6-14-88
Vol. 53 No. 114
Pages 22125-22290

Federal Register

Tuesday
June 14, 1988

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: June 16; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Maxine Hill, 202–523–5229

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Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

[Docket No. AMS-FV-88-043FR]

Limes Grown in Florida; Relaxation of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule the provisions of two interim final rules which relaxed container and pack requirements for Florida limes. These interim final rules reduced the minimum net weight of limes which must be packed in a currently authorized master container from 38 to 35 pounds when that container is used for bagged limes and the container is marked "Master Container." This action permitted the packing of bagged limes in the container without distorting it or damaging the fruit. The first interim final also added a container to the list of containers currently authorized for the shipment of fresh limes. These actions were recommended by the Florida Lime Administrative Committee, which works with the Department in administering the Florida lime marketing order.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 26 handlers of Florida limes subject to regulation under the Florida lime marketing order, and approximately 260 lime producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Sections 911.329 and 911.311 were amended by an interim final rule issued on December 31, 1987, and published in the **Federal Register** (53 FR 403, January 7, 1988). Interested persons were invited to submit written comments on the rule until February 8, 1988. No comments were submitted during the specified time. However, the committee subsequently requested that the temporarily relaxed weight requirements specified in the rule for bagged limes packed in a master container be extended indefinitely, based on the unanimous recommendation of the committee at its meeting of March 9, 1988. As a consequence, a second interim final rule was issued on April 1, 1988, and published in the **Federal Register** (53 FR 11831, April 11, 1988), extending the relaxed weight requirements indefinitely. Comments on this rule were due on May 11, 1988, and none were received.

Container requirements for Florida limes are prescribed in § 911.329 in terms of inside dimensions and net weight capacity which handlers must meet when they ship limes outside the production area. Paragraph (a)(2)(v) of that section prescribes the specifications of one of the containers handlers may use for such shipments. That container has inside dimensions of 12¾ × 15¼ × 10¾ inches and is required to contain not less than 38 pounds nor more than 42 pounds net weight of limes.

The January 7 interim final rule was issued based on the committee's report that handlers had been using this container as a master shipping container for bagged limes, but that the container was too small to comfortably hold the 38-pound minimum net weight. This resulted in container distortion and damage to the fruit. Reducing the minimum net weight of the contents of this container to 35 pounds when it was used for bagged limes was recommended to alleviate this problem and to ensure that limes free from damage due to packing would reach the consumer. The January 7 interim rule was in effect from January 7 until March 31, 1988. To differentiate containers of bagged limes from containers of loose limes, the January 7 interim rule also required containers of bagged limes to be marked "Master Container." The minimum weight requirement for containers of loose limes continued to be 38 pounds.

The January 7 interim final rule also added a container with inside dimensions of 11 × 16¾ × 10 inches, containing between 38 and 42 pounds net weight of limes, to the list of currently authorized containers. This container is specified in paragraph (a)(2)(ix) of § 911.329.

Reducing the minimum net weight requirement of the container for bagged limes proved successful during the trial period, and the committee requested that the 35-pound minimum net weight be made a permanent part of the lime container requirements. Therefore, the second interim final rule was issued on April 1 to extend the relaxed weight requirements indefinitely.

Both interim final rules made necessary conforming changes in the container marking requirements specified in § 911.311.

This rule adopts without modification the provisions of the interim final rules which relaxed the container and pack requirement for bagged limes packed in master containers and which added a container to the list of containers authorized for the shipment of fresh limes. This rule also adopts, unchanged, the conforming changes made in the second interim final rule. This rule pertains only to limes grown in the production area.

It is the Department's view that the impact of the relaxed container requirements upon producers and handlers are beneficial and have a positive effect on industry operations. The application of a less restrictive minimum weight for the specified container continues to ensure that limes free from packing damage reach the consumer. The addition of a new container benefits handlers by providing them with a container needed to ship fresh limes to market.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action continues container and pack requirements currently in effect for Florida limes; (2) shipment of the 1988–89 season Florida lime crop is in progress; (3) this action is based upon the unanimous recommendation of the committee considered at a public meeting; (4) handlers are prepared to continue conducting their operations in accordance with the requirements specified in the interim final rules; and (5) each interim final rule provided a 30-day comment period, and no such comments were received; and (6) no useful purpose would be served by delaying the effective date of this action until 30 days after publication.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

For the reasons set forth in the preamble, the following action pertaining to 7 CFR Part 911 is taken:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

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

§§ 911.311, 911.329 [Amended]

2. Accordingly, the interim final rule amending §§ 911.311 and 911.329 published in the **Federal Register** (53 FR 403, January 7, 1988), and interim final rule further amending §§ 911.311 and 911.329 published in the **Federal Register** (53 FR 11831, April 11, 1988), is adopted as a final rule without change.

Dated: June 9, 1988.

William J. Doyle,

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

[FR Doc. 88–13416 Filed 6–13–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 925 and 944

[AMS-FV-88-010 FR]

Grapes Grown in a Designated Area of Southeastern California and Table Grapes Imported Into the United States; Change in Minimum Size Requirements for Perlette Grapes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the minimum berry size for California Perlette grapes and imported Perlette grapes from 9/16 to 10/16 of an inch starting with the 1989 crop season. This action is intended to provide fresh markets with Perlette grapes of desirable size and promote consumer acceptance of these grapes.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone: (202) 447–5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR Part 925), regulating the handling of grapes grown in a designated area of southeastern California. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 20 handlers of California desert grapes subject to regulation under this marketing order, and approximately 85 desert grape producers. Also, there are approximately 50 grape importers subject to the requirements of the table grape import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California desert grapes and importers of table grapes may be classified as small entities.

The California Desert Grape Administrative Committee's 1987 Annual Report indicated that table grape shipments for 22 pound boxes had totals in the past three seasons of 7,364,853 in 1987, 8,189,994 in 1986, and 7,441,364 in 1985. The decrease in last year's production was due to inclement weather conditions. Bearing acreage of 18,815 in 1987 was 722 acres more than the 18,093 acres reported in 1986. Available forecasts indicate that table grape supplies should be comparable to those in recent seasons.

Table grape producers are improving their cultural practices to remain competitive and to meet the expectations of the consumer. Table grapes compete with over 250 other items in supermarket produce sections. Since table grapes are usually an impulse item, purchases are based on eye appeal.

Total shipments in 1987 of 22 pound boxes of Perlette grapes were 2,693,356 or approximately 36 percent of the total shipments for all varieties.

Based on prices provided by the Federal-State Market News Service and the committee's handling cost figures, it

is estimated that the on-vine value of California Perlette grapes approximated $23.1 million in 1987. This represents about 45.4 percent of the total value of all varieties of grapes grown in the production area.

Perlette grapes were the dominant variety shipped out of the production area during the last crop year. The "production area" is Imperial County, California, and part of Riverside County and San Diego County, California.

The final rule will change the handling regulation specified at 7 CFR in § 925.304 (52 FR 24443, July 1, 1987) to increase the minimum berry size for California Perlette grapes regulated under the marketing order from 9/16 to 10/16 of an inch in diameter.

Changes will be made in §§ 925.304(a) and 944.503(a)(1) to increase the size of California desert grapes and imported table grapes by increasing the minimum berry size for the Perlette grape variety. This final rule is being issued pursuant to § 925.52 of the order.

Members of the committee believe that increasing minimum berry size for Perlettes will better meet the demands of the consumer. The larger berries of this variety tend to produce a more attractive and uniform pack. Requiring handlers to ship only larger size grapes, which are more desirable in the marketplace, is expected to foster increased consumption and have a positive impact on the industry. Furthermore, the committee believes the increase in the minimum berry size requirement will help consumers identify and distinguish the green-colored, round Perlette grape from other grape varieties of similar color.

Notice of this change was published in the Federal Register on March 23, 1988 [53 FR 9450]. Three comments were filed. Two comments, one from a grape grower in the production area and another from a consumer, objected to the proposed change. An industry association, Desert Grape Growers League of California (DGGLC), filed a comment supporting the committee's recommendation.

The grape grower opposed to the change in the berry size requirement contends that the real problem facing the industry is the shipment of sour grapes. The appropriate course of action would therefore be to increase the minimum maturity standards currently in effect rather than the size specifications.

While there may be merit in the assertion that grape growers would benefit from the establishment of tighter maturity requirements, there is no consensus in the industry to do so at the current time. Further, information submitted by the committee and the DGGLC supports the berry size increase as a means of expanding demand and sales of Perlette grapes.

The second opposing comment was filed by a consumer who objects to this action because it would limit his choice to larger, more expensive grapes. Further, supplies available from Mexico would be restricted.

With regard to the first of these objections, again, the preponderance of information supports the committee's claim that consumer demand for larger, more uniformly sized grapes is stronger than that for smaller fruit. On the issue of imports, as is later discussed more fully, the Act requires that this change in the domestic size requirement be made applicable to imports as well. Further, the proposal was mailed to all grape importers of record, and none expressed objection to this change. It is therefore reasonable to conclude that supplies of Perlette grapes would not be significantly affected by this 1/16-inch increase in the minimum berry size requirement.

The DGGLC in support of the committee's recommendation cited a report prepared by an independent marketing order study team in 1986 and published by the Economic Research Service, USDA, entitled "Criteria for Evaluating Federal Marketing Orders: Fruits, Vegetables, Nut and Specialty Commodities." That report notes that "Minimum quality standards can have three impacts related to the objectives of the Act: (1) Increase the retail demand for a product resulting in higher prices and/or increased quantities sold; (2) Reduce marketing margins with benefits accruing to both consumers and producers; and (3) Reduce supply which, with inelastic demand at the farm level, will result in increased total returns to producers for a given crop. With regard to the latter impact, any minimum quality standard which is effective will necessarily restrict quantities marketed, but we argue that supply control should not be the focus of such standards."

According to the DGGLC, the first two items clearly support the increase in the minimum Perlette berry size. Consumers seem to perceive the smaller Perlette berry as an inferior product and this is based on most available trade reports. Wholesalers and retailers request the largest size grapes available because those are what the consumer buys.

The DGGLC further contends that the quality perception problem is reflected in the decreasing price received for the Perlette grape over the past five years.

Year	Price per Lug	Quantity
1987	$12.22	2,693
1986	$12.96	2,792
1985	$13.28	3,135
1984	$15.40	2,500
1983	$15.19	2,800

According to the DGGLC and as the price column shows, there has been steady, downward pressure on the price of Perlettes, even though the supply has remained farily constant. The DGGLC states that most Perlettes already meet the proposed 10/16 minimum berry size requirement, and this rule change will not restrict or limit domestic and imported Perlette supplies. The majority of the industry also believes that increasing the minimum berry size will not inflict hardships on growers of Perlette grapes.

Qualtiy assurance is very important to the California desert grape industry. Providing the public with acceptable quality fruit which is appealing to the consumer on a consistent basis is necessary to maintain buyer confidence in the marketplace. To the extent that this action increases the quality of Perlette grapes in the marketplace, it will also be of benefit to both California desert grape producers and handlers. This action will not adversely affect marketable supplies of grapes.

This action will not become effective until the 1989 crop season. This will afford producers the time necessary to change their cultural practices in order to meet the increased minimum berry size requirement.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Because this final rule increases the minimum berry size for California Perlette grapes under M.O. 925, this change will be applicable to imported Perlette grapes during the period (April 20 to August 15 each year) that the domestic handling requirements are in effect.

Chile and Mexico are the two main sources of Perlette grape imports to the United States. Imports of Perlette grapes from Chile will be unaffected by this rule because harvesting and shipping of this variety are completed in January, and the domestic handling regulations do not become effective until April 20.

However, the Mexican grape shipping season runs concurrently with that for

California desert grapes which are regulated under Marketing Order 925.

During 1987, U.S. imports of Mexican grapes totaled 2,597,926 lugs. Of this total, 28 percent represented grapes of the Perlette variety.

While this rule increases the minimum berry size for domestic and imported Perlette grapes for the 1989 and subsequent crop years, exemptions from requirements under the domestic handling regulation will remain unchanged for shipments of the Emperor, Almeria, Calmeria, and Ribier grape varieties. These varieties are exempt from handling requirements because they are not grown in the production area. Imports of these varieties also are exempt from import regulation requirements (§ 944.503, Table Grape Import Regulation 4; 52 FR 8865, March 20, 1987).

Organically grown grapes are exempt from the berry size requirements, and the handling of grapes for processing (raisins, crushing, and other by-products) is exempt from size, quality, and container requirements. These exemptions are specified in § 925.304(c) and (d).

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is hereby found that increasing the minimum berry size for California Perlette grapes and imported Perlette grapes from 9/16 to 10/16 of an inch starting with the 1989 season will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Marketing agreements and orders, Grapes, California.

7 CFR Part 944

Fruits, Import regulations, Grapes.

For the reasons set forth in the preamble, 7 CFR Parts 925 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 925 and 944 continues to read as follows:

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

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

2. Section 925.304 is amended by revising paragraph (a) to read as follows.

Note.—This regulation will appear in the Code of Federal Regulations.

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(a) *Grade, size, and maturity.* Such grapes shall meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.887 through 51.912), except that (1) grapes of the Perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch, and that (2) grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code [Title 3].

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. Section 944.503 is amended by revising paragraph (a)(1) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that (1) grapes of the perlette variety shall meet the minimum berry size requirement of ten-sixteenths of an inch, and that (2) grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1463.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3)

* * * * *

Dated: June 9, 1988.

William J. Doyle,

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

[FR Doc. 88–13414 Filed 6–13–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 94

[Docket No. 87–187]

Importation of Animals and Animal Products; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendments.

SUMMARY: We are renumbering the footnotes and references to them in 9 CFR Parts 92 and 94 to correct inconsistencies in numbering. This action makes the regulations easier to follow. It creates no substantive changes to the regulations.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Kathy McCloskey at (301) 436–5533.

SUPPLEMENTARY INFORMATION: We are renumbering the footnotes and references to them in 9 CFR Parts 92 and 94. Before this final rule, some footnotes were numbered by section (each section beginning with a footnote 1), while other footnotes were numbered by part (consecutively throughout the part), according to an earlier style of numbering. We are renumbering the footnotes by section for internal consistency. We have chosen this method of numbering so that footnotes throughout a part will not have to be renumbered each time a footnote is added to or removed from any one section. In § 92.11, we are reserving footnote 4. Also, in § 92.41, footnotes 12 and 13 will be renumbered as 1 and 2, and the footnotes now designated as 1 and 2 in the Cooperative and Trust Fund Agreement will remain 1 and 2 since they are part of the agreement laid out in that section. This action creates no substantive changes in the regulations.

List of Subjects

9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African swine fever, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Rinderpest, Swine vesicular disease

Accordingly, we are amending Title 9, Chapter I of the Code of Federal Regulations as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. In § 92.2, footnotes 2, 3, 4, 4a, 15, and 16 and all references within the text are redesignated as 1, 2, 3, 4, 5, and 6, respectively.

§ 92.3 [Amended]

3. In § 92.3, footnote 4a and all references within the text are redesignated as 1.

§ 92.4 [Amended]

4. In § 92.4(d)(1)(iv), footnote 2 and the reference within the text is redesignated as 3.

§ 92.11 [Amended]

5. In § 92.11, footnotes 6, 7, 8, and 1 and all references within the text are redesignated as 1, 2, 3, and 5, respectively.

6. In the undesignated center heading preceding §§ 92.19–92.26, footnote 9 is redesignated as 1.

7. In the undesignated center heading preceding §§ 92.27–92.30, footnote 10 is redesignated as 1.

8. In the undesignated center heading preceding §§ 92.31–92.40, footnote 11 is redesignated as 1.

§ 92.34 [Amended]

9. In § 92.34, footnote 7 and all references within the text are redesignated as 1.

§ 92.41 [Amended]

10. In § 92.41, footnotes 12 and 13 and all references within the text are redesignated as 1 and 2, respectively.

§ 92.42 [Amended]

11. In § 92.42, footnote 16 and all references within the text are redesignated as 1.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

12. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.5 [Amended]

13. In § 94.5, footnote 2 and all references within the text are renumbered as 1.

§ 94.6 [Amended]

14. In § 94.6, footnotes 3, 4, 5, 6, and 7 and all references within the text are renumbered as 1, 2, 3, 4, and 5, respectively.

§ 94.8 [Amended]

15. In § 94.8, footnote 7a and all references within the text are renumbered as 1.

§ 94.9 [Amended]

16. In § 94.9, footnotes 8 and 9 and all references within the text are renumbered as 1 and 2, respectively.

§ 94.12 [Amended]

17. In § 94.12, footnotes 10 and 9 and all references within the text are renumbered as 1 and 2, respectively, and redesignated footnote 2 is revised to read "See footnote 2 to § 94.9."

§ 94.16 [Amended]

18. In § 94.16, footnote 11 and all references within the text are renumbered as 1.

Done in Washington, DC, this 8th day of June, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–13223 Filed 6–13–88; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0638]

Delegation of Authority to Staff Director for Banking Supervision and Regulation and Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Secretary of the Board, in accordance with 12 CFR 265.2(a)(11), has approved technical amendments to the Board's Rules Regarding Delegation of Authority (12 CFR Part 265) to conform references to the Board's Regulations G, T, and U (12 CFR Parts 207, 220, and 221, respectively) to the totally revised versions of those regulations that became effective in 1983 and 1984.

EFFECTIVE DATE: June 8, 1988.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson, (202) 452–3544.

SUPPLEMENTARY INFORMATION: Paragraph (19) of § 265.2(c) is being removed and reserved because the delegated authority granted to the Staff Director for Banking Supervision and Regulation in that subparagraph is no longer necessary in light of the 1983 revision of Regulation G. Paragraph (19) of § 265.2(c) gives the Staff Director for Banking Supervision and Regulation delegated authority to approve repayments of the "deficiency" with respect to stock option or employee stock purchase plan credit in lower amounts and over longer periods of time than those specified in Regulation G. The complete revision of Regulation G (Docket No. R–0457, 48 FR 35070) liberalized the complex rules with respect to credit extended by a corporation to its own employees and officers for the purpose of purchasing the company's stock and eliminated the specific loan reduction schedules and the concept of "deficiency." Consequently, there is no longer a need for delegated authority in this area.

Paragraph (18) of § 265.2(c) gives the Staff Director for Banking Supervision and Regulation delegated authority to approve the issuance of the Board's List of Marginable OTC Stocks. The references in this subparagraph to

sections in Regulations G, T, and U (12 CFR Parts 207, 220, and 221, respectively) are being revised to conform to the renumbering that accompanied the complete revision of the three regulations in 1983 and 1984.

Paragraph (17) of § 265.2(f) gives the Federal Reserve Banks delegated authority to approve applications for termination of registration by persons who are registered under the Board's Regulation G (12 CFR Part 207). The references to sections in Regulation G are being revised to conform to the renumbering that accompanied the complete revision of the regulation in 1983.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment does not have particular effect on small entities.

Public Comment

The provisions of 5 U.S.C. 553 relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures have not been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority, Delegations (Government agencies), Banks, Banking, Federal Reserve System.

For the reasons set forth above, 12 CFR Part 265 is amended as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: Sec. 11(k), 38 Stat. 261 and 80 Stat. 1314; 12 U.S.C. 248(k).

2. Section 265.2 is amended by revising paragraph (c)(18) and removing and reserving paragraph (c)(19) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

* * * * *

(c) * * *

(18) Under the provisions of §§ 207.6(d), 220.17(d) and 221.7(d) of this chapter (Regulations G, T, and U, respectively) to approve issuance of the list of OTC margin stocks and to add, omit, or remove any stock in circumstances indicating that such change is necessary or appropriate in the public interest.

(19) [Reserved]

* * * * *

3. In § 265.2(f)(17), the reference to "§ 207.1(b)" is revised to read "§ 207.3(a)(2)" and the reference to "§ 207.1(a)" is revised to read "§ 207.3(a)(1)."

Board of Governors of the Federal Reserve System, June 8, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–13312 Filed 6–13–88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

Agricultural Loan Loss Amortization

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: This regulation implements Title VIII of the Competitive Equality Banking Act of 1987 which permits agricultural banks to amortize losses on qualified agricultural loans. The regulation describes the procedures and standards applicable to banks desiring to amortize losses under that statute. It also describes the manner in which such amortizations are to be done. This rule amends and makes final the interim regulation, which has been in effect since November 9, 1987, and reflects the FDIC's consideration of the public comments received on that interim regulation.

After consideration of comments received, the FDIC is making one substantive change and several technical changes to the rule. The substantive change would allow eligible banks to amortize over a period of up to seven years losses on reappraisal or sale of real or personal property that was acquired in connection with a qualified agricultural loan and that the bank owned on January 1, 1983, or subsequently acquires prior to January 1, 1992. Under the interim rule, such property had to be currently owned to qualify. The technical changes amend the definitions of "qualified agricultural loan" and "agricultural bank" to clarify that the FDIC intends to construe these phrases broadly and add a definition of "agriculturally related other property" to clarify the treatment of losses due to reappraisals and sales of such property. These amendments make the rule retroactively effective to November 9, 1987. The other Federal banking agencies are also adopting substantially identical amendments to their regulations.

EFFECTIVE DATE: The rule is retroactively effective to November 9, 1987. Part 324 will remain in effect indefinitely.

FOR FURTHER INFORMATION CONTACT: William C. Crothers, Examination Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–6906.

SUPPLEMENTARY INFORMATION: Title VIII of the Competitive Equality Banking Act of 1987 (the "Statute") permits an agricultural bank to amortize (1) losses on qualified agricultural loans shown on its financial statements for any year between December 31, 1983 and January 1, 1992; and (2) losses suffered as the result of an appraisal of agriculturally related other property that it owned on January 1, 1983, or acquire prior to January 1, 1992. The Statute also requires that the Federal banking agencies issue implementing regulations no later than 90 days after its enactment.

In response to this requirement, the FDIC published and requested comments on an interim regulation (52 FR 41966; November 2, 1987) which has been in effect since November 9, 1987. The other Federal banking agencies (the Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency) adopted substantially identical regulations, containing only technical variations necessary to accommodate their slightly different situations.

Discussion of Comments Received

This final rule reflects the FDIC's review of the public comments received. In total, 20 letters have been received from 16 banks and four industry associations. Four banks expressed agreement with the interim regulation as published. Two trade associations are similarly supportive but suggest certain clarifications. The remaining comments largely represent a combination of support for some provisions of the regulation as well as suggestions for change.

Definitions

The definition of *"agricultural bank"* in the final regulation continues to include the agricultural loan volume test

(agricultural loans are 25 percent or more of total loans) that is provided by the Statute.

The comment letters suggest that the FDIC should be liberal when applying this test and also that banks should be eligible for new deferrals if they met the loan volume test any time subsequent to December 31, 1983 rather than as of the time a loss would be recognized in financial statements. This suggestion is not adopted because the legislation was directed toward banks with a continuing commitment to agriculture and, given the broad definition of agricultural loans (see discussion below), such banks should not have difficulty meeting this test.

The interim regulation's definition of *"qualified agricultural loan"* incorporated the definitions of "loans to finance agricultural production and other loans to farmers" and "loans secured by farmland" contained in Schedule RC–C of the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income ("call report"). Additionally, as suggested by the Statute, the FDIC retained discretion to deem other types of loans and leases to be "qualified" if the requesting bank demonstrates those loans and leases to be sufficiently related to agriculture.

Several comments suggest that the regulation should include a list of such other kinds of loans which will be deemed sufficiently related to agriculture. One letter recommends that any loan secured by agricultural equipment should be included whether or not the equipment was used in farm production and pointed out that the Statute explicitly mentioned such loans. This would primarily pick up farm implement dealers. It is also suggested that regulators adopt a liberal attitude when determining if loans are closely related to agriculture.

The interim regulation was intended to be liberal and not to use agricultural loan definitions in a restrictive manner in order to exclude banks from participation. Call Report numbers were chosen because they are nearly identical to the statutory definition, are familiar to bankers, readily available and should be sufficient to qualify most agricultural banks. If additional loans are needed it should not be difficult for an agricultural bank to find loans it can readily support as related to agriculture. Loans to farm implement dealers are an obvious example of such loans. However, publishing a formal list of such loan types could be more, rather than less, restrictive. The practical effect of such a list might be that many banks would assume that if a loan type or category was not on the list it would not qualify. Nevertheless, in order to clarify that the regulatory definition of qualified agricultural loans is as broad as the statutory definition and is not intended to be restrictive in the types of loans which may be included in an application, the regulatory definition has been amended to include the statutory reference to loans secured by farm machinery. Banks remain able to use additional types of loans if they can demonstrate that the loans are related to agriculture.

Among the comments received was the suggestion that banks be permitted to include charged-off loans and farm-related property acquired through foreclosure for purposes of the loan volume tests. The interim regulation allowed the use of charged-off loans by virtue of including them in the definition of "qualified agricultural loans." Such loans are still legal assets of the banks, even though off the books, and represent part of the banks' total credit commitment to agriculture. A similar argument seems equally applicable to assets acquired through foreclosure on agricultural loans. Therefore, the final rule provides that such assets will be counted for purposes of the loan volume test in the definition of an agricultural bank.

The definition of an agricultural bank includes the statutory requirement that the bank have total assets of $100 million or less. Comments were received suggesting regulators clarify what happens if a bank is approved for loss deferral and subsequently exceeds the size limitation. Congress did not intend for banks larger than $100 million to defer loan losses. If size was unimportant the law could have easily excluded it. At the same time, it is of little value for a bank to defer a loss one year if it must reverse that deferral the next year because it grew to over $100 million in assets. Therefore, the FDIC expects a bank to meet the definitions of an agricultural bank, including the size limitation, upon initial application *and* as of every quarter-end that new additional agricultural loan losses are to be deferred. Once admitted to the program, any loss which was properly deferred will be allowed to be amortized according to the regulation, regardless of the bank's size, but new losses cannot be deferred once a bank exceeds the size limit.

On the other hand, it is not intended that banks desiring to use loss deferral be allowed to bypass the application and review process by merging with another bank which has already been approved. Conversely, the merger of two banks which are both in the program could result in a bank over $100 million in assets. Mergers involving eligible banks are not expected to be frequent. Therefore, the status of loss deferral subsequent to a merger will be determined on a case-by-case basis. This should be discussed with FDIC representatives in the appropriate regional office and a determination made before a merger transaction is consummated. However, existing approved deferrals of loan losses can continue to be amortized unless the resultant bank's eligibility is formally revoked. No new losses may be deferred if the resultant bank is larger than $100 million in assets.

Loss Amortization

Section 324.3 on loss amortization and reappraisal addresses two issues: (1) Which losses are subject to amortization and (2) how they may be amortized. On the first issue, the rule reflects Congress' clear intent that losses resulting from fraud or criminal abuse not be eligible for amortization. Two comments were received regarding fraud and abuse provisions of the regulation. One indicates that clarification is necessary on what constituted fraud and abuse, suggesting that the filing of a criminal referral report be the determining factor. The other suggestion is that the regulation only address fraud and abuse by executive officers, directors and principal shareholders. Congress intended to help banks suffering from agricultural problems, not problems of employee fraud. In any event, the FDIC does not expect this issue to be a frequently occurring factor in agricultural banks. Most bankers, though not necessarily legally trained, readily recognize fraud and abuse. For these reasons changing the regulation as suggested does not appear warranted.

The interim regulation provided for deferral of loan losses experienced in 1984 and subsequent years. Losses on reappraisal or sale of agricultural property, acquired through efforts to collect the loans the property secured, were also permitted but only if the property was currently owned. Several comment letters considered this inconsistent treatment inappropriate, suggesting that losses from any sales and reappraisals of property which occurred in 1983 or subsequent years be deferred regardless of whether or not the property is still owned by the bank. One of the reasons Congress authorized in the Statute the deferral of reappraisal losses was to remove the accounting pressure to sell such property into already weak markets. This is not a factor if the property has already been

sold. In addition, unlike sold property, with charged-off loans there generally remains a legal obligation, an asset which could perhaps ultimately be of some value. As to sales, the Statute does not mention deferral at all. Losses on sales were authorized in the regulation merely to make unnecessary the expense of a reappraisal immediately before a sale solely to allow the economic loss to qualify for deferral as a loss on reappraisal rather than be recognized as a loss on a sale. In spite of these reasons, the FDIC is persuaded that such property-related losses are as much a part of the bank's agricultural problem as the original loan loss, and the overriding intent of the legislation is to mitigate the effect of such losses. Therefore, the final rule removes the "currently owned" requirement and provides that losses on holding or selling property will be treated in the same manner as losses on agricultural loans.

The Statute allows amortization of agricultural loan losses that would be reflected on annual financial statements for 1984 through 1991. It also allows amortization for losses resulting from reappraisals on real or personal property acquired in connection with an agricultural loan that the bank would otherwise be required to show on its annual financial statements. To ensure that losses due to reappraisals are treated comparably to loan losses, the final regulation provides that losses from reappraisals that the bank would be required to reflect on financial statements for 1983 through 1991 will be allowed a seven-year amortization period in the same manner as agricultural loan losses generally, i.e., they must be fully amortized by 1998. For the same reason, the regulation provides that losses resulting from reappraisals after 1991 are not eligible for amortization.

With respect to the manner of amortization, the Statute provides that the loss shall be amortized over a period not to exceed seven years as provided in regulations issued by the Federal banking agencies. The regulation provides that amortization shall occur on a quarterly straight-line basis over a period not to exceed seven years beginning in the quarter following the date of loss. Losses sustained in years prior to the effective date of the regulation would be treated as if amortized over seven years beginning in the quarter following the date of the loss. Thus, a bank could take only the amortizations that remain for such a loss after it enters the program.

Comments were received suggesting that this approach to amortization unfairly penalized banks which promptly recognized their loan losses. They suggested that amortization begin in the quarter following enactment of the Statute rather than the quarter following the loss. The FDIC does not believe the rule penalizes banks that were diligent in adjusting their assets. Accepted banking practice and Call Report instructions require banks to record a loss in the period it becomes apparent. Banks that had losses which they declined to recognize would have been in contravention of proper procedures. Therefore, differences in the actual occurrence of an economic loss should be a much greater cause of different timing patterns in loan charge-offs than differences in how quickly management elects to take a loss. The effect of the technique prescribed is to reflect amortization as though the program had been in effect from the first year deferral was allowed. Amortization in this manner does reduce the initial amount of deferred losses which can be established when a bank is accepted into the loss deferral program, but it also reduces the future amortization which must be absorbed. That is not viewed as a penalty, and, the suggested changes are not adopted.

Eligibility

Under the regulation, any bank desiring to participate in the program is required to submit to the appropriate Federal banking agency a proposal establishing both its eligibility and the eligibility of the losses it proposes to amortize. Among the criteria for eligibility is that the proposing bank's current capital must be in need of restoration; but the bank must also be an economically viable, fundamentally sound institution. Some comment letters indicated a belief that these are mutually exclusive conditions and, in any event, neither condition should be used to determine eligibility.

The FDIC does not consider viability and capital inadequacy to be mutually exclusive conditions and has retained these eligibility conditions. A bank can have inadequate capital due to a variety of temporary problems or conditions yet also have enough underlying demand for banking services and earning capacity to restore capital if given sufficient time. Viability is not defined in the regulation. It is a judgment based on many variables. One measure of viability would be whether a bank has traditional funding and earning sources of acceptable quality within its market area sufficient to permit the bank to earn a reasonable profit in a normal economic environment while achieving and maintaining a capital level that provides the capacity to operate throughout the normal downturns in economic cycles without suffering severe financial problems. Usually, a bank will be considered viable if it has a reasonable prospect of remaining a going concern throughout the program and at the end of the amortization period.

The FDIC rejected the suggestion that capital should not have to be in need of restoration and the argument that restoration should mean a return to a historical level of capital that is higher than normal standards of financial prudence would require. Such banks have no need for loss deferral and that approach does not represent the intent of the Statute. Loss deferral is not a generally accepted accounting practice nor is it considered good public policy for the industry in general. Therefore, the use of such techniques to artificially maintain unnecessarily high levels of capital is believed inappropriate. In this instance Congressional intent seems clear since the Statute requires, as an essential condition of eligibility, the submission of a plan to restore capital to a level acceptable to the banking agency. If capital is to be restored to an acceptable level it must, by definition, not already be at an acceptable level.

The regulation does not prescribe any absolute level of capital to be achieved. Some comment letters suggest that acceptable capital levels be defined and others suggest specific ratios to use, not only for eligibility but also for subsequent removal. Part 325 of the FDIC's rules and regulations (12 CFR Part 325) already establishes minimum capital standards for well-run banks in satisfactory financial condition. Banks applying for loss deferral will not be in satisfactory financial condition; and, therefore, capital may be above the six percent minimum cited in Part 325 and still be judged inadequate. Because it is impossible to standardize the conditions of the applicant banks, their management or the economic prospects of their markets, it is also not possible to precisely define acceptable levels of capital. Each bank's individual circumstances will be evaluated during review of the requisite capital plan. This approach parallels current practices under the agency's existing capital forbearance program. Because a determination regarding capital adequacy must be made in each case, a bank should include a statement as to why its capital is "in need of restoration" when applying to amortize loan losses.

There remains the question of removing a bank from the program once

it has recovered financially. As a matter of administrative practice, the FDIC does not intend to remove such a bank from the program so long as the bank continues to meet the Conditions on Acceptance prescribed in the regulation. Therefore, once a loan loss has been deferred a bank will have the option to continue to amortize it over the period provided for in the regulation. However, once the bank has recovered sufficiently so that it no longer meets eligibility requirements, no new deferral of loan losses will be permitted.

Conditions on Acceptance

The regulation specifies that any acceptance of a proposal will be subject to certain conditions. These conditions are designed to ensure that a bank continues to meet the eligibility requirements and is properly amortizing losses under the program. One of these conditions is that the bank must agree to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans not lower than the percentage of such loans in its loan portfolio on January 1, 1986. Some comment letters indicated that they were confused about what assets would be counted as agricultural loans for purposes of calculating this ratio. Any asset meeting the definition of a qualified agricultural loan (see § 324.2(b)) or agriculturally related other property (see § 324.2(c)) may be used in calculating this ratio.

Other Matters

The FDIC's administrative practices implementing the interim regulation included providing the bank instructions covering the possible amortization of future loan losses in the letter granting approval of the bank's application for loss deferral. These instructions typically required the bank to submit a list of future period loan losses and request permission to defer them. It has been decided that advance permission is unnecessary and, once granted initial loss deferral authorization, a bank may continue to defer new eligible losses and report to the FDIC after the fact so long as the eligibility criteria and conditions of acceptance continue to be met. The volume of such losses should be reviewed by the bank to see that they do not invalidate the reasonableness or acceptability of the bank's capital plan. If subsequent review by the FDIC indicates that the bank should not have recorded new deferrals of losses because eligibility criteria and/or conditions of acceptance were not met, such deferrals may be required to be reversed, removed from the bank's books and, if the amount is material, amended Call Reports may also be required.

The interim regulation required a certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors or principal shareholders. One commentor expresses concern over this requirement in that it is not generally possible to be absolutely certain of every circumstance surrounding every loan. The FDIC understands this reluctance and, therefore, a specific form of certification is not dictated in the regulation. Certification to the best of one's knowledge and belief was and is permissible.

Comments suggest that clarification is needed affirming the possibility of participation in both the Capital Forbearance Program and loss deferral and the eligibility of banks subject to administrative actions containing capital provisions. The Capital Forbearance and Loan Loss Deferral programs are similar. A bank in the Capital Forbearance Program or a bank with capital below levels established by 12 CFR Part 325 or that is subject to an enforcement action related to capital can be eligible for loss deferral. Conversely, a bank using loss deferral may also apply for the Capital Forbearance Program. A bank may also apply for both programs simultaneously. Acceptance of a bank's capital plan for loss amortization will normally relieve the bank of any inconsistent provisions dealing with capital in any extant agency order, agreement, or directive. Requests for such relief should be included as part of the bank's proposal to utilize loss amortization.

Special Studies

Regulatory Flexibility Act

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

Paperwork Reduction Act

The information collection requirements contained in the interim rule were reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 324

Banks, Banking, State nonmember banks.

Accordingly, the interim rule adding 12 CFR Part 324 which was published at 52 FR 41966, Nov. 2, 1987, is adopted as final with the following changes:

PART 324—[AMENDED]

1. The authority citation for Part 324 continues to read as follows:

Authority: 12 U.S.C. 1823(j), 1819, and 12 U.S.C. 1811–1831d.

2. Section 324.2 is revised to read:

§ 324.2 Definitions.

For purposes of this part:

(a) "Agricultural Bank" means a state nonmember bank, except a district bank,

(1) The deposits of which are insured by the Corporation;

(2) Which is located in an area of the country the economy of which is dependent on agriculture;

(3) Which has total assets of $100 billion or less as of the most recent Report of Condition; and

(4) Which has—

(i) At least 25 percent of its total loans in qualified agricultural loans and agriculturally related other property as defined below; or

(ii) Less than 25 percent of its total loans in qualified agricultural loans and agriculturally related other property, but which bank the appropriate state banking authority has recommended to the Corporation and which the Corporation accepts for eligibility under this part or which the Corporation on its own motion deems eligible hereunder.

(b) "Qualified agricultural loan" means—

(1) Loans qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farmland" for purpose of Schedule RC–C of the FFIEC Consolidated Reports of Condition and Income or such other comparable schedule as may be in effect;

(2) Loans secured by farm machinery;

(3) Other loans and leases that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Corporation;

(4) The remaining unpaid balance of any loans as described in paragraphs (b)(1), (2) and (3) of this section that have been charged-off since January 1, 1984, and that qualify for deferral under this regulation.

(c) "Agriculturally related other property" means any property, real or personal, that a bank owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992, in connection with a qualified agricultural loan. For purposes of

§§ 324.2(a)(4)(i) and 324.6(d) the value of such property shall include amounts previously charged-off.

(d) "Accepting Official" means the Director, Division of Bank Supervision, or his designees.

3. Section 324.3(a)(2) is revised to read:

§ 324.3 Loss amortization and reappraisal.

(a) * * *

(2) Any loss that the bank would be required to reflect in its financial statements for any period between and including 1983 to 1991 resulting from a reappraisal or sale of agriculturally related other property.

4. Section 324.5(c) is revised to read:

§ 324.5 Eligibility.

* * * * *

(c) There is no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans and agriculturally related other property; and

* * * * *

5. Section 324.6(d) is revised to read:

§ 324.6 Conditions on acceptance.

* * * * *

(d) The bank shall agree to make a reasonable effort, consistent with safe and sound banking practices, to maintain a percentage of agricultural loans and agriculturally related other property to total loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

* * * * *

6. Section 324.7 (a) and (b)(6) introductory text are revised to read:

§ 324.7 Submission of proposals.

(a) A bank wishing to amortize losses on qualified agricultural loans or agriculturally related other property shall submit a proposal to the Division of Bank Supervision regional director of the region in which the bank is located.

(b) * * *

(6) A list of the loans and agriculturally related other property upon which the bank proposes to defer loss including, for each such loan or property, the following information:

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of June.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-13241 Filed 6-13-88; 8:45 am]

BILLING CODE 6714-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 612

Personnel Administration

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts a final rule amending Subpart B of Part 612 that prohibits an officer of a Farm Credit Bank (Bank) from simultaneously serving as an officer or other employee of a Farm Credit System association (association) in its district and prohibits a lower level Bank employee from serving as an officer of an association. The rule permits joint employees at lower levels provided each institution (1) obtains a separate and independent opinion of counsel that the institution has the authority under the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 et seq., to appoint joint employees, and (2) appropriately reflects the expense of the service of each such employee in its financial statements. The regulation has the effect of requiring independent senior management in Farm Credit Banks and associations.

EFFECTIVE DATE: This regulation shall become effective January 1, 1989, provided one or both houses of Congress is in session for at least 30 days between the date of publication of this final rule and January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: On April 7, 1987, the FCA published for comment a proposed amendment to Subpart B of Part 612 that would have prohibited an individual from serving simultaneously as an employee for a Farm Credit System (System) bank and an association it supervises. 52 FR 11080. The comment period closed on June 5, 1987.

Comments on the Proposed Rule

Comments were received from banks in nine Farm Credit districts, nine System associations, and one former member-borrower.

One Farm Credit district and six individual associations in another district supported the proposed rule. Two of the associations supporting the rule stated that the Farm Credit Act of 1971 (1971 Act) contemplates a separation by entity of certain functions: funding and supervision are the responsibilities of the Federal land bank (FLB) and the Federal intermediate credit bank (FICB), and lending is the function of the associations. These associations stated their belief that a rule prohibiting an individual from being employed by both a bank and an association supervised by the bank would be appropriate as long as the System operates under such a concept, and agreed that a joint employee may find it difficult to be totally impartial in discharging supervisory responsibilities toward and managing a financial relationship with an association.

The district that supported the proposed regulation requested that some exception be made for persons employed under temporary contractual arrangements for certain services, such as appraisal and credit review.

Comments opposed to the proposed regulation fell into three broad categories: (1) Joint employees are authorized by the Act and the proposed regulation would constitute an unauthorized interference with management prerogative; (2) the proposed regulation would increase costs and reverse management efficiencies; and (3) no conflicts of interest have arisen and should they arise, the FCA's enforcement powers are sufficient to deal with them.

Two exceptions were requested by districts opposing the regulation in the event the proposed regulation became final. One district requested that an exception be made for interim appointments of bank employees to association positions while a vacancy is being filled.

Statutory Changes

All of the comments were received prior to the amendment of the 1971 Act by the Agricultural Credit Act of 1987 (Pub. L. 100-233) (1987 Act), and must be considered in that context.

Sections 1.4(8), 1.15(7), 2.1(8), and 2.12(17) (12 U.S.C. 2011(8), 12 U.S.C. 2033(7), 12 U.S.C. 2072(8), 12 U.S.C. 2093(17), respectively) of the 1971 Act prior to amendment by the 1987 Act authorized Federal land banks (FLBs), Federal intermediate credit banks (FICBs), Federal land bank associations (FLBAs) and production credit associations (PCAs) to "provide for such other officers or employees as may be necessary, including joint employees as provided in this Act." Also, prior to the amendment of the 1971 Act by the 1987 Act, the FLB, the FICB, and the bank for cooperatives (BC) in each district were governed by a common district board. Section 5.6(a)(3) of the 1971 Act, prior to its amendment by the 1987 Act, empowered the district board to "Elect or provide for joint officers and

employees for the banks in its district which are institutions of the System or, upon agreement with banks in other districts, joint officers and employees for institutions in more than one district."

The 1987 Act provides for a significant restructuring of the System, requiring the merger of the FLB and the FICB in each district into a Farm Credit Bank, eliminating the district board, and permitting mergers between institutions within a district and between certain institutions in different districts. All of titles I and II of the 1971 Act and all of the provisions relating to the district board, including § 5.6(a)(3), were repealed, effective 6 months from date of enactment. New titles I and II, which take effect at that time, set forth corporate powers for the new Farm Credit Bank (Bank), for the FLBAs, and for the PCAs. New title I does not expressly authorize joint employees for Banks, but title II continues to authorize joint employees for associations. System representatives have argued that the authority to have joint employees is within their incidental corporate powers.

Final Rule

After reviewing the comments and taking into consideration the provisions of the 1987 Act, which amends the 1971 Act, the FCA has adopted a final rule that is more narrowly focused than the proposed rule, prohibiting any Bank employee from serving as an officer of the association and prohibiting officers of the Bank from serving as association employees at any level. The final rule permits lower level Bank employees to serve as association employees other than officers, provided each institution (1) obtains a separate and independent opinion of counsel that such joint employment is authorized under the 1971 Act, as amended, and (2) appropriately reflects the cost of the service in its financial statements so that each institution pays only for work done for that institution. The expense of the service must be appropriately reflected in the financial statements so that the earnings of the institutions are accurately reflected.

The FCA believes that joint employees may be used at lower levels without compromising the independence of the association as long as these individuals are not involved in the institutions' decisionmaking process in a manner that could present a conflict of interest. Institutions employing joint employees at lower levels should develop procedures that would require such employees to identify and disclose any potential conflicts to their superiors.

"Officer" is currently defined in § 612.2130(m) to mean the president, vice president, secretary, treasurer, and general counsel and any person not so designated who holds a similar position of authority.

Response to Comments

Unauthorized Interference with Management's Prerogative

A number of commenters cited provisions of the 1971 Act authorizing joint employees and stated that the proposed regulation would constitute an unwarranted intrusion into matters of business judgment which are properly the domain of the institutions' stockholders and boards of directors. The FCA was not persuaded by these arguments even under the 1971 Act prior to amendment. The purpose of the proposed regulation was not to influence hiring decisions, but to further a legitimate regulatory interest in preventing conflicts of interest. FCA regulations governing the conduct of officers and directors of System institutions to prevent even the appearance of conflicts of interest, promulgated pursuant to FCA's general rulemaking authority, have been in effect for many years. The FCA has determined that such regulations are necessary and appropriate for carrying out the purposes of the 1971 Act and sees no conflict with its status as an arms-length regulator in setting minimum standards of conduct for System officers and directors designed to eliminate organizational conflicts of interest that, in the opinion of the FCA, could threaten the safety and soundness of System institutions.

The FCA believes that there is an inherent conflict of interest in a joint management arrangement between the Bank and the associations in its district because the relationship involves the exercise of evaluative judgment and approval authority and requires impartial treatment of other shareholder institutions with which the Bank does not share officers. The rule reflects a judgment by the FCA that a person that is responsible for evaluating the conduct of the operations of an institution is not likely to be able to be totally objective if he or she has participated in the management decisions that produce the results of such operations, especially if his or her performance appraisal is affected by such an evaluation. In addition, the FCA believes that management is most effective when its loyalties are not divided between two boards owing fiduciary duties to two different groups of shareholders.

The FCA believes that the case for independent management is even stronger after the 1987 amendment of the 1971 Act. Under the amended provisions, the associations are likely to emerge as more independent, autonomous institutions that will be more responsive to their shareholders than to the Bank. While the Bank is still charged with the general supervision of the associations and must approve salary scales for their employees, it can no longer remove their chief executive officers. This removal power provided the Bank considerable leverage with associations in the past. Section 5.38 of the 1971 Act, as amended by the 1987 Act states:

> Notwithstanding any other provision of this Act, a farm credit district board, bank board of bank officer or employee shall not remove any director or officer of any production credit association of Federal land bank association. 12 U.S.C. 2274.

The effect of this provision is to allow associations to act more independently of the Bank than they were able to do in the past. The FCA believes that joint management between the Bank and the associations would compromise this independence.

In addition, the 1971 Act now allows FLBAs to become direct lenders, either by merging with PCAs or by a delegation of authority from the Bank. These institutions would have, as the PCAs have always had, a debtor-creditor relationship with the Bank. As a creditor, the Bank must make judgments on the sufficiency of the collateral supporting association loans and the eligibility of loans, in order to evaluate the Bank's security position, the adequacy of its collateral for issuing bonds and the adequacy of its allowance for losses. It is important for the safety and soundness of the Bank that these judgments be made objectively and without the personal bias that may result when the evaluating individual has participated in the association's management or credit decisions.

The FCA recognizes that the relationship between a Bank and the FLBAs that continue to operate in the traditional mode is a different relationship from the relationship with direct lenders, but believes that the prohibition is also appropriate in the traditional context. Many of the conflict-of-interest issues that the regulation addresses are independent of the debtor-creditor relationship, such as required Bank approval of association salary scales, reporting to two different boards owing fiduciary duties to two different constituencies and the

potential for compromise of objectivity in dealing impartially with all stockholders of the Bank. In addition, the supervision of the exercise of the authorities that have been delegated by the Bank to the FLBAs involves an evaluative judgment that should be independent of constraints that would result from having participated in management decisions that produced the results.

Cost and Management Efficiency

The second major concern of the commenters was that operating costs (and, therefore, interest rates) would be increased and management efficiencies achieved through joint management would be reversed. The FCA shares the commenters' concerns for reducing operating costs and achieving management efficiencies. However, the FCA believes that these can and should be achieved by means other than use of management structure that creates an inherent conflict of interest. As the FLBs and the FICBs merge, there will be opportunities for restructuring and streamlining Bank operations in a manner that eliminates joint management between the Bank and associations without significantly increasing costs. Furthermore, additional efficiencies may be achieved if FLBAs and PCAs merge or if associations operating under the same title of the Act merge. Also, allowing joint employees at the lower levels will allow for cost efficiencies without compromising the independence of the institutions.

FCA Enforcement Powers

A number of commenters asserted that no conflicts have actually arisen and that FCA enforcement powers are adequate to deal with them when they do. The commenters pointed out that FCA regulations prohibit employees from participating directly or indirectly in the deliberation on any matter affecting the interests of the employee, any relative of the employee or any entity controlled by the employee.

The conflict of interest addressed by the regulation is an inherent, organizational conflict rather than the self-interested conflict addressed by existing provisions of the FCA's conflict-of-interest regulations. While there is an opportunity for such self-interested conduct under such an arrangement, in that the salary scale of the officers and employees of the association and the appointment and compensation of the chief executive officer is subject to Bank approval, this type of conflict is only a part of the reason for the FCA's concern. The FCA is also concerned about whether the Bank can effectively supervise the debtor-creditor relationship or the delegation of functions where Bank employees are in effect supervising themselves. It is difficult for an individual to be objective in evaluating the results of operations when the individual has participated in management decisions that have produced the results, especially where the individual is evaluated on the basis of those results.

Some commenters have suggested that procedures can be implemented to assure that supervision is carried out in an effective and impartial manner by assigning supervisory responsibilities to persons who are not joint employees. The FCA believes, however, that where the Bank and association share the same management, such an arrangement will have a chilling effect on the willingness of the subordinate employees who are assigned the supervisory responsibilities to criticize the operations of the associations. The regulation is directed at this obvious organizational conflict and the conflicts that are likley to be generated by the joint employees' accountability to two different boards of directors, rather than any specific irregularities.

Furthermore, the FCA believes that it is in the interest of the Bank to avoid even the appearance of conflicts of interest or potential favoritism toward an association with which management is shared in order to reassure non-System financing institutions that discount with the Bank (OFI's) and all other System associations not sharing management with the bank is managed in a non-discriminatory manner in the best interest of all of its equityholders. This will be even more true after the merger of the FLBs and the FICBs, since there will be more associations supervised by the Bank (at least initially) and the Bank will be supervising associations of different kinds.

Exemptions

The FCA did not adopt the suggested exemptions for employees performing specialized services and for employees temporarily detailed until a vacancy is filled. However, permitting joint employees at lower levels will allow for specialized services to be performed by joint employees. Also, under the final rule it will be possible to detail a lower level bank employee to an association on a temporary basis while a vacancy is being filled. The FCA did not adopt the latter requested exemption for senior officers, because the FCA believes that allowing such a procedure at the management level could compromise the independence of associations and possibly undermine the effectiveness of the regulation.

Transition Period

Several commenters requested that if the rule were to be adopted, existing arrangements be "grandfathered" or a grace period be allowed in which to unwind such arrangements, in view of the fact that districts implementing joint management structures have relied in good faith upon FCA's awareness and approval of such arrangements.

Recognizing that some districts will need to unwind such arrangements in an orderly manner, the FCA, in the preamble of the proposed rule, alerted System institutions that they should undertake contingency planning in the event the FCA adopted the regulation. Thus, institutions have been aware of the possible need to unwind joint management arrangements and should have taken this possibility into account in considering structure options under the 1987 Act. However, the rule does provide for a transition period. In view of the significant restructuring of System banks that will take place in 1988, the regulation will not become effective until January 1, 1989. The delayed effective date will provide a grace period that will enable institutions to coordinate the transition with restructuring so as to minimize disruption.

List of Subjects in 12 CFR Part 612

Banks, Banking, Credit, Conduct standards, Ethical conduct.

For reasons stated in the preamble, Part 612 of Chapter VI, Title 12 of the Code of Federal Regulations is amended to read as follows:

PART 612—PERSONNEL ADMINISTRATION

1. The authority citation for Part 612 is revised to read as set forth below and all other authority citations throughout Part 612 are removed.

Authority: Secs. 5.9 and 5.17; 12 U.S.C. 2243 and 2252.

Subpart B—Standards of Conduct for Directors, Officers and Employees

2. Section 612.2150 is amended by adding new paragraph (e) to read as follows:

§ 612.2150 Employees—prohibited acts.

* * * * *

(e) No officer of a Farm Credit Bank may serve as an employee of an association in its district and no employee of a Farm Credit Bank may

serve as a officer of an association in its district. Farm Credit Bank employees other than officers may serve as employees other than officers of an association in its district provided each institution obtains a separate, independent opinion of counsel that such joint employees are authorized under the Act and appropriately reflects the expense of such employees in its financial statements.

Dated: June 7, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-13374 Filed 6-13-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ACE-02]

Designation of Transition Area; Fairmont, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate a 700-foot transition area at Fairmont, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Fairmont State Airfield, Fairmont, Nebraska, utilizing the Fairmont Nondirectional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: 0901 u.t.c., October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Fairmont State Airfield, Fairmont, Nebraska, is being established, utilizing the Fairmont NDB as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Fairmont, Nebraska, at and above 700 feet above the ground, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 4, 1988.

Discussion of Comments

On page 6831 of the **Federal Register** dated March 3, 1988 (53 FR 6831), the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Fairmont, Nebraska. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One objection was received as a result of the Notice of Proposed Rulemaking. The Air Force contends that the transition area will infringe on an existing low level route (IR-502), which it uses for radar bomb scoring site operations. The FAA believes that the Air Force's concern is not well-founded because civil aviation use of the transition area is anticipated to be so minimal that it will not have any significant adverse effect on Air Force operations. Therefore, the Fairmont transition area designation proposal is being adopted without change.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Fairmont, Nebraska [New]

That airspace extending upward from 700 feet above the surface within a five (5) mile radius of the Fairmont, Nebraska, State Airfield (lat. 40°35'08"N, long. 97°34'10"W); within three (3) miles each side of the 187° bearing of the Fairmont, Nebraska NDB (lat. 40°35'23"N, long. 97°34'04"W) extending from the five (5) mile radius to 8.5 miles south of the NDB.

This amendment becomes effective at 0901 u.t.c. October 20, 1988.

Issued in Kansas City, Missouri, on June 2, 1988.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 88-13293 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-AAL-3]

Establishment of Amchitka Island, AK; Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes the Amchitka Island, AK, Control Zone and Transition Area. The United States Navy (USN) is activating the Amchitka Island Airport to support the installation and commissioning of the Relocatable Over the Horizon Radar (ROTHR) Facility. This action provides controlled airspace for departure and arrival aircraft in that terminal area.

EFFECTIVE DATE: 0901 UTC, August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On November 18, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Amchitka

Island, AK, Control Zone and Transition Area (52 FR 44136). The USN is activating the Amchitka Island Airport to support the installation and commissioning of the ROTHR Facility. An airport advisory service will be installed to meet criteria for control zone requirements. This action accommodates instrument procedures for arrival and departure aircraft from that terminal. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Amchitka Island, AK, Control Zone and Transition Area. The USN is activating the Amchitka Island Airport to support the installation and commissioning of the ROTHR Facility. This action provides controlled airspace for departure and arrival aircraft in that terminal area.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Amchitka Island, AK [New]

Within a 5-mile radius of Amchitka Island Airport (lat. 51°22'37"N., long. 179°15'57"E.).

§ 71.181 [Amended]

3. Section 71.181 is amended as follows:

Amchitka Island, AK [New]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Amchitka Airport (lat. 51°22'37"N., long. 179°15'57"E.); within 2 miles each side of the 263° bearing from the Amchitka Island Airport extending from the 8.5-mile radius to 14 miles west; within 2 miles north of the 063° bearing and 2 miles south of the 077° bearing from the Amchitka Island Airport, extending from the 8.5-mile radius to 14 miles east.

Issued in Washington, DC, on June 3, 1988.

Temple H. Johnson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-13294 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 31

Fees for Audits of Leverage Transaction Merchants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission recently proposed a revision to its method of calculating annual fees for audits of leverage transaction merchants. 53 FR 8932 (March 18, 1988). The fees would be set at 65% of the actual average annual cost of auditing each leverage transaction merchant over a three-year period. The Commission is now adopting the proposed formula and they FY 1988 fee schedule in final form as proposed.

EFFECTIVE DATE: August 15, 1988.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street NW., Washington DC 20581.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Office of the Executive Director, 2033 K Street NW., Washington, DC 20581, telephone number (202) 254-6090.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Futures Trading Act of 1982 (Pub. L. 97-444, 96 Stat. 2294, 2326, January 11, 1983) amended section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) to add specific authority for the Commission:

> to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act: *Provided*, That the fees for any specified service or activity or function shall not exceed the actual cost thereof the Commission.

The Conference Report accompanying the legislation (H.R. Rep. No. 964, 97th Cong. 2d Sess. 57 (1982)) states that "the conferees intend that the fee schedule addressed by the Conference substitute is to be strictly limited to Commission activities directly related to" eight enumerated Commission functions including "Commission audits of firms which are not members of contract markets or of a registered futures association."

On February 13, 1984, the Commission published interim final rules governing the regulation of leverage transactions. 49 FR 5498. In accordance with those rules, leverage transaction merchants, which are not members of contract markets or registered futures associations, are subject to the audit and financial review program of the Commission. The program includes full-scope and limit-scope financial and sales practice audits. The purpose of the financial audits is to ensure that leverage transaction merchants are complying with the Commission's financial regulations, including net capital, segregation and cover requirements. Sales practice audits include a detailed sample review of customer files for items such as confirmations, month-end statements, recision documents, a review of all advertising material and customer complaints, an examination of the registration status of the firm's sales staff, and a profile of the firm's personnel organization and business structure.

On May 16, 1984, the Commission promulgated fees for these audits of leverage transaction Merchants. 49 FR 20644. Under this regulation, leverage transaction merchants were charged an

FY 1984 audit fee of $8,000, which was, at the time, a conservative estimate of the future costs of auditing each of these firms. No fee was due in FY 1985. See 49 FR 20645. In FY 1986, the Commission maintained the fee for audit of leverage transaction merchants at $8,000, even though the actual costs during FY 1984 and FY 1985 indicated that the actual average cost of auditing the three leverage firms was $14,807. (See 51 FR 21149, June 11, 1986.) In FY 1987, the Commission reviewed the actual average costs for FY 1984, FY 1985 and FY 1986. The actual average cost per firm for those three years had increased to $15,461. However, because the program had only been in place since late FY 1984, the Commission determined to raise the fee by only $1,000 to $9,000. 52 FR 22634. As discussed below, a review of the costs of auditing the three leverage transaction merchants during FY 1985, FY 1986 and FY 1987 yields an actual average cost over the three year period of $30,705 per firm, which prompted the Comission to prepare an amendment to the formula for calculating the audit fee.

In response to the proposed rule the Commission received one comment letter which suggested that the leverage rules could be streamlined thereby reducing the time and costs associated with Commission audits of leverage transaction merchants. No specific comments were received regarding the change in the formula for calculating the fee.

The Commission has therefore determined to adopt the amended formula as proposed.

II. Computation of Fees

Under the final rule, fees are calculated based on the actual cost to the Commission of auditing each of the three leverage transaction merchants. This procedure is similar to that used to calculate annual audit fees for futures exchanges. In calculating the actual cost, the Commission takes into account Commission personnel costs, benefits and administrative costs.

The Commission first determines the personnel costs associated with each audit by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on audits of leverage transaction merchants and other projects under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A-76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead figure varies slightly from year to year as changes occur in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs. The overhead factors in the last three fiscal years are as follows: FY 1985—98%; FY 1986—104%; FY 1987—101%.

The following FY 1988 fee for each leverage transaction merchant is due 60 days after publication of this notice.

	Actual avg. costs by firm, FY 1985-87	FY 1988 fee
First Asset Corp	$10,821	$7,000
Monex International Ltd	54,280	35,300
International Precious Metals Corp	27,014	17,600
Total	92,115	59,900

III. Regulatory Flexibility Act

The final rules in this release affect leverage transaction merchants. Because of the minimum financial requirements for registration of leverage transaction merchants, the Commission does not consider these firms "small entities." Therefore, the requirements of the Regulatory Flexibility Act do not apply to leverage transaction merchants. Accordingly, the Chairman, on behalf of the Commission, certifies that the final fees assessed herein will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 31

Audits of leverage transaction merchants, Fees.

PART 31—LEVERAGE TRANSACTIONS

1. The authority citation for Part 31 continues to read as follows:

Authority: 7 U.S.C. 6c(c), 7, 7a, 12a(5) and 16a, 31 U.S.C. 9701.

Appendix B—[Amended]

2. Appendix B, paragraph (a) is revised to read as follows:

(a) The Commission shall compute the annual fee for each leverage transaction merchant by computing the actual average annual cost to the Commission of auditing that leverage transaction merchant over the preceding three fiscal years, then multiplying that amount by 65% and rounding to the nearest $100.

* * * * *

Issued in Washington, DC on June 9, 1988, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88-13395 Filed 6-13-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161, 250, and 284

[Docket No. RM87-5-000; Order No. 497]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

Issued June 1, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule to address possible abuses in the relationship between interstate natural gas pipelines and their marketing to brokering entities. The rule contains standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services.

EFFECTIVE DATE: July 14, 1988.

FOR FURTHER INFORMATION CONTACT: Lynn Lichtenstein, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule to address possible abuses in the relationship between interstate natural gas pipelines and their marketing or brokering entity. The rule contains standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services.

II. Background

On November 14, 1986, the Commission issued its "Notice of

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines" (NOI).[1] The NOI was issued in response to several petitions for rulemaking[2] and several specific cases which had raised the issue of potential abuse of the pipeline-marketing affiliate relationship.[3] The NOI solicited comments on numerous general issues related to the Commission's legal authority to regulate pipeline marketing affiliate activity including the relevance of antitrust law, examples of existing abuses, and possible remedies. One hundred and seven commenters responded.

On June 2, 1987, the Commission issued a notice of proposed rulemaking on "Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines" (NOPR).[4] The Commission noted that the comments received in response to the NOI appeared to indicate that no industry-wide standards of conduct are being observed and that anticompetitive activities could be occurring. The Commission issued the NOPR to outline its preliminary assessment of what it considered to be prohibited practices by interstate pipelines with marketing affiliates. The Commission also proposed reporting requirements to provide data to reveal where anticompetitive practices are occurring.

In addition, the NOPR discussed remedies for violation of either the substantive standards or the reporting requirements contained in the NOPR.[5] Finally, the NOPR suggested several other approaches for dealing with pipeline-marketing affiliate abuses such as an open season for new transportation authorizations and released gas and a "dual approach" in which open access transportation pipelines could have marketing affiliates, but non-open access transportation pipelines could not have marketing affiliates.

The Commission received approximately eighty-two responses to the NOPR.[6] In addition, at the request of several commenters, the Commission held an Opportunity for Oral Presentation on October 20, 1987. Twenty-five persons presented their views at this hearing.[7] All of the presenters had previously submitted comments in response to the NOI or the NOPR.

III. Discussion of Comments

A. Need For and Coverage of the Rule

1. Need for the Rule

The pipeline commenters argue generally that the rule is unnecessary. They maintain that there have been relatively few cases of anticompetitive behavior in the relationship between pipelines and their marketing affiliates; that those "anecdotal" problem situations occurred mainly when pipelines were adjusting to the new conditions created by the Commission's Order No. 436 initiative; and that pipeline transactions with their affiliates were primarily designed to ease their take-or-pay burdens by developing new means for finding markets for their gas. These factors, they claim, indicate that abuses in the pipeline-marketing affiliate relationship are not widespread, and, in any case, are declining as pipelines adjust to new conditions and ease their take-or-pay burdens. As a result, the pipelines argue, there is no need for a general rule, and individual instances of abuse can be considered and resolved by the Enforcement Task Force or in individual formal Commission proceedings.

By contrast, several independent marketers and other commenters claim the proposed rule does not go far enough and that certain "structural" remedies are necessary. These remedies range from requiring an outright physical separation between the pipeline's staff and the staff of the marketing affiliate to prohibiting dealings between the pipeline and its affiliates altogether, a remedy referred to in the NOPR as "divorcement." One commenter argues that pipelines should be compelled at this time to divest themselves of their marketing affiliates.[8]

Having carefully considered these various comments, the Commission remains convinced of the need for a general rule to establish standards of conduct governing relationships between pipelines and their marketing affiliates, and to require sufficient information to allow the Commission and participants in natural gas markets to monitor those relationships and to prevent anticompetitive abuses.[9]

Given the limited information previously available to the Commission and the public, past instances of abuse were necessarily "anecdotal." Nevertheless, in light of evidence of no prior consensus within the industry about what pipeline marketing affiliate practices were improper, the specific instances of abuse actually adjudicated by the Commission, and the many allegations of unlawful behavior raised to the Commission in response to the NOI and presented to the Enforcement Task Force since last June, there are grounds for Commission concern and Commission action. Moreover, while some pipelines have suggested that continued informal resolution of disputes by the Enforcement Task Force (Task Force) could serve as a substitute for this rule, the Commission disagrees. In fact, the work of the Task Force would have been made far more difficult if not impossible had the Commission not enunciated, at least tentatively, standards of behavior that the Task Force could point to in its dealings with pipelines and complainants. Even some of the pipelines concede the value of having a clearly established code of conduct to guide behavior, rather than operating without established standards and running the risk that pipeline practices would later be found unlawfully discriminatory.

Further, while there has been a decline in recent months in the number of complaints of prohibited affiliate practices, this fact does not argue for dropping the rule. The Commission has no way of knowing whether this decline in complaints signals that the problem is a short-term one that will disappear by itself or whether unlawful practices

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[1] 51 FR 41982 (Nov. 20, 1986), FERC Stats. & Regs. ¶ 35,520.

[2] Petitions of Hadson Gas Systems, Inc. in Docket No. RM86-19-000, Minnesota Department of Public Service in Docket No. RM87-1-000, and Shell Gas Trading Company in Docket No. RM87-2-000.

[3] Northern Natural Gas Co., Docket No. RP82-71-001 *et al.*, 20 FERC ¶ 61,040 (1982); Mountain Fuel Resources, Inc., Docket No. RP86-67-001, 36 FERC ¶ 61,150 (1986); ANR Pipeline Co., Docket No. RP86-105-000, 35 FERC ¶ 61,400 (1986); Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipeline Co., Docket No. CP86-584-000, 36 FERC ¶ 61,282 (1986); Southern Natural Gas Co., Docket No. CP86-277-001 *et al.*, 36 FERC ¶ 61,275 (1986); Texas Gas Transmission Corp., Docket No. CP86-349-001, 36 FERC ¶ 62,274 (1986); Arkla Exploration Co., Docket No. CI86-376-000 *et al.*, 37 FERC ¶ 61,011 (1986); Southern Natural Gas Co., Docket No. CI86-371-000 *et al.*, 36 FERC ¶ 61,401 (1986); Tenneco Oil Co. *et al.*, Docket No. CI86-254-000 *et al.*, 36 FERC ¶ 61,399 (1986).

[4] 52 FR 21578 (June 8, 1987), FERC Stats. & Regs. ¶ 32,445.

[5] The Commission also established by separate announcement an Enforcement Task Force to process complaints and resolve disputes related to marketing affiliates.

[6] The list of the commenters is included in Appendix A.

[7] The list of the presenters is included in Appendix B.

[8] Yankee Gas Company, Yankee Resources, Inc., and Yankee Pipeline Company (Yankee Gas).

[9] According to the trade publication Inside FERC, April 25, 1988, nine major pipelines and pipeline holding companies reported that volumes of gas equal to 33 percent of their transportation volumes were moved or sold by their marketing affiliates in 1987.

have decreased because of the attention the Commission has focused on the issue through the NOPR and the Enforcement Task Force. For all these reasons, and the fact that pipelines continue to have economic incentives to show undue preferences toward their marketing affiliates, the Commission concludes that a rule is needed.

However, the Commission does not believe that it is necessary at this time to impose an open-ended information collection requirement. Given the possibility that market affiliate abuses may not be a serious long-term problem as transportation service becomes more competitive, the reporting requirement should be the subject of a review by the Commission after one year and an affirmative Commission decision by December 31, 1989, on whether to continue the reporting requirements as a necessary element of the regulatory framework. Accordingly, the Commission is adopting a sunset provision for the reporting requirement of December 31, 1989. This requirement should meet the Commission's need for more information and protect the public from the possible exercise by pipelines of residual market power over transportation service as the industry moves toward increased competition. The Commission is free to find, at the end of the reporting requirement period which expires December 31, 1989, that there is a need to extend the reporting requirement.

At the same time, the Commission finds no basis in the present record for adopting the more radical "structural" remedies of divorcement and divestiture. In view of the decline in the number of complaints, there is no reason at this time to doubt the effectiveness of the approach proposed in the NOPR. Structural remedies that could impede the ability of affiliated marketers to compete may reduce the choices available to buyers and sellers of gas for moving gas in the marketplace. Several of these have filed comments expressing their support for the continued availability of marketing services by pipeline affiliates. Such structural remedies should be adopted only where they are shown to be necessary to prevent more seriously anticompetitive practices. No such showing has been made on this record.[10] However, the Commission reserves the right to consider and impose such remedies as divorcement and divestiture in specific cases where the circumstances demonstrate they are required.

[10] However, see discussion below of the special problems raised by selective discounting, pp. 23–28.

2. Applicability of the Rule

a. Persons subject to the rule. The Commission proposed standards of conduct and reporting requirements that would apply to any interstate natural gas pipeline that is affiliated with a marketing or brokering entity.[11] Several commenters ask the Commission to define marketing or brokering entity. Some commenters are concerned that the term "marketing affiliate" [12] is too broad. They argue the term can include affiliated gas producers, affiliated local distribution companies, and affiliates such as gathering companies, intrastate pipelines, Hinshaw pipelines, joint venture partnerships, and single purpose "project" affiliates since these entities market and broker natural gas.[13]

These commenters ask the Commission to exclude certain pipeline affiliates from the rule: Intrastate pipelines, gatherers, local distribution companies, and producers; [14] an affiliated production company that brokers gas through pipelines with which it is not affiliated, sells gas of other working interests in a joint venture, or sells gas for a separate affiliated production company; [15] and any affiliated pipeline company that can show a minimal business relationship with a gas marketing entity affiliated solely through common corporate ownership (common parent).[16]

Some commenters state that all pipeline affiliates—not just marketing affiliates—should be included in the rule because the potential for abuse of the pipeline-affiliate relationship is the same whether the gas being transported is owned and sold, or brokered, by the pipeline's marketing or producing affiliate.[17]

[11] To determine affiliation, the definition in section 2(27) of the Natural Gas Policy Act of 1978 was to be applied. Section 2(27) provides "[t]he term 'affiliate,' when used in relation to a person, means another person which controls, is controlled by, or is under common control with, such person." The NOPR also stated a 10 percent voting interest shall be a prima facie indici[um] of sufficient "control" to satisfy the NGPA definition of "affiliate." 52 FR at 21565.

[12] Proposed §§ 161.1 and 250.16(a).

[13] *See e.g.*, Affiliated Gas Producers (AGP), Eastern Kentucky Production Company (Eastern Kentucky), Arkla, Inc. (Arkla), Northwest Pipeline Corporation (Northwest), Tennessee Gas Pipeline Company (Tennessee), and Tenngasco Corporation (Tenngasco).

[14] *See e.g.*, Tenngasco, AGP, Eastern Kentucky, Arkla, Consolidated Gas Transmission Corporation (Consolidated Gas), and Indicated Producers (IP).

[15] Eastern Kentucky.

[16] ANR Pipeline Company (ANR).

[17] *See e.g.*, American Paper Institute, Inc. (API), United Gas Pipe Line Company (United), and Ohio Gas Marketing Corporation (Ohio Gas Marketing).

The Commission agrees with the commenters who state that the potential for abuse of the pipeline-affiliate relationship exists whether the gas being transported is owned, brokered, or sold by a pipeline's affiliate. The Commission is concerned with a transaction conducted on a pipeline that benefits the pipeline or the corporate group of which it is a part. In such a transaction, there is an economic incentive for the pipeline to favor the transaction. Any affiliate of a pipeline can conduct a transaction which benefits the pipeline or the corporate group of which it is a part. Thus, the Commission is not exempting any affiliate of a pipeline that markets or brokers gas, unless the pipeline does not conduct any transactions with the affiliate. The Commission believes this approach is preferable to defining marketing or brokering entity. A definition may be too restrictive to include all the different types of marketing and brokering arrangements.

There are commenters who believe the rules of conduct and reporting requirements in the NOPR should apply to additional entities such as large producers and their marketing affiliates [18] and to all marketing entities, no matter whether or with whom affiliated, so that costs of compliance with the rule will be the same for all.[19] Some commenters claim the rule should cover intrastate pipelines to prevent circumvention of its requirements [20] and interstate pipelines not affiliated with marketing entities to keep costs uniform for marketing entities and to apply tariff requirement equally.[21]

The Commission will not expand the rule to cover additional entities such as producers and pipelines without marketing affiliates or other entities such as intrastate pipelines. In some instances, the Commission does not have jurisdiction over the entities suggested to be covered by the rule, or has very limited jurisdiction. In any event, in the absence of evidence of abusive practices and in light of the availability of complaint procedures for aggrieved persons, the Commission does not believe extensions of the rule to apply to entities other than pipelines with marketing affiliates is warranted at this time.

Some commenters believe the proposed rule does apply to pipelines without marketing affiliates. They cite

[18] United.

[19] Williams Natural Gas Company (Williams).

[20] Producer Associations and United.

[21] United and Natural Gas Clearinghouse, Inc. (Natural Gas Clearinghouse).

the tariff-related standards, the nontariff standards relating to confirmation of sales of released gas, a log of contacts with shippers, and written procedures to show how prohibited practices have been eliminated; and the reporting requirements as applicable or potentially applicable to interstate pipelines whether or not they have marketing affiliates.[22]

The rule does not apply to pipelines without marketing affiliates. The Commission's proposed rule states that it would apply to any interstate pipeline that is affiliated with a marketing or brokering entity.[23] The Commission has retained this approach.

Some commenters ask the Commission to exempt certain pipelines with marketing affiliates from the requirements of the rule. These commenters cite instances in which they believe there is no possibility for abuse of a pipeline-marketing affiliate relationship, such as where the pipeline is minor,[24] user-owned,[25] or does not provide transportation services to its marketing affiliates.[26] The commenters argue that in these situations there is either not enough transportation capacity involved to have competitive significance or there is no arrangement for transportation between the pipeline and the affiliate. International Paper Company suggests that for user-owned pipelines the rule should apply only if less than half of the throughput of the pipeline is consumed by the pipeline owner or its affiliates.

The Commission agrees with the comments that there is no possibility for abuse of the pipeline-marketing affiliate relationship where the pipeline and marketing affiliate do not conduct any transactions with each other. The Commission, therefore, is exempting pipelines that have marketing or brokering entities if these pipelines do not conduct any transactions with their affiliated marketing or brokering entities. Nevertheless, the Commission emphasizes that any exempted pipelines must immediately come into compliance with these regulations as soon as they conduct any transaction with a marketing affiliate.

b. Test for affiliation. The Commission proposed a test of a 10 percent voting interest as a *prima facie* indication of sufficient control to satisfy the definition of affiliation.[27] Some commenters state that the 10 percent test for affiliation is too broad. In their view, this test would unintentionally include minority investment interests that are not controlling. Instead they propose there should be a presumption of control if the ownership interest is greater than 50 percent [28] or if there is at least 51 percent ownership by a common parent.[29]

The Commission believes a 10 percent voting interest may create a great enough financial interest to influence a pipeline's transactions with a marketing affiliate. The Commission concludes, however, that a strictly numerical test may be too restrictive to encompass the many different kinds of corporate arrangements that result in common financial interests. It is thus adopting a definition of control which emphasizes the authority to direct or cause the direction of the management or policies of a business entity rather than a percentage of ownership or voting rights. A 10 percent voting interest, however, creates a rebuttable presumption of control.

The Commission will also examine on a case by case basis situations in which a pipeline and a marketer are not technically affiliated but the pipeline has a beneficial interest in the marketer or a third party has beneficial interests in both a marketer and a pipeline, in keeping with the decision in *Midwest Gas Users Association v. FERC* [30] in which the court emphasized that entities may not be dealing at arm's length if their economic interests coincide.[31] If the economic interests of a pipeline and a marketer do coincide even though they are not technically affiliated, then the Commission believes the pipeline may give the marketer preferential treatment. In such a case, the Commission may apply the requirements of the rule in an individual proceeding or other provisions of the statutes and regulations it administers, as appropriate.

c. Transactions covered by the rule. The Commission proposed the provisions of the rule should apply to marketing affiliates, and, in some instances, to shippers or persons requesting transportation service. Producer Associations urge that the rule apply to all transactions engaged in by a pipeline and its marketing affiliates whether the affiliates are acting as shippers, brokers, or in any other capacity.

The Commission agrees that the rule should cover all transactions engaged in by pipeline marketing affiliates, no matter what their role. The possibility of preferential treatment exists whether a marketing affiliate is involved in a transaction as a shipper or a broker or in some other role. The final rule therefore covers "transactions" between pipelines and marketing affiliates.

B. Proposals Adopted

1. "First sale" Status For Pipeline Marketing Affiliate Sales

The Commission proposed retaining the "first sale" status of sales by pipeline marketing affiliates,[32] codified in § 270.203(c) of the Commission's regulations.[33] As a result of such status, affiliate sales of certain NGPA categories of gas are not subject to Natural Gas Act (NGA) jurisdiction.[34] If the Commission were to treat these sales not as a "first sale," it would have to review the affiliate's charge for these sales under section 4 of the NGA. The Commission proposed to retain "first sale" status for affiliate sales because it believed it could prevent affiliate abuses by regulating the pipelines and would not need to regulate marketing affiliates. Moreover, maintaining the "first sale" status of sales by marketing affiliates prevents possible circumvention of NGPA maximum lawful prices by pipelines.

The majority of the commenters who addressed this issue agree with the Commission's proposal to retain "first sale" status for pipeline marketing affiliates. Some commenters argue that without freedom from price regulation, marketing affiliates could not compete, that affiliates promote competition, and should have the right to compete on an

[22] Williston Basin Interstate Pipeline Company (Williston Basin) and American Gas Association (AGA).

[23] Proposed §§ 161.1 and 250.16(a).

[24] Iowa Public Service Company (Iowa Public Service).

[25] International Paper Company. Such pipelines transport on behalf of themselves or industrial entities with which they are affiliated.

[26] Arkla.

[27] For purposes of securities laws, a 10 percent voting interest in a public-utility company establishes the presumption that a company is a holding company if it controls or owns the interest or that it is a subsidiary if the interest is held by a holding company. 15 U.S.C. 79b (7) and (8).

[28] Western Gas Marketing Ltd. (Western Gas Marketing).

[29] ANR.

[30] Midwest Gas Users Association v. FERC, No. 86-1140 (D.C. Cir. Nov. 17, 1987).

[31] Slip op. at 25-26. The court enjoined the Commission to examine the "significant and determinative economic fact[s]" of the entities involved.

[32] 52 FR at 21583-21584.

[33] 18 CFR 270.203(c) (1987). That section provides:

(c) *Circumvention rule for certain sales by affiliates.* Any sale by an affiliate of an interstate pipeline, intrastate pipeline, or local distribution company, * * * is that affiliate's first sale under the NGPA unless the Commission, on application, deter mines not to treat such sales as a first sale.

[34] The categories of gas for which first sales are not subject to the Natural Gas Act are those defined in NGPA sections 102(c), 103(c), and 107(c) (1)-(4). 15 U.S.C. 3312(c), 3313(c), and 3317(c) (1)-(4) (1982).

equal footing with non-affiliated marketers.[35]

Minnesota Department of Public Service believes that marketing affiliate sales should not receive "first sale" status and those sales should be regulated. This commenter argues that the nonregulation of affiliate sales allows a pipeline to spin off its merchant function completely and to charge unjust and unreasonable agency rates or fees for its services. Lastly, it allows a pipeline to segment the market to the advantage of fuel-switchable customers and the detriment of captive customers by releasing low-cost gas reserves through an affiliate to serve its fuel-switchable customers. When this occurs, the pipeline's captive customers lose their long-term reserves and are denied access to a meaningful substitute for the firm, long-term, and low cost supplies.[36]

The Commission confirms its earlier decision not to regulate marketing affiliates' sales. As noted, there is insufficient basis in the record for doubting the effectiveness of the general approach proposed in the NOPR for dealing with pipeline marketing affiliate abuses, and there is no basis for adopting an approach that could impair the ability of marketing affiliates to compete. The Commission believes that all marketers should be allowed to compete on an equal footing.[37] This way there will be more competitors in the marketplace and both producers and consumers will have the benefit of greater options in terms of supply and rates. The Commission appreciates the concerns of the commenters, but believes that it can prevent pipeline marketing affiliate abuses through the standards of conduct and the information collection requirements promulgated in this rulemaking and through its enforcement policies.

2. Tariff-related Standards of Conduct

The Commission proposed certain standards of conduct related to tariffs.[38] Section 161.2 of the proposed rule required pipelines with marketing affiliates to implement all tariff provisions in a uniform manner; enforce tariff conditions strictly as to marketing affiliates, as well as to non-affiliates; refrain from providing marketing affiliates with a higher scheduling and curtailment priority for less essential service that would ordinarily have a lower priority; specify in their tariffs what information and format constitute a valid request for transportation service by shippers; specify in their tariffs a specific period of time or specific milestones for processing requests and process all pending requests in accordance with these specifications; and refile their tariffs to meet these standards.

a. *Uniform enforcement of tariffs and strict enforcement of tariff conditions.* The Commission proposed that an interstate pipeline with a marketing affiliate implement all tariff provisions in a uniform manner and strictly enforce any conditions that are required by a tariff for marketing affiliates as well as nonaffiliated marketers. (Proposed § 161.2 (a) and (b).) Several commenters argue that pipelines should have discretion in applying tariff provisions.[39] Tenngasco claims it is industry practice to allow minor variations in the implementation of tariff provisions in order to provide participants, both affiliated and non-affiliated, a degree of flexibility.[40] For example, there might be slight variations in delivery pressure, measurement techniques, or quality specifications. Tenngasco asks the Commission to provide only that pipelines implement tariff provisions uniformly for all shippers and others using their systems. Several commenters believe the purpose of the provision should be to ensure that tariff requirements are applied in a nondiscriminatory manner.[41]

In general, the Commission does not agree that a pipeline should have discretion in applying tariff provisions unless there is discretion in the provision itself or in Commission regulations. The Commission intended the proposed rule requiring the uniform implementation of tariff provisions (proposed § 161.2(a)) to require pipelines to treat similarly situated shippers and others using their system in a similar manner when a pipeline has discretion in the application of a tariff provision. If a pipeline wants to waive a tariff provision, it must apply to the Commission for permission to do so.

NIPSCO maintains it is unrealistic and uneconomical to impose the same obligations on marketing affiliates as on independent entities to establish credit worthiness or make prepayment sufficient to guarantee viability. In addition, this commenter claims a pipeline cannot treat affiliates and nonaffiliates with the same flexibility with regard to receipt and delivery points because the receipt and delivery points of the affiliate are already familiar to the pipeline and better match the delivery requirements of the pipeline. The commenter asks the Commission to design shortcut processing requirements for affiliates rather than condemning the economies inherent in the pipeline/affiliate situation.

The Commission disagrees with the commenter that it is desirable to establish shortcut procedures for pipeline marketing affiliates. The Commission intends this rule generally to create equivalent conditions for all marketers, both affiliates and nonaffiliates. Marketing affiliates must satisfy pipeline tariff requirements for requesting transportation in the same manner as nonaffiliated marketers so that all marketers face the same requirements in making transportation arrangements.

Several commenters claim pipelines have selectively enforced penalty provisions in tariffs. The Maryland People's Counsel argues pipeline tariffs should provide that marketing affiliates will be charged the same penalties and fees that are charged to nonaffiliates. Two commenters address pipeline discrimination in favor of their affiliates with regard to balancing penalties. They state penalty payments made by an affiliate are an intracorporate transfer of funds that has no overall impact on corporate profits.[42] Uniform enforcement of penalty provisions means that the total corporate entity of which the pipeline and the affiliate are a part loses no revenue when the affiliate pays a penalty and is enriched by the amount of nonaffiliate penalties. Therefore, these commenters argue pipelines should not be allowed to retain penalty payments made by an

[35] For example, Texaco, The City of Willcox, Arizona & Arizona Electric Power Cooperative, Inc. (The City of Willcox & AEPCO), and PSI, Inc. (PSI).

[36] The Maryland People's Counsel believes that only a non-Order 436 pipeline can segment the market in this manner. It states that the parent corporation will direct the lowest-cost gas purchases to the marketing affiliate for sales to the competitive market, leaving the higher priced gas to the regulated pipeline for its system supply.

[37] However, the Commission's desire to have independent marketers and pipeline affiliates compete on an equal footing has resulted in a decision to limit to pipelines holding blanket certificates the authority to grant selective discounts to a marketing affiliate. *See* discussion below, pp. 23–26.

[38] Proposed § 161.2, 52 FR at 21585–21586.

[39] *See e.g.*, Northern Indiana Public Service Company (NIPSCO).

[40] *See also* Hadson Gas Systems, Inc. (Hadson) ("Equal or comparable application of the tariff is the objective, not necessarily 'strict enforcement' * * *") and remarks of City of Willcox, & AEPCO, Oral Presentation, Oct. 20, 1987, Transcript at 102–103. This commenter states penalties were waived by a pipeline when a generating unit became unoperational. They state the rules should permit waivers of tariff rules as long as it is done fairly.

[41] *See e.g.*, Williams.

[42] Ohio Gas Marketing.

affiliate.[43] They suggest that penalties and fees be flowed back to customers via Account 191[44] and that balancing penalties be replaced by charges based on the costs a pipeline incurs due to imbalances.[45]

The Commission agrees with the commenters that penalties and fees must be enforced against marketing affiliates as well as against nonaffiliates. The Commission is requiring the strict enforcement of tariff conditions where there is no discretion in their application. The Commission believes fee and penalty provisions come within this requirement.

With regard to a penalty payment by a marketing affiliate, the Commission agrees with the commenters that such a payment is an intracorporate transfer of funds. The Commission examines penalty payments in the course of a pipeline's rate proceedings. If the Commission determines the circumstances warrant such treatment, the penalties will be credited to the pipeline's cost of service which, in turn, decreases the rates of all pipeline customers. The Commission believes the suggestion to flow back marketing affiliate penalties and fees to the customers may have merit. The Commission may consider such an approach on a case-by-case basis, in rate proceedings for pipelines which conduct transactions with their marketing affiliates, or possibly in another generic proceeding.

Several commenters express concern over the use of selective discounting by pipelines to favor their marketing affiliates. Consolidated Edison Company of New York (Consolidated Edison) asks the Commission to make it clear the requirement for uniform application of tariff provisions applies to discounting or to adopt a separate provision dealing with selective discounting.[46] Hadson believes pipelines should be prohibited from selective discounting in favor of any unregulated affilate in order to prevent abuses such as affiliates making below cost sales of gas.[47]

Selective discounting is permitted under the Commission's regulations for pipelines transporting gas under Part 284 of the Commission's regulations.[48] Selective discounting was approved by the court in *Associated Gas Distributors*.[49]

While the Commission has approved the grant of selective discounts by pipelines, subject to certain safeguards, it has recognized that selective discounts for pipeline affiliates have the potential for giving rise to undue discrimination. To prevent such discrimination, the Commission has limited selective discounting to pipelines that offer open access transportation under Part 284, and has required pipelines to file with the Commission any discounts offered to an affiliate, allowing interested persons to challenge such discounts. We continue to believe that competition in transportation services, reporting requirements, the additional safeguards adopted in the present rule, and active enforcement efforts will deter anticompetitive behavior by pipelines holding blanket certificates. Such pipelines are open to all shippers and must remain open until the Commission grants an abandonment. They thus make a long-term commitment to nondiscriminatory transportation to all shippers.

Pipelines operating only under section 311 offer no comparable assurance that the discipline of competition will prevent the pipelines from exercising the opportunities for discrimination provided by selective discounting to an affiliate. Section 311 pipelines are not open to all shippers on a nondiscriminatory basis; they provide service only on behalf of local distribution companies and intrastate pipelines. More important, since pipelines may cease section 311 transportation without Commission approval, they make no long term commitment to undertake even this limited form of transportation for others. Therefore, with section 311 operations there is limited competition for discounts, limited availability of discounts, and limited awareness by marketers of the discounts available since only some shippers may receive those discounts. Further, since section 311 pipelines make no long term commitment to provide open transportation, they have an opportunity to manipulate the use of selective discounting in an unduly preferential manner. For example, pipelines could give a discount to an affiliate while they were undertaking section 311(a)(1) transportation and then stop transporting under section 311(a)(1) so they would not have to make comparable discounts to non-affiliates.

Thus, since the transportation provided by section 311 pipelines is only partially policed by competition and the potential for abuse of selective discounting is significant, the Commission is conditioning selective discounting on a pipeline's acceptance of a blanket certificate under Part 284 of the Commission's regulations.[50] If a pipeline has not accepted a blanket certificate under Part 284 it may not charge, in a transaction involving its marketing affiliate, a rate that is lower than the highest rate it charges in any transaction not involving its marketing affiliate.

b. Scheduling and curtailment priority. The Commission proposed that tariffs of pipelines with marketing affiliates must not provide marketing affiliates with a higher scheduling and curtailment priority for "less essential service" that would ordinarily have a lower priority.[51] (Proposed § 161.2(c).) Several commenters ask the Commission to delete or revise this section. These commenters ask the Commission to define the term "less essential service." They ask how priorities are to be determined and whether the section distinguishes only between firm and interruptible service or between end uses as well.[52]

Entrade Corporation (Entrade) claims that pipelines have blatantly favored their marketing affiliates in the past by

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[43] Maryland People's Counsel and Ohio Gas Marketing.

[44] Maryland People's Counsel.

[45] Ohio Gas Marketing.

[46] Consolidated states the cost of transportation rate discounts to the pipeline is inconsequential by comparison with the opportunity for unregulated profits if discounting to an affiliate drives out competing suppliers and allows the affiliate to become the dominant supplier in the pipeline's market.

[47] Hadson cites a portion of the submission of Transco Gas Company on the NOI in this docket (Exhibit 53 to Appendix A of Transco's NOI comments). Hadson states this submission indicates Transco's unregulated affiliate TEMCO sold gas below its costs for five out of the seven off-peak months from April to October of 1986.

[48] 18 CFR 284.7(d)(5) (1987). See *also* new § 250.16(b)(6)(xix) of this rule, relating to selective discounting reporting requirements.

[49] Associated Gas Distributors v. FERC, 824 F.2d 981, 1009, 1010 (D.C. Cir. 1987). The court held generally that discounting is not unduly discriminatory and, in particular, that discounts in favor of a pipeline's gas trading affiliate are not *per se* unduly discriminatory. The court unheld selective discounting as long as its application conforms to sections 4 and 5 of the NGA, 15 U.S.C. 717c and 717d. The court stated that if a pipeline gives its gas trading affiliate discounts identical to those given to unaffiliated parties in identical circumstances, the discount would not be unlawful merely on account of the affiliation. *See also* Order No. 436, FERC Statutes and Regulations, Regulations Preambles 1982-1985 ¶ 30,665 at 31,546 ("[A] pipeline may not offer a discount to its affiliate simply because of the affiliation. This would be a violation of the prohibition against undue discrimination."); and 31,511 ("[T]he Commission finds that transportation tariffs, terms and conditions, including but not limited to prices, minimum volume or operational requirements, or schedules, that are designed to favor pipeline affiliates over non-affiliated shippers are preferential or unduly discriminatory practices under this rule.").

[50] 18 CFR Part 284 (1987).

[51] Proposed 161.2(c), 52 FR at 21586.

[52] Iowa-Illinois Gas & Electric Company (Iowa-Illinois), NIPSCO, API, and Hadson.

giving them higher scheduling and curtailment priority. This commenter believes the Commission must promulgate a regulation to prevent a reversion to these practices. ANR suggests that the Commission require pipelines to file tariff provisions specifying the manner in which scheduling and curtailment will be determined by the pipeline and prohibit pipelines from giving scheduling or curtailment priority for marketing affiliates contrary to the priorities granted in the tariff.

Pipelines are prohibited from giving their marketing affiliates scheduling and curtailment priorities simply because they are affiliated entities. In this rule the Commission is requiring a pipeline to process requests for transportation in the order received and to process similar requests in a similar manner. A pipeline is prohibited from giving a marketing affiliate priority in scheduling both by this rule and the rules and orders under Order No. 436 and Order No. 500 which were promulgated and issued pursuant to sections 4 and 5 of the NGA, and section 311(a)(1) of the NGPA. In like manner, a pipeline is prohibited by this rule and other statutes and regulations administered by the Commission from favoring marketing affiliates when it imposes curtailments.

The Commission believes it is desirable to promulgate a regulation to ensure that marketing affiliates are not given scheduling and curtailment priorities solely on account of their affiliation with a pipeline. The Commission is eliminating the phrase "less essential service" because scheduling and curtailment are not dependent on the essentiality of the service.

c. Valid transportation request. The Commission proposed that tariff provisions of pipelines with marketing affiliates must specify what information and format constitute a valid request for transportation service by shippers. (Proposed § 161.2(d).)

El Paso Natural Gas Company (EL Paso) supports the proposal, stating the requirement is already part of its tariff which went into effect on Commission approval of its Order No. 436 settlement. Texas Gas Transmission Corporation (Texas Gas) believes that information which is within the knowledge of the shipper or supplier that is required in the proposed transportation request log should become part of the information necessary to constitute a valid request. Otherwise, this commenter believes a pipeline would be under threat of severe penalties for failing to report information which shippers are not required to submit. Finally, Minnesota asks the Commission to issue standard procedures for requesting service on pipelines rather than leaving the procedures up to each individual pipeline.

As is discussed more fully below, the Commission is requiring the information in the transportation request log to be filed only for transactions in which affiliated marketers are involved. The Commission believes information in the log is essential for monitoring a pipeline's conduct with regard to its marketing affiliates. Accordingly, the Commission is requiring a valid transportation request to include items of information within the knowledge of the shipper when a marketing affiliate is involved in a transaction. These items include the affiliation of the requester with the pipeline, the pipeline's affiliation with the person to be provided transportation service, the supplier's affiliation with the pipeline, the producing area of the source of the gas, the state of the end user, and whether the gas is being sold at a loss. A pipeline will thus have the information that the rule requires to be filed with the Commission.

Although the Commission does not believe that this Final Rule should establish only one standard procedure that customers would use in order to make a valid transportation request, the Commission notes that it has established general requirements in individual pipeline cases under Order No. 436. Those general requirements have been intended, in part, to respond to concerns similar to those of Minnesota. The Commission declines, therefore, to adopt a new uniform procedure at this time in the Final Rule.

d. Proposed processing of pending requests according to time periods or milestones. This section, proposed § 161.2(e), is included in the discussion below of proposed § 161.3(a), disposition of transportation requests.

e. Proposed refiling of tariffs. The Commission proposed requiring pipelines to refile their tariffs so that all tariffs are implemented in a uniform manner, strictly enforced, contain no higher scheduling and curtailment priority for marketing affiliates, state what constitutes a valid transportation request, and provide criteria for the processing of requests. (Proposed § 161.2(f).)

Several commenters object to the refiling of tariffs. The City of Willcox & AEPCO states that under section 5(a) of the NGA, the Commission cannot require the refiling of tariffs unless and until it has found specific provisions in the tariffs to be unjust and unreasonable. The commenter believes that when the Commission has approved Order No. 436 tariffs it has found them to be just and reasonable. Other objections are that it is unreasonable to require refiling within 30 days and unnecessary if the pipelines's tariff currently includes the proposed tariff-related standards of conduct.[53] Mountain Fuel Resources, Inc. and Questar Energy (Mountain Fuel) ask whether it is necessary to refile the entire tariff and whether, upon refiling, Commission approval will shield pipelines from complaints based on the form of the tariff.

In this rule, the Commission is requiring the pipeline to file certain tariff provisions. These provisions reflect practices subject to the filing requirements of NGA section 4(c).[54] The Commission also notes that it has required pipelines, because of concern about undue discrimination and preference, since September 1986, to maintain transportation logs and file transportation policies as a condition for approval for approvals under section 7(c) of the NGA, and courts have approved this requirement.[55]

A pipeline that already has the required tariff provisions may file its existing provisions.[56] The Commission will waive fees for those restating tariff provisions. However, if a pipeline does not have the required tariff provisions, it must file new provisions. The Commission will review and evaluate the pipeline's tariff provisions to ensure that they are just and reasonable.[57]

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[53] Enron Interstate Pipelines (Enron) and Kentucky West Virginia Gas Company (Kentucky West).

[54] *See* Michigan Wisconsin Pipeline Company, Docket No. RP60-9, Opinion 471, 34 FPC 621, 626 (1965) (Commission ordered pipeline to make its lateral line policy part of its tariff subject to approval of the Commission.

[55] Transcontinental Gas Pipe Line Corporation, 39 FERC ¶ 61,026, 61,062-61,063 (1987), *affirmed sub nom.* New Jersey Zinc Co. v. FERC, Nos. 87-1262, *et al.* (April 15, 1988).

[56] *See* new § 250.16(b)(5). A pipeline must file tariff provisions that contain a complete list of personnel and facilities shared by the pipeline and an affiliated marketer or brokering company; the specific information and format required from a shipper for a valid request for transportation service, including the items required in the transportation request log for transactions involving an affiliated marketer; procedures used to address and resolve complaints by shippers; and procedures used to inform shippers of the availability and pricing of transportation services and the availability of pipeline capacity.

[57] *See* Florida Power & Light Co. v. FERC, 660 F.2d 668, 676-677 (5th Cir. 1981), *cert. denied sub nomine* Fort Pierce Utilities Authority v. FERC, 459 U.S. 1156 (1983). This case involved electric rate tariffs under the Federal Power Act, but, as noted by the court, provisions of the NGA are to be read *in pari materia* with analogous provisions of the FPA. *Id.* at 677 n.23. The court noted that a practice made a part

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Once approved by the Commission, these provisions will constitute terms and conditions upon which a pipeline will provide service.[58]

The tariff provisions to be filed contain information concerning a pipeline's personnel and procedures. To the extent that a pipeline does not have such tariff provisions or its tariff provisions conflict with those required by this rule, the Commission finds its tariffs are unjust and unreasonable. The absence of such tariff provisions would frustrate the regulatory framework adopted in the Final Rule and would not provide the protection of nonaffiliated marketers and deterrence against abuse, discrimination, and preference the Commission deems necessary to protect the public interest.

The Commission is requiring that the tariff filings required in § 250.16 (b)(1) through (b)(4) of the rule be updated quarterly if there are changes.

3. *Nontariff-related Standards*

a. *Proposed disposition of transportation requests and processing of requests.* The Commission proposed to require interstate pipelines with marketing affiliates to process all pending requests within a specific period of time or in accordance with specific milestones, to be specified in advance in their tariff. (Proposed § 161.2(e).) The Commission also proposed to prohibit such pipelines from disposing of transportation requests by affiliates or providing transportation service in response to such requests before disposing of valid pending transportation requests by nonaffiliates which were received by the pipeline prior to the requests of the affiliates. (Proposed § 161.3(a).)

Several commenters state requests cannot be finally resolved in the same order they are received because requests vary in completeness, complexity, capacity problems, the type of gas involved, and the need for facilities. There are also differences between requests for firm and interruptible transportation. These differences require different processing times.[59] They believe the rule would result in the logjamming of requests. That is, an affiliated marketer (and others) could be prevented from implementing even routine transactions if a pipeline received a request from a nonaffiliate requiring study of new facilities, coordination with an upstream or downstream pipeline, resolution of capacity problems, or the receipt of additional information to complete the request.[60]

Other commenters state processing of requests starts in the order received. Disposition of the requests, however, will vary depending on the nature of the request.[61]

The Commission agrees the proposal would discourage efficient processing of transportation requests.[62] The Commission recognizes, as stated by some commenters, that different requests present different degrees of complexity and that they may not be resolved in the order received due to differences in complexity. The Commission expects, however, that all requests that are similar will be processed in a similar manner, such as in terms of the commencement of processing and the time taken for processing. The Commission is requiring a pipeline to process all similar requests for transportation in the same manner.[63]

The Commission intended proposed §§ 161.3(a) and 161.2(e) to ensure that comparable requests for transportation service are processed in turn. The Commission believes comparable requests must be processed in the order received to achieve fairness in the treatment of marketers. In addition, to achieve fairness, similar requests must be resolved in the order they are received. The Commission believes it would be unduly discriminatory for a pipeline to process and resolve a request from an affiliate that was similar in nature to a request from a nonaffiliate when the request from the nonaffiliate was received first, especially when the request from the affiliate and the request from the non-affiliate involve the same or overlapping service. The Commission is thus prohibiting a pipeline from giving its marketing affiliate preference in transactions that include scheduling, transportation, storage, or curtailment priority through a tariff provision or otherwise.[64]

b. Prohibition against revealing confidential information by a pipeline to its marketing affiliate. The rule contains several provisions dealing with a pipeline's treatment of information. To summarize, the Commission is adopting the approach in the rule that a pipeline is prohibited from giving its marketing affiliate any information the pipeline receives from a nonaffiliated shipper to secure transportation service. A pipeline must, however, provide simultaneously to all potential shippers any information related to transportation, sales, or marketing that it gives to a marketing affiliate. A pipeline must also, on request, identify any information relating to released gas that is mitigating the pipeline's take-or-pay liability if it has provided this information to a marketing affiliate. These specific provisions and related comments are discussed below.

The Commission proposed to prohibit interstate pipelines from revealing to their affiliates any confidential information provided by nonaffiliated shippers to secure service. In addition, the proposed rule would have prohibited pipelines from revealing their own confidential information to their affiliates unless they communicated the information contemporaneously to all shippers. (Proposed § 161.3(b).)

The U.S. Department of Justice argues that much of the information provided to a pipeline by a nonaffiliated shipper to obtain transportation service is competitively sensitive and that there is no need for a pipeline to communicate any information provided by competing shippers to its affiliate. The Department also objects to the proposed requirement in the NOPR that all pipelines with a marketing affiliate maintain a daily log recording detailed information on transportation requests involving both affiliates and nonaffiliates.

The Commission agrees that there is no need for a pipeline to disclose any information to a marketing affiliate that is filed with it by a nonaffiliated entity. Moreover, the Commission believes that this competitively sensitive information must not be disclosed by a pipeline to its

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of a filed tariff is subject to the Commission's right to review such practice and to pass on changes within it. *Id.* at 677.

[58] Michigan Wisconsin Pipe Line Company, 34 FPC at 626.

[59] ANR, Arkla, El Paso, Natural Gas Pipeline Company of America (Natural), and United. Consolidated Gas points to differences in requests concerning transportation of gas from the Appalachian Basin System and that to be transported from interconnecting pipelies.

[60] ANR, Arkla, and Natural. Natural states the processing of requests should not be confused with the priority to be afforded a shipper once its request has been processed and a contract executed. Enron explains transportation requests are evaluated on a first-come, first-served basis. The request date sets priority for receipt and delivery points. Natural Gas states priority for scheduling and curtailment of service relates back to the date a valid request was submitted. This commenter states the request date fixes a shipper's place in the queue under the first-come, first-served rule. Therefore, even if gas starts flowing under a complicated request later than under a subsequent simple request, the complicated request would nonetheless have a higher priority. Once gas begins to flow under the complicated request, it will be scheduled in at a higher priority slot, and will be curtailed later than any subsequent request regardless of when gas flow commenced.

[61] ANR and Williams.

[62] *See e.g.*, Panhandle Eastern Pipe Line Company (Panhandle) and Tenngasco.

[63] *See* new § 161.3(d).

[64] *See* new § 161.3(c).

affiliate. The Commission is thus prohibiting a pipeline from disclosing any information to an affiliate which it receives from a nonaffiliated shipper to secure transportation service.[65] If this prohibition is not effective, the Commission will consider taking further steps to ensure the confidentiality of nonaffiliated shipper submissions to pipelines consistent with its statutory authority.

Similarly, in light of the competitive concerns expressed by the Department of Justice, the Commission is not requiring information concerning transportation requests by nonaffiliated marketers to be filed or otherwise made available to the public except to parties in Commission proceedings, subject to the discovery rules, so that this information will not be disclosed to a marketing affiliate as part of a transportation request log.

The prohibition against revealing information provided by nonaffiliated shippers may be achieved through organizational separation. However, the Commission disagrees with the comments that organizational separation is the only possible means of complying with the requirement not to reveal nonaffiliated shipper information. The Commission believes that other arrangements may be possible, such as segmenting the processing of transportation requests or identifying requests solely by a number rather than by name, which would have the effect of separating knowledge of these requests even though employees might work for both pipeline and its marketing affiliate.

Some commenters want the rule expanded to prohibit a pipeline from giving its affiliate information on available gas supplies, potential customers, and available pipeline capacity whether it is considered confidential or not.[66]

Several commenters argue that pipelines should be barred from sharing transportation-related information with the affiliates (including transportation access and capacity) but should be able to give its marketing affiliate market and supply information. Supply and market intelligence, they reason, can be gained by competing marketers for themselves. Other kinds of confidential business information, such as expansion plans for an affiliate and long range capital investment plans, are types of information a pipeline would normally share with an affiliate. These commenters believe sharing of these kinds of information should not be prohibited.[67]

United Gas argues the proposed rule would also prohibit a marketing affiliate from performing an essential function in the take-or-pay negotiating process.[68] Producers only give take-or-pay credit for gas which is sold.[69] It is thus essential to the pipeline that arrangements are made for the sale of the gas. In addition, negotiations for the release of gas are confidential. United Gas argues it is thus impractical to require disclosure of the information provided by the producer to the pipeline during the negotiation process to nonaffiliated marketers. These commenters believe that the prohibition against sharing confidential information with marketing affiliates unless shared with all shippers contemporaneously should not apply to information supplied by producers in negotiations for take-or-pay relief.

The Commission agrees that a pipeline should be prohibited from sharing transportation, sales, or marketing information with a marketing affiliate unless it makes the information available at the same time to all potential shippers. The Commission believes that information concerning transportation must be available to all who use a pipeline and that to allow otherwise would be to allow a pipeline to use its market power over transportation to the advantage of itself and its corporate affiliates. A pipeline's marketing and sales information is a product of its past market power over transportation. Sharing such information with a marketing affiliate at this time would therefore represent an undue preference by the pipeline toward the affiliate. This information must, therefore, be made available to all shippers if it is to be made available at all in order to counteract the past and present effects of pipeline market power over transportation. The Commission is thus requiring a pipeline to provide information related to transportation, sales, or marketing contemporaneously to all potential shippers to the extent it provides such information to a marketing affiliate.[70]

The Commission does not believe the rule will affect take-or-pay negotiations entered into by a pipeline. Several pipeline commenters state that the producer decides to whom it will sell its gas and who will market its gas. At the present time, producers are aware that both marketing affiliates and independent marketers are available and that they can provide services with regard to released gas. The Commission notes that there are several pipeline commenters who either would or already do provide to those requesting it a list of sources of released gas.[71] In addition, two pipelines informed the Commission in response to an inquiry at the Opportunity for Oral Presentation on October 20, 1987, that nonaffiliated marketers have arranged for transportation of gas that provides the pipeline with take-or-pay relief on its system.[72] This is an indication that released gas can be and is being marketed and transported for nonaffiliated marketers. Accordingly, requiring information concerning released gas to be made available to all marketers should not disrupt take-or-pay negotiations.

c. Prohibition against revealing information filed with transportation requests. The Commission proposed to prohibit pipelines with marketing affiliates from making information filed with transporation requests available to marketing affiliate personnel, any other pipeline, or any other shipper, unless the information were made available on a not unduly discriminatory basis to all potential shippers. (Proposed § 161.3(c).)

Several commenters object to the proposal. They argue that pipelines should not be able to make this information public. Instead, they should be prohibited from disclosing any information filed with a transportation request.[73] The City of Willcox & AEPCO

[65] *See* new § 161.3(e).

[66] Northridge Petroleum Marketing, Inc. (Northridge) and Ohio Gas Marketing.

[67] *See e.g.*, Tennessee and Tenngasco.

[68] United.

[69] Tenngasco.

[70] *See* new § 161.3(f).

[71] Texas Gas and Natural. In supplemental comments, Tenneco and Enron suggested that the Commission require a pipeline to provide a list of all producers and working interest owners and the sources of supply eligible for transportation pursuant to offers of credit under Order Nos. 500 *et seq.* (Supplemental Comments of Enron Interstate Pipelines (filed Nov. 30, 1987) and Additional comments and Responses of Tenneco Gas Pipeline Group, Inc. (filed Nov. 30, 1987).) (See also discussion below, Confirmation of sale of released gas.)

[72] ANR, letter of Jan. 12, 1988, Appendices A and B. From September 1986 through August 1987, less than five percent of the total released gas transported on the ANR Pipeline Company system was transported for an affiliate. The total released gas transported for 1987 was 104,477 dekatherms. On the Colorado Interstate Gas Company system, at least 50 percent of the total released gas transported was transported for nonaffiliates in 1987. The total released gas transported in 1987 was 13,642,031 Mcf.

A letter from Natural dated Nov. 3, 1987 indicates that for the period October through December of 1986, at least three percent of the released gas transported was transported for nonaffiliates.

[73] EXXON Corporation (Exxon), Members of the Northern Distributor Group (Northern Distributor Group), U.S. Department of Justice, and Tenngasco.

state the rule would make it impossible for a shipper to ask a pipeline to convey confidential information about the shipper to a provider of gas without risking disclosure of proprietary information to the shipper's competitors. These commenters believe the proposed rule penalized customers of the pipelines.

Two commenters suggest revisions. Indicated Producers ask the Commission to provide a 60-day period from the time of request before the information would be released to prevent competitive harm. Columbia Gas believes release to other pipelines should be allowed since many transportation requests must be processed through other pipelines.

Several commenters believe that the majority of the information filed with a transportation request will be available to anyone under the log and access requirements through the proposed recordkeeping requirements (proposed § 250.16(b)(6) and (f)).[74] Tenngasco . states this information should not be available to other parties through the proposed recordkeeping requirements.[75]

The Commission agrees that information filed with transportation requests should not be made available to marketing affiliates. This requirement is now part of the standards of conduct.[76] In addition, the Commission has adopted the approaches, as is indicated above, of having the filing requirements apply only to transactions involving marketing affiliates and of providing a reporting delay mechanism.

d. Capacity information. The Commission proposed to prohibit pipelines with marketing affiliates from providing information to affiliated shippers regarding the availablility of capacity for transportation service, unless such offer or information is simultaneously communicated to all potential shippers. "Potential shippers" included all current transportation and sales customers of the pipeline and all persons with pending requests for transportation service or for information regarding transportation service on the pipeline.[77] (Proposed § 161.3(d).)

Two commenters ask the Commission to clarify the term "information * * * regarding the availability of capacity." The term could refer either to general information or to information specific to an affiliate.[78] Most of those commenting on this section assume the information to be or include information provided to an affiliate in response to a specific request from the affiliate.[79]

Commenters who believe the section applied to specific requests for affiliates state it would be overly burdensome to report responses to specific requests from affiliates simultaneously to all potential shippers.[80] They also point to the competitive harm to the affiliate if the response to the affiliate's request is made available to other shippers.[81] These commenters suggest the Commission revise the rule to exempt routine requests by marketing affiliates.

The Commission intended the prohibition against revealing transportation information to an affiliate unless the information was given to all potential shippers to apply to general information concerning transportation. The Commission is requiring a pipeline to make general transportation information available to all potential shippers if it makes this information available to an affiliate.[82] Further, the pipeline must disclose immediately any new or changed general information not available to nonaffiliated marketers if it provides such information to affiliates as part of a response to a specific request from an affiliate. The fact that such new or changed general information is contained in a response to a specific request does not lessen its potential competitive advantage to the affilate, nor insulate the pipeline from disclosing the general information.

e. Independent functioning. The Commission proposed that employees of the interstate pipeline and of the marketing affiliate function independently of each other to the maximum extent possible. The Commission also sought comments on whether organizational separation of personnel and facilitates should be required of any interstate pipeline with a marketing affiliate, so that employees of the pipeline and the marketing affiliate function completely independently of each other. The Commission asked whether shared personnel and facilities should be prohibited.[83] (Proposed § 161.3(e).)

A number of commenters believe complete separation of personnel and facilities should be required,[84] while others believe it should not be required.[85] Some suggest requiring a modified form of separation. They state the operating functions of the pipelines such as sales and transportation should be separate from the operating functions of any marketing affiliate such as supply, acquisition, sales, dispatching, and balancing. They believe, however, that some sharing should be allowed, such as affiliates[86] or support functions including telephone, printing equipment, billing, cash management, personnel, legal, and accounting.[87] Some commenters believe that prohibition against shared personnel and facilities should not apply when a marketing affiliate's activities are restricted to the movement of take-or-pay relief gas.[88]

The Commission does not agree with the commenters who state that a complete separation of pipeline and marketing affiliate personnel and facilities is necessary to prevent unduly discriminatory conduct. The Commission believes less drastic requirement will achieve the same result without imposing one form of organization on all pipelines no matter what their circumstances. The Commission believes the standards of conduct and the reporting requirements proposed in this rule will be a sufficient deterrent to preferential treatment of a marketing affiliated by its affiliated pipeline because its transactions with its marketing affiliates will be open to public scrutiny and because it will be subject to enforcement actions in the event it violates a standard of conduct. The Commission therefore is not mandating organizational separation, but only requiring that it be undertaken to the maximum extent practicable. Different pipelines are faced with different practical circumstances and may not be able to accomplish organizational separation to the same degree. However, in any particular proceeding to consider allegations that a pipeline has improperly shared

[74] Texas Gas and Tenngasco.

[75] Tenngasco.

[76] *See* new § 161.3(e).

[77] 52 FR at 21586.

[78] *See* Panhandle and Texas Gas.

[79] *See e.g.*, Columbia Gas Transmission Corporation (Columbia) and Tennessee. Texas Gas, however, assumed the opposite.

[80] For example, Columbia, Enron, and Natural.

[81] Texas Gas and United.

[82] *See* new § 161.3(f).

[83] 52 FR at 21586 and 21580.

[84] Pennzoil Company, Iowa-Illinois, The Process Gas Consumer Group (Process Gas), Indiana Utility Consumer Counselor, Maryland People's Counsel, Minnesota, Consolidated Fuel Supply, Inc. & AMGAS, Inc. (Consolidated Fuel), Entrade, Hadson, Natural Gas Clearinghouse, Northridge, Ohio Gas Marketing, The Producer-Marketer Transportation Group, PSI, Inc., Sunshine Energy Company (Sunshine), Industrial Energy Services Company (IESCO), and Yankee Gas Company (Yankee).

[85] Exxon, Eastern Kentucky, ANR, Arkla, Enron, Interstate Natural Gas Association of America (INGAA), Mountain Fuel Natural Gas, Southern Natural Gas Company (SONAT), Texas Eastern Transmission Corporation (Texas Eastern), Delta Natural Gas Company (Delta), SNG Trading Inc. (SNG), and Tenngasco.

[86] El Pasco and Virginia State Corporation Commission (Virginia).

[87] Columbia Gas, Panhandle, Williams, and Enron Gas Marketing, Inc. (Enron Gas Marketing).

[88] Tennessee and Enron Gas Marketing.

information with an affiliate, the degree of organizational entanglement between the two will be a factor to be considered. In any event, the Commission has clarified this section to state that separation of employees and facilities refers to operating personnel. The Commission does not believe it is necessary to require separation of support personnel to prevent the occurrence of undue preferential treatment of a marketing affiliate by its affiliated pipeline.

The Commission does not believe that a requirement to separate employees and facilities of a pipeline and its marketing affiliate to the maximum extent practicable will discourage a pipeline from having a marketing affiliate, even if it is a small pipeline.

A number of commenters are concerned with the effect of the proposed rule on pipelines' ability to mitigate take-or-pay liabilities. Some believe a prohibition against sharing of employees and facilities between a pipeline and its marketing affiliate would reduce the pipeline's ability to mitigate take-or-pay liability.[89] The Commission believes that a pipeline can undertake take-or-pay negotiations even if the pipeline and its marketing affiliate do not share any personnel. Thus, the Commission has retained this requirement.

f. Prohibition of tying. The Commission proposed to prohibit a pipeline's conditioning or tying an agreement to release gas subject to take-or-pay relief to an agreement by the producer (or a customer/end user) to obtain services from any affiliate of the pipeline, or to an offer by the pipeline to provide or expedite transportation service to its affiliate relating to the released gas.[90] (Proposed § 161.3(f).)

Some commenters state the rule is needed and suggest that it be broadened to preclude tying use of an affiliate or expedited transportation service to any gas that is released, not just released gas subject to take-or-pay relief, and to future purchases by pipelines for system supply.[91] Some commenters state there would be no transportation preference for released gas and ask the Commission not to condition transportation on released take-or-pay liability.[92]

Pipeline commenters directly addressing this section state they do not tie the release of gas to use of an affiliate.[93] Natural states it has no objection to prohibitions against requiring released gas to be sold through an affiliate or giving an affiliate preferential access to released gas. It does object, however, to the prohibition against granting preferential transportation rights for released gas. The commenters believes this prohibition interferes with take-or-pay negotiations. Several commenters believe the Commission should deal with restrictions on take-or-pay relief in the proceedings under Order Nos. 436 and 500 rather than in this rulemaking.[94]

The Commission believes tying an agreement to release gas subject to take-or-pay relief to an agreement by the producer (or a customer/end-user) to obtain services from any affiliate of the pipeline or to an offer by the pipeline to provide or expedite transportation service to its affiliate for the released gas is an unduly discriminatory practice. The Commission has adopted this provision to prevent this unduly discriminatory practice in the natural gas market.

The Commission does not believe the rule should be broadened to include other releases or purchases of gas. The commenters that favor such action have not provided the Commission with any information that such incidents are occurring. Furthermore, the Commission has no such information from any other source. Therefore, it does not believe that it is appropriate to broaden the rule at this time.

g. Confirmation of sale of released gas. The Commission proposed requiring pipelines with marketing affiliates to confirm, if asked, when independent marketers or producers are selling released gas, so that the pipeline's purchasers may know when these sales are mitigating the pipeline's take-or-pay liability. Any false or misleading information about take-or-pay, such as where a pipeline or an affiliate states there will be a take-or-pay billing credit that will flow to the pipeline customer if the customer purchases gas from the affiliate, was to be considered a violation of the proposed rule's reporting requirements.[95] (Proposed § 161.3(g).)

Pipeline commenters state generally the proposed requirement is not relevant to discriminatory practices, inhibits take-or-pay settlements, and is not needed with regard to the making of false statements.[96]

Several pipeline commenters state they do not know in any given transaction whether independent marketers or producers are selling released gas, so that compliance with the requirement would be impossible.[97] Some commenters state, however, that when the transporting pipeline releases the gas, the pipeline can tell which sources of gas are sources of released gas or result in take-or-pay relief. The exact allocation or disposition of the released gas is determined by the marketer, however, not the pipeline.[98] El Paso states that simply knowing gas is released gas does not mean the transporting pipeline knows what take-or-pay relief will be obtained or by whom. Texas Gas indicates it can tell whether released gas is actually involved in a particular sale or whether take-or-pay credit is received, but not until weeks or months after the sale.

Several commenters refer to a list of released gas. Texas Gas believes the Commission should encourage a list showing where and with what producers a pipeline has entered into release agreements. This commenter was willing to identify publicly all gas it has released by producer and location. Natural states it gives out a list of released gas on its system on request. Tennessee objects to being required to provide a released gas list stating it is not related to the marketing affiliate problem and not warranted to require pipelines with marketing affiliates to provide such a list when pipelines without marketing affiliates are not required to do so.

The Commission agrees with the comments that a pipeline may not know immediately whether a given transaction involves released gas or take-or-pay relief. The Commission believes that whether or not a pipeline knows a given transaction involves released gas or take-or-pay relief, a pipeline does know its sources of gas and can confirm when these sources are sources of released gas or result in take-or-pay relief. The Commission notes that several pipeline commenters have a list of such sources or are willing to provide one.

The Commission has clarified the rule to reflect it is concerned with supplies of gas mitigating the take-or-pay liability of the transporting pipeline. The rule applies to information relating to gas

[89] *See e.g.*, Arkla, Enron, Natural Gas, SONAT, Tennessee, and Transco Gas Company.

[90] 52 FR at 21586.

[91] Entrade, IESCO, and Natural Gas Clearinghouse, respectively.

[92] *See e.g.*, Hadson and NACASCO, Inc.

[93] ANR and El Paso.

[94] *See e.g.*, El Paso and Natural.

[95] 52 FR at 21586

[96] Exxon, ANR, and El Paso.

[97] *See e.g.*, Columbia Gas INGAA, and Tennessee.

[98] Natural, Panhandle, and Texas Gas.

mitigating the pipeline's take-or-pay liability rather than to specific transactions.[99] The Commission is requiring a pipeline to identify information relating to released gas that is mitigating its take-or-pay liability if the pipeline has provided this information to a marketing affiliate.

For purposes of this provision, the Commission considers any false or misleading information provided under the terms of this Final Rule by pipelines with regard to released gas and take-or-pay credits to be a violation of the reporting requirements. Again, the Commission is acting to prevent competitive abuses resulting from any such intentional inaccuracy as to the take-or-pay credit available from transportation of released gas which could accrue to the benefit of the marketing affiliate.

h. Log of contact with potential shippers. The Commission proposed that pipeline personnel having contact with any potential shippers must maintain logs showing all requests for transportation and their disposition in accordance with applicable Commission regulations and report those data as required by the regulations.[100] (Proposed § 161.3(h).)

Commenters raise several objections to the proposed log requirement. Several commenters ask the Commission to define "contact." [101] Some believe the requirement is too broad if it applies to unauthorized personnel, preliminary or informal communications, or general inquiries.[102] Commenters ask the Commission to restrict the requirement to contact personnel, final transportation requests, and written requests.[103]

The Commission believes, as do some commenters, that this requirement may be duplicative of other requirements such as § 284.13 of the Commission's regulations which is a log of all transportation requests and of the log in § 250.16(b)(6) of the rule which would contain requests by affiliates for transportation service.[104] The Commission also agrees that preliminary contacts by a shipper or marketer with a pipeline may be proprietary in nature.[105] The Commission believes that a log of all contacts with potential shippers is unnecessary and may be detrimental to competition. Therefore, it is not adopting this proposal.

i. Written procedures to show how prohibited practices have been eliminated. The commission proposed requiring pipelines with marketing affiliates to develop written procedures to enable shippers and the Commission to determine how prohibited practices, such as enforcement of tariff requirements, nondisclosure of nonaffiliated shipper information to an affiliate, and preferential disposition of affiliate transportation requests, have been eliminated.[106] (Proposed § 161.3(i).)

Several commenters object to the assumption that the pipelines are guilty of prohibited practices.[107] Kentucky West suggests the Commission revise this section simply to require pipelines to develop written guidelines which ensure transportation services are rendered pursuant to the standards proposed.[108] Other commenters believe written procedures should only be required where prohibited activity has been proved or where there are colorable allegations of a specific anticompetitive practice.[109] Columbia Gas believes the requirement should be eliminated.

The Commission agrees with the comments that the characterization of pipeline conduct is unnecessary and has deleted this reference from the rule. The Commission is requiring the provision of written procedures stating how the pipeline plans to implement the requirements of the standards of conduct. The Commission believes this requirement is necessary because it will inform pipeline employees, marketers, and the Commission of pipeline procedures. The Commission believes these written procedures are all the more necessary because, as stated previously, pipelines do not currently have standards of conduct.

4. *Reporting requirements.* In general, the Commission is adopting the approach that a pipeline must file information on transportation requests in which a marketing affiliate is involved that have commenced 30 days or more earlier. A pipeline must keep the same information for transportation requests in which nonaffiliated shippers are involved, but is not required to file the information which is available only to the Commission or to the public under the Commission's discovery rules.

Both the reporting requirement and the maintenance requirement are limited to the period up to the end of calendar year 1989. As discussed earlier, because there is a possibility that market affiliate abuses may not be a serious long-term problem as transportation service becomes more competitive, the Commission is limiting the reporting requirement. The Commission expects that this will protect the public from the possible exercise by pipelines of residual market power over transportation service as the industry moves toward increased competition. If, at the end of this period, the Commission affirmatively finds a need to extend the reporting requirement it may do so.

The Commission proposed requiring pipelines with marketing affiliates to file certain items of information. These items were (1) a list of personnel and facilities shared with an affiliated marketing or brokering company, (2) the information and format required for a valid request for transportation service, (3) procedures used to address and resolve complaints by shippers and potential shippers, (4) procedures used to inform shippers and potential shippers of the availability and pricing of transportation service and the capacity of the pipeline available for use, (5) tariff provisions containing the first four items, and (6) a log of all requests for transportation service.[110] The log contained a number of separate requirements. (Proposed Part 250.)

The Commission further proposed requiring pipelines with marketing affiliates to make the filings and the log available to the public by providing a paper copy at their principal places of business and copies by mail within seven calendar days of a written request. In addition, the Commission proposed requiring pipelines to provide 24-hour access by electronic means to the data required to be maintained in the log.[111]

Some commenters generally support the proposed reporting requirements.[112] Others believe the proposed reporting requirements were unjustified,[113] and

[99] *See* new § 161.3(i).

[100] 52 FR at 21586.

[101] *See e.g.*, Kentucky West and Entrade.

[102] Arkla, Tennessee, and Panhandle, respectively.

[103] Arkla, City of Willcox & AEP, and AGA, respectively.

[104] *See, e.g.*, Enron, El Paso, Columbia Gas, and INGAA.

[105] *See, e.g.*, NIPSCO and City of Willcox & AEP

[106] 52 FR at 21586. *See also* at 21580–21581.

[107] *See e.g.*, Columbia Gas, Enron, Kentucky West.

[108] Kentucky West.

[109] Northern Border Pipeline Company (Northern Border) and El Paso, respectively.

[110] Proposed § 250.16 (a) and (b). 52 FR at 21586–21587.

[111] Proposed § 250.16(f).

[112] *See e.g.*, AGD, Producer Associations, Consolidated Edison, Public Service Electric & Gas Company (Public Service), Wisconsin Distributor Group, and Consolidated Fuel.

[113] *See e.g.*, Exxon, Columbia Gas, El Paso, Enron, Natural, and Entrade.

still others believe they should be modified.[114]

Consolidated Edison states that contemporaneous full disclosure is the most effective deterrent to favoritism, undue discrimination, and anticompetitive conduct. Producer Associations believe the public access requirements would mitigate the "insider" advantage of affiliates. This commenter points to the former requirement that self-implementing transportation transactions be reported to the Commission within 48 hours. Order No. 436 repealed this requirement.

The Commission has further considered the reporting requirements and has revised and narrowed some requirements as explained below.

a. Proposed §§ 250.16(b)(1) through (b)(5). The Commission proposed requiring pipelines to file as tariff provisions a list of personnel and facilities shared with an affiliated marketing or brokering company, the information and format required for a valid request for transportation service, procedures used to address and resolve complaints by shippers and potential shippers, procedures used to inform shipper and potential shippers of the availability and pricing of transportation service, and the capacity of the pipeline available for use.

Some commenters believe the information required for a valid transportation request (proposed § 250.16(b)(2)) and procedures to inform shippers of the availability and pricing of transportation service (proposed § 250.16(b)(4)), duplicate information already contained in pipeline tariffs and should not be required.[115] Mid Louisiana Gas Company objects to the refiling and subsequent amendment of tariffs containing the information required in proposed § 250.16(b)(1)–(4) on the ground that multiple filing fees would be incurred.

To the extent that the requirements duplicate existing tariffs, the rule does not require refiling of the tariff. A pipeline must file new tariff provisions with the valid request and availability and pricing information if it does not have existing tariff provisions with those procedures. The Commission will waive fees for those restating tariff provisions. The Commission is requiring that these filings be updated quarterly.

b. Log of transportation requests. The Commission proposed requiring pipelines to file a log of all requests for transportation service. The log would contain a number of specific items of information[116] and would be available to the public. (Proposed § 250.16(b)(6).)

The major objections of those opposed to the transportation request log were that creating and maintaining the log was burdensome and disclosed confidential information.[117] A number of commenters state the requirements would disclose confidential information including key elements or proposed and executed contracts for transportation[118] and information on take-or-pay settlements such as duration and transportation rate discounts.[119] (Confidentiality of information is discussed below.)

The Commission agrees with comments that to protect the confidentiality of competitively sensitive information the reporting requirements in this rule should be consistent with Commission reporting requirements under the open access transportation regulations.[120] Therefore, the Commission will require a pipeline to specify the producing area where the source of gas is located and the state of location of the end user, but will not require it to name the source of gas or the end user. For the same reasons, the Commission will allow for a lag time between the commencement of transportation and public access to the information. (See discussion below.)

The Commission recognizes, as stated by some commenters, that some of the data required by the reporting requirements may already be required by other Commission regulations.[121] However, these other regulations do not require detailed information concerning pipeline-marketing affiliate transactions or nonaffiliate transactions, and, therefore, cannot be used to detect undue discrimination by a pipeline in favor of its marketing affiliate. The Commission believes the items of information required in the final rule are necessary to allow meaningful monitoring of unduly discriminatory conduct by pipelines. The Commission has thus adopted reporting requirements for a pipeline's transactions with its marketing affiliate and record maintenance requirements for a pipeline's transactions with nonaffiliates.

The Commission also agrees with comments that some of the data required, such as the supplier of the gas, the end user, and whether or not the gas is subject to take-or-pay relief, are available from shippers rather than pipelines.[122] The Commission notes that this information (modified to state of location for the end user and producing area for the supplier) must now be supplied only for requests for transportation in which an affiliated marketer is involved. The Commission believes the provision of this information is essential to the prevention and correction of undue discrimination by a pipeline in favor of its marketing affiliate. The Commission has thus adopted the approach that a valid transportation request in which an affiliated marketer is involved must include the items in the transportation request log.

c. Confidentiality of information. A number of commenters state that making some of the items of information in the proposed transportation request log available to the public would cause competitive harm to marketers.[123] Almost all such commenters mention the source of the gas and the end user. Other items of information include the affiliation of the requester with the supplier, daily volumes of gas delivered, receipt and delivery points, the transportation rates for the service,

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[114] *See e.g.*, Indicated Procedures and United.

[115] Columbia Gas and Enron.

[116] Proposed § 250.16(b)(6) required the following information: (i) Date of receipt of the request; (ii) date of communication if request is received by mail; (iii) date request was accepted as valid; (iv) affiliation of the requester with the pipeline and the extent of the pipeline's affiliation with the person to be provided transportation service; (v) affiliation of the requester with the supplier; (vi) identity of the shipper; (vii) volumes of gas to be transported on a daily basis; (viii) source of the gas; (ix) date service is requested to commence and terminate; (x) receipt and delivery points between which the gas is to be transported and the distance to be transported; (xi) whether service is firm or interruptible; (xii) the end user of the gas; (xiii) transportation rates; (xiv) whether the gas is subject to take-or-pay relief; (xv) whether and by how much the cost of gas to an affiliated marketer exceeds the price received for the sale of the gas by the affiliated marketer; (xvi) the existence and duration of a discount; (xvii) current status of the request including whether it is incomplete, complete and pending, withdrawn, or denied and the reason why (xviii) the position of the request in the transportation request queue; (xix) the disposition of the request including the date the requester was notified of the availability of capacity, the date the contract was executed, the date service actually commenced, and any explanation concerning the disposition of the request; and (xx) any complaints by the shipper or end user concerning the requested or furnished service and the disposition of such complaints.

[117] Burdensome: Exxon, Consolidated Gas, El Paso, Enron, Natural, Seagull, and U.S. Department of Justice.

Disclosure of confidential information: *inter alia*, Exxon, Indicated Producers, Natural Gas Supply Association, Enron, United Gas, and U.S. Department of Justice.

[118] Exxon.

[119] United Gas.

[120] *See e.g.*, 18 CFR 284.106 and 284.223(f) (1987) and comments on Natural and Northern Border.

[121] *See e.g.*, Northern Border, Panhandle, and Tennessee.

[122] *See e.g.*, INGAA, Natural, Panhandle, and Texas Gas.

[123] *See e.g.*, Eastern Kentucky, ANR, AGA, Entrade, and NAGASCO, Inc.

whether the gas is subject to take-or-pay relief, the transaction profits of affiliated marketers, and the status of the request. [124]

The Commission agrees with the commenters that protection of sensitive marketing information is important to the preservation and fostering of competition within natural gas markets. The Commission is, accordingly, requiring the reporting of the producing area in which the source of gas is located and the state of location of the end user rather than their names. In addition, the Commission agrees with comments [125] and has clarified the final rule to require public access to information in the log only after the commencement of transportation. The Commission believes these revisions will protect the confidentiality of the information to be provided. They are also consistent with the Commission's open access transportation provisions.

The U.S. Department of Justice suggests revising the rule to require disclosure only of transactions involving affiliates. The Department objects to disclosure of competitively sensitive nonaffiliate information. It also maintains that nonaffiliates do not need information about each other's shipments to detect discrimination in favor of affiliates. The commenter states they need only details of their own transportation requests (which they have) and the details of the pipeline's transactions with its affiliate to provide the necessary basis for comparison. [126]

The Commission believes, as is implicit in the view of the U.S. Department of Justice, that information concerning transactions of affiliated marketers will be most important for alerting both the Commission and a nonaffiliated marketer as to whether or not undue discrimination may exist. A nonaffiliated marketer will be able to establish whether or not it has been discriminated against by having access to information concerning a pipeline's transactions with its affiliates and comparing that information with its own information concerning its own transactions. Accordingly, the Commission is requiring a pipeline to keep records and file information concerning requests for transportation in which a marketing affiliate is involved.

Information concerning a pipeline's transactions with nonaffiliated shippers will still be necessary, however, to permit comparisons of a pipeline's treatment of different nonaffiliated marketers and the overall treatment of affiliated marketers with the treatment of nonaffiliated marketers. The Commission is thus requiring a pipeline to maintain, but not file, information on requests for transportation service by nonaffiliated shippers. This information will be available to the Commission on request and to the public under the Commission's discovery rules. [127]

d. *Technical changes in the transportation log.* The Commission has made some technical changes in the transportation log as the result of staff review. The Commission has deleted the requirement that shipper affiliation with the supplier be reported as not germane to this rule. The Commission has narrowed the requirement concerning receipt and delivery points so that only one distance, the distance between the receipt and delivery points that are the furthest apart, must be reported, rather than the distances between each pair of receipt and delivery points. The Commission is requiring a pipeline to report the identity of the rate schedule applying to a transportation request. The requirement regarding the reporting of the volume of gas to be transported has been clarified to be the total contract volume and the maximum daily contract volume, as opposed to volumes of gas to be transported. The rule also now specifies that records are to be kept until Dec. 31, 1989 and that information that is to be maintained only must be maintained in computerized form, according to Commission specifications.

5. Supplemental Comments of Enron and Tenneco

Two pipeline commenters filed additional comments and a joint appendix after the Opportunity for Oral Presentation held on Oct. 20, 1987. [128] Both commenters favor the fair and equitable administration of tariff provisions and the use of reporting requirements to achieve the objective of a competitive market.

The Commission agrees in part with Enron's suggestion that it require a pipeline to maintain records of transportation internally and file a monthly transportation request processing report based on the transportation log proposed in the NOPR. The Commission has adopted the requirement that information concerning a transportation request of a nonaffiliate be kept by the pipeline. The Commission is requiring the monthly filing only of data concerning a transportation request of an affiliate.

Both Enron and Tenneco ask the Commission to delete some items from the transportation log. [129] The Commission has not adopted these suggestions because it believes these items of information are needed to establish the comparability of affiliate and nonaffiliate transactions and the existence of unduly discriminatory treatment with regard to gas subject to take-or-pay relief or transactions involving losses.

Both commenters suggest the Commission require a pipeline to provide a list of all producers and working interest owners and the sources of supply eligible for transportation pursuant to offers of credit under Order Nos. 500 *et seq.* The Commission is requiring a pipeline to make this information available to nonaffiliates on request to the extent it makes it available to a marketing affiliate.

The commenters also suggest that the Commission expand the discount reporting rules and revise the current reporting requirement in the Commission's regulations. [130] Enron suggests the Commission require a pipeline to report the maximum rate or fee, the rate or fee actually charged during the billing period, the shipper, corporate affiliation between the shipper and transporting pipeline, and the quantity of gas scheduled at the discounted rate during the billing period for each delivery point. Enron asks that the discount report be filed 30 days from the end of the preceding month because scheduled volumes cannot be ascertained in time to permit filing within the currently required 15 day period.

The Commission is adopting Enron's suggestion in this rule, as it believes this information will relate discounts to rates and enlarge its knowledge of discounts, and, thus, will enhance its ability to ascertain whether a discount is given on an unduly discriminatory basis. The rule

[124] Commenters varied as to when they thought this information had to be made available, for example: when a request for transportation is made (Entrade) and unclear whether information is to be immediately available (Exxon). Producer Associations states there should be a one business day lag in posting changes in the transportation log on the electronic system.

[125] *See e.g.*, Indicated Producers.

[126] U.S. Department of Justice.

[127] 18 CFR 385.401–411 (1987), FERC Stats. & Regs. ¶¶ 26,837–26,848, 52 FR 6957 (Mar. 6, 1987).

[128] Supplemental Comments of Enron Interstate Pipelines (filed Nov. 30, 1987); Additional Comments and Responses of Tenneco Gas Pipeline Group, Inc. (filed Nov. 30, 1987); and Appendix to Comments of Tenneco Gas Pipeline Group and Enron Interstate Pipelines (Joint Appendix) (filed Nov. 30, 1987).

[129] The items eliminated from the NOPR according to the Joint Appendix would be (v) the affiliation of the requester with the supplier and the extent of the pipeline's affiliation with the supplier; (viii) source of gas; (xii) end user; (xiv) whether the gas being transported is subject to take-or-pay relief; (xv) affiliate loss margin; and (xix) disposition of the transportation request.

[130] 18 CFR 284.7(d)(5)(iv) (1987).

makes reporting of discount information separate from the reporting of the other information in the transportation request log. The rule requires a pipeline to report a discount within 15 days of the close of the pipeline's billing period, as it is currently required to do under § 284.7(d)(5)(iv) of the Commission's regulations. A report of a discount under this rule satisfies a pipeline's obligation to report under that section.

Lastly, Tenneco believes a pipeline should identify the locations of current capacity constraints affecting interruptible transportation service. While the Commission has not specifically dealt with this type of information, it has, as stated previously, required that to the extent a pipeline provides natural gas business related information to an affiliate, this information must be made available contemporaneously to all potential shippers, both affiliated and nonaffiliated. This requirement applies to information concerning capacity constraints.[131]

[131] The Commission has considered the other suggestions made by the commenters and has adopted provisions which it believes are substantially in agreement with those suggestions. The other suggestions are:

(1) Interstate pipelines must implement and enforce tariff provisions without undue discrimination between affiliated and non-affiliated shippers and potential shippers.

(2) Tariff provisions must specify the procedures for scheduling, allocating and curtailing transportation. These procedures should not depend upon a shipper's affiliation with an interstate pipeline.

(3) Tariff provisions must specify what information and format constitute a valid request for transportation service by shippers, and these tariff provisions must clearly and completely specify these requirements.

(4) Interstate pipelines must use due diligence in processing all pending requests of comparable complexity within a specific period of time, or in accordance with specific milestones, to be specified in advance in their tariff.

(5) Tariffs must be refiled to comply with 1 through 4 above, if they do not already contain these provisions.

(6) Interstate pipelines must file and maintain procedures for accepting and processing of transportation requests including departments which are authorized to receive requests for transportation.

(7) Interstate pipelines must have a code of conduct for employees of the pipeline company and the affiliated marketing companies with regard to information about transactions provided to the pipeline by nonaffiliated shippers to secure open access transportation service except information which is required by the Commission to be reported to the Commission.

(8) Interstate pipelines must have procedures for notifying shippers and potential shippers of all receipt points, delivery points and key pipeline segments at which valid nominations exceed available capacity.

(9) The Commission should adopt a policy stating that an interstate pipeline will not condition or tie its agreement to release gas subject to take-or-pay relief to an agreement by the producer (or a customer/end user) to obtain services from any marketing affiliate of the pipeline, or to an offer by the pipeline to provide or expedite transportation service to its marketing affiliate related to the released gas.

(10) An interstate pipeline should adopt a policy on the relationship between employees and facilities of the interstate pipeline company and of each of its affiliated marketing companies, including whether there are common employees for any functional activity of the pipeline company and the marketing company.

(11) An interstate pipeline should file procedures used to address and resolve complaints by shippers and potential shippers.

(12) An interstate pipeline should file procedures used to inform affiliated and nonaffiliated shippers and potential shippers of the pricing of transportation services.

[132] 52 FR at 21583.

[133] For example, Panhandle, Hadson, Iowa-Illinois, Northern Distributor Group, United Distribution Company, and The Process Gas Consumer Group, Indiana Utility Consumer Counselor, Maryland People's Counsel, Entrade, and Sunshine.

[134] For example, Enron, Kentucky West, Texas Gas, United Gas, and Public Service Electric & Gas Company (Public Service).

Enron, Texas Gas, United and City of Willcox & AEPCO state an open season is unnecessary in light of the standards of conduct promulgated in this rule and existing requirements in Order No. 436 certificates.

[135] Hadson (supplemental filing), The Producer-Marketer Transportation Group, and IESCO.

C. Proposals Not Adopted

1. Open Season

The Commission proposed an open season access period of 10 days before a pipeline could become or resume status as an open access transporter, apply for any other significant transportation authorization, or announce the release of significant gas volumes. The Commission was concerned that a pipeline may provide advance notice to its marketing affiliate that the pipeline intended to seek certain transportation authorizations, thereby providing an unfair advantage to the marketing affiliate who can "queue up" in advance of the formal announcement by the pipeline. Requests received during the open season period would be considered to have been received simultaneously. The Commission stated the effect of this proposal would be to place all persons who express interest in obtaining transportation during the 10 day grace period equally "first" with an equal claim on the transportation to be offered.[132]

Some commenters endorse the proposal [133] and some oppose it.[134] Other commenters request clarification or support portions of the proposal. Several commenters believe open season provisions should be codified, either as part of a marketing affiliates rule or the open access transportation regulations.[135]

The Commission has approved use of an open season in individual proceedings to achieve equal access to the capacity being offered.[136] The open season is intended to counteract any unfair advantage a marketing affiliate might have from receiving advance notice of a pipeline's intent to seek certain transportation authorizations. If information is available to all marketers at the same time on the availability of transportation, there may not be a need for an open season requirement. The Commission will continue to consider an open season on a case by case basis. In addition, while it is not imposing an open season requirement in this rule, the Commission reserves the right to do so in future if it determines it is necessary.

2. "Dual" Approach To Pipeline Marketing Affiliates

In the NOPR the Commission asked for comments on a "dual" approach to pipeline marketing affiliates. This approach would prohibit a pipeline that is not subject to Order No. 436 from having a marketing affiliate, but allow a pipeline that is subject to Order No. 436 to have one.[137] The Commission proposed this approach to encourage a pipeline to become an Order No. 436 pipeline and thereby forego any market power it might have over transportation. The Commission noted, however, that even for Order No. 436 pipelines, its concern remained how the pipeline-marketing affiliate combination should be structured or regulated so as to prevent undue discrimination by the pipeline in favor of its marketing affiliate.

The majority of those commenting on this issue were against barring a non-Order No. 436 pipeline from having a marketing affiliate.[138] These commenters argue that there is no rational basis for the prohibition and that such a prohibition would undercut the voluntary nature of the open access transportation program.

Some commenters, however, supported the proposal.[139] These

[136] Tennessee Gas Pipeline Company, RP87-26-000 *et al.*, 40 FERC ¶ 61,194 (1987) and Pacific Gas Transmission Company, CP87-159-000 *et al.*, 40 FERC ¶ 61,193 (1987).

[137] 52 FR at 21579-21580.

[138] Exxon, ANR, Enron, Kentucky West, National Fuel, Natural Gas, Texas Eastern, Texas Gas, United, AGA, AGD, Consolidated Edison, The Gas Company of New Mexico, The Process Gas Consumer Group, Virginia, Enron Gas Marketing, Western Gas Marketing, and The Producer-Marketer Transportation Group.

[139] Columbia Gas, Iowa-Illinois, Indiana Utility Consumer Counselor, Maryland People's Counsel, PSI, and Sunshine.

commenters argue that a pipeline should be rewarded for taking the increased risks of becoming an open access transporter and that a pipeline should not be allowed the full benefits of competition via a marketing affiliate until it has accorded its customers the benefits of competition by becoming an open access transporter.

The Commission believes that mandating open access status for a pipeline that wishes to have a marketing affiliate would not resolve its concerns over preferences a pipeline may give to its affiliate. The Commission's concerns about anticompetitive practices are related to open access pipelines as well as non-open access pipelines. Accordingly, the Commission will not pursue the proposed "dual" approach in this rulemaking.[140]

D. Remedies

The Commission outlined remedies it would consider where information indicates that unlawful, unduly discriminatory practices have occurred. Some commenters ask that, in general, the Commission follow Opinion No. 212,[141] which states the policy that "the least severe remedy that will deter illegal actions should be chosen."[142] Individual remedies are described below.

1. Refunds

The Commission proposed that where unlawful, unduly discriminatory practices have occurred, one possible remedy would be to require the pipeline to refund

> an amount reasonably calculated to put actual or prospective shippers and suppliers who were injured by the pipeline's undue discrimination in the position they would have been had the undue discrimination not occurred * * *[143]

Some commenters believe that the remedy described is damages rather than a refund[144] and that the Commission lacks authority to require damages to be paid.[145] One commenter states that the Commission's remedy in such situations should be based on whether the transportation is unjust and unreasonable;[146] another asserts that the remedy might be abused.[147]

The Commission also proposed requiring pipelines to refund unjust enrichment obtained from its undue discrimination. The City of Willcox & AEPCO asserts that ordering such a refund would violate the filed rate doctrine.

The Commission sees no merit to assertions that it lacks authority to impose its stated remedy for compensation of harm—payment of an amount reasonably calculated to put a shipper injured by a pipeline's undue discrimination in the position it would have been had the undue discrimination not occurred. The Commission has clear authority under section 16 of the NGA (and therefore under the substantially similar provision, section 501 of the NGPA) to return the parties to the *status quo ante*.[148]

The other comments regarding the Commission's remedial powers raise no issues which are not satisfactorily addressed by the text and cases contained in the NOPR.

2. Conditioning Authority

The Commission proposed considering conditioning present or future transportation in a number of ways when information indicated that unlawful, unduly discriminatory practices have occurred. Transportation could be conditioned on (1) loss of priority for some or all transportation arranged by an affiliate; (2) limitation or elimination of the pipeline's authority to transport gas sold or brokered by the marketing affiliate (divorcement); (3) restructuring or corporate structures of pipeline and affiliate to ensure against future undue discrimination; (4) regulating the affiliate in the future as part of the pipeline; and/or (5) divestiture of the affiliate.[149]

Enron Gas Marketing states that the Commission lacks the legal authority to impose such conditions.

The Commission believes that in the presence of unlawful, unduly discriminatory practices, the conditions for transportation it has enumerated for consideration constitute reasonable terms and conditions for which it has the legal authority under section 7 of the NGA and section 311 of the NGPA.[150] However, the Commission is not imposing conditions at this time because it believes the rule it is promulgating here will effectively deter undue discrimination by a pipeline in favor of a marketing affiliate.

a. Divorcement and divestiture. The Commission proposed considering the remedies of divorcement and divestiture as part of its conditioning authority in the event that it found unlawful, unduly discriminatory practices have occurred.[151] Generally, the commenters that oppose use of these measures argue they would reduce competition, eliminate the benefits of vertical integration, and be outside the Commission's legal authority.[152] The commenters that support these measures generally argue that divorcement is the only effective remedy for undue discrimination by a pipeline in favor of its marketing affiliate.[153] NIPSCO states that most abuses will result simply from informal communication between pipeline personnel and the affiliate.

The Commission is not promulgating requirements for divorcement or divestiture in this rule. The Commission believes that the current rule may be sufficient to keep pipeline marketing affiliate abuses from occurring. Should circumstances arise which warrant the application of such measures, however, the Commission believes it has the authority to undertake them. The U.S. Department of Justice expressed the same opinion in the public hearing held in this proceeding.[154] Where necessary, the Commission will consider and impose divorcement or divestiture to prevent a pipeline's undue discrimination in favor of its marketing affiliate.

b. Loss of priority. The Commission proposed conditioning present or future transportation on loss of priority for

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[140] The Commission has, however, conditioned the ability to engage in selective discounting on pipelines' acceptance of a blanket certificate. *See* discussion above, 2.a. Uniform enforcement of tariffs and strict enforcement of tariff conditions.

[141] 20 FERC ¶¶ 61,352, 61,773 (1984).

[142] Texas Gas and TXG Gas Marketing.

[143] 52 FR at 21581.

[144] *See e.g.*, Arkla, and City of Willcox & AEPCO.

[145] Cases cited included FPC v. Sunray DX Oil Co., 391 U.S. 9, 24 (1968); United Gas Improvement Co. v. Callery Properties, Inc., 382 U.S. 223 (1965); Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246 (1951); FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944); Southern Union Gas Co. v. FERC, 725 F. 2d 99, 102 (10th Cir. 1984); and Public Service Co. of New Hampshire v. FERC, 600 F. 2d 944, 957–958 (D.C. Cir. 1979).

[146] Arkla.

[147] NIPSCO.

[148] Coastal Oil & Gas Corp. v. FERC, 782 F.2d 1249, 1253 (5th Cir. 1986); Cox. v. FERC, 581 F.2d 449, 451 (5th Cir. 1978); Mesa Petroleum Co. v. FPC, 441 F.2d 182 (5th Cir. 1971).

[149] 52 FR at 21582.

[150] In Associated Gas Distributors v. FERC, the court held the Commission has broad powers to deal with undue discrimination including the power under sections 5, 7, and 16 of the NGA. 824 F. 2d 981 (1987). For the exercise of Commission authority, *see, for example*, ANR Pipeline Co., 41 FERC ¶ 61,077 (1987) Opinion No. 288, *rehearing granted in part and denied in part*, 42 FERC ¶ 61,077 (1988), Opinion No. 288–A (binding company engaged in undue discrimination and requiring company to apply to transport gas for its sales customers in the event that it ceases to transport under Part 284 of the regulations).

[151] 52 FR at 21582.

[152] *See e.g.*, INGAA and TXG Gas Marketing.

[153] *See e.g.*, Citizens Energy Corporation, Natural Gas Clearinghouse, Inc., Ohio Gas Marketing, and PSI.

[154] *See* remarks, U.S. Department of Justice, "Opportunity for Oral Presentation" (Oct. 20, 1987) at 128–129.

some or all transportation arranged by an affiliate in the event of instances of undue discrimination. Some commenters state this remedy would penalize third parties who had dealt with the affiliate rather than the offending pipeline.[155] For this reason, The City of Willcox & AEPCO asks that the remedy be prospective only. In addition, this commenter believes that conditioning transportation on loss of priority was beyond the Commission's authority because it would require a pipeline to act contrary to its tariff.

The Commission agrees that penalizing innocent third parties is undesirable. It would, therefore, examine loss of priority as a remedy extensively before applying it. The Commission believes, however, that any transaction in which a marketing affiliate is involved, no matter what its role, presents an opportunity for preferential treatment. Thus, all such transactions may occasion a need for priority loss.

3. Civil Penalties

Another remedy the Commission proposed to consider, as appropriate, was the assessment of civil penalties of up to $5,000 per day for violations of the rule's reporting and recordkeeping requirements.[156] The reporting and recordkeeping requirements applied to all transportation transactions whether authorized under the Natural Gas Act or the Natural Gas Policy Act.[157]

Some commenters object to the imposition of civil penalties. One commenter states that the NGA does not authorize the Commission to impose civil penalties and that the Commission is circumventing the NGA by stating the reporting requirements are proposed pursuant to the NGPA.[158] This commenter believes that unduly discriminatory conduct is prohibited by the NGA, not the NGPA.

Another commenter stated the Commission cannot impose reporting requirements promulgated pursuant to section 501 of the NGPA on transactions occurring under the NGA.

The Commission previously considered the legal rationale for promulgating all the reporting and recordkeeping requirements of the rule pursuant to the NGPA. The Commission stated that in order to implement the NGPA and properly discharge its duties thereunder, it required information concerning all transactions. The Commission found, therefore, that it was necessary and appropriate under section 501 of the NGPA to ensure that the reporting requirements disclose the nature of the transactions being conducted. It also found that it was necessary and appropriate to ground the reporting and recordkeeping requirements on its authority under section 501 of the NGPA and to ensure compliance by application of the civil penalties available under section 504 of the NGPA, whatever the source of the transportation authorization for the transaction.[159]

4. Enforcement Task Force

The Commission also announced in the NOPR that it was establishing an informal fact gathering process. This process consists of an Enforcement Task Force to receive complaints concerning alleged unduly discriminatory activities by marketing affiliates and to initiate preliminary investigations into complaints pursuant to § 1b.6 of the Commission's Rules Relating to Investigations,[160] to verify facts, ascertain the scope of any problem, and attempt informal resolutions. In addition, cases are compiled and analyzed for presentation to the Commission to disclose the nature of the complaints and allow a decision as to whether to institute formal investigations and/or refer matters to the Department of Justice.[161]

Several pipelines commented that the procedures would generate unsubstantiated complaints and could lead to harassment by competitors.[162] Other commenters, consisting of local distribution companies and independent marketers, emphasize the need for prompt resolution of complaints.[163]

The Commission believes the Task Force and the hotline have facilitated the resolution of potential misunderstandings and disputes. They have also assisted in bringing to light some practices which warranted more formal consideration. Commenters who addressed this issue at the oral presentation stated that the hotline was working and that it had a substantial effect on resolving disputes.[164] The Commission anticipates that these procedures will aid in the prompt examination of complaints and intends to continue them.

The Commission also proposed additional procedures to be utilized for complaints consisting of the initiation of hearings in which a pipeline would be directed to show cause why it has not unduly discriminated in favor of its marketing affiliate and formal investigations conducted pursuant to § 1b.5 of the Commission's Rules Relating to Investigations.[165]

AGD states that it is important that pipelines be required to show cause that they have not unduly discriminated and believes the show cause requirement mirrors the "rebuttable presumption" standard urged by the *Associated Gas Distributors* case.[166] NIPSCO responds that shifting the burden of proof in an investigatory proceeding is not authorized by either the NGA or the NGPA. This commenter believes the investigation of undue discrimination is carried out under section 5 of the NGA and that the Commission or the third party making the allegation must bear the burden of proof.

The Commission does not believe issuing a show cause order shifts the burden of proof to the respondent. The show cause order commences a proceeding and puts the respondent on notice that he must appear. The Commission or other complainant still bears the burden of proof as to discrimination.

IV. Regulatory Flexibility Act Statement

When the Commission is required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553 (1982), to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), to prepare and make available for public comment an initial regulatory flexibility analysis. This analysis is prepared unless the Commission certifies, pursuant to section 605(b) of the RFA, that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA is intended to ensure careful and informed agency consideration of rules that may affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

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[155] City of Willcox & AEPCO and Enron Gas Marketing.

[156] 52 FR at 21582.

[157] 52 FR at 21583.

[158] ANR citing Coastal Oil & Gas Corp. v. FERC, 782 F. 2d 1249 (5th Cir. 1986).

[159] 52 FR at 21583.

[160] 18 CFR 1b.6 (1987).

[161] 52 FR at 21581.

[162] Mountain Fuel, Texas Gas, and Williams.

[163] For example, AGD, Public Service, The Process Gas Consumer Group, Citizens Energy, and Ohio Gas Marketing.

[164] Natural Gas and AGD, "Opportunity for Oral Presentation," (Oct. 20, 1987) at 82–83 and 99.

[165] 18 CFR 1b.5 (1986).

[166] Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987).

In this case the RFA requires the Commission to analyze only the impacts on small entities that would be subject to this rule. Most interstate natural gas pipelines that would comply with this rule do not fall within the RFA's definition of small entity because of size. Therefore, the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act Statement

The information collection provisions in this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[167] and its regulations.[168] The Commission believes that the reporting and recordkeeping requirements in this final rule are essential to the discharge of its duties under the enforcement of the NGPA and the NGA.

Interested persons may obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Marian Obis, Office of Information and Resource Management, (202) 357–8173). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

VI. Effective Date

This final rule is effective July 14, 1988.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Natural gas, Selective discounting.

In consideration of the foregoing, the Commission adds Part 161 and amends Parts 250 and 284, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission. Commissioner Stalon concurred with a separate statement attached. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Stalon, Commissioner, Concurring

I will support the rule on the premise that some action to regulate the relationships between interstate pipelines and their marketing affiliates is better than no action. It is with reluctance, however, that I do so. To constrain and limit the potential for undue discrimination that arises when a pipeline creates a marketing affiliate, the Commission should develop a market structure designed to ensure that pipelines cannot abuse their monopoly power to the competitive advantage of their affiliates. The solution, in my opinion, is to allow only those pipelines that have accepted a Part 284 blanket transportation certificate to have marketing affiliates. A brief discussion of this issue follows.

The recent development of interstate pipeline marketing affiliates has created a dilemma for the Commission. If there are no particular economic benefits to be derived from the pipeline-marketing affiliate relationship, the need for the affiliate cannot be justified, nonaffiliated marketers can provide the same service with equal efficiency and less risk of monopoly abuse. On the other hand, if economic benefits do arise out of the relationship, these benefits must arise from the pipeline's monopoly power over the transportation of gas. In that case, the marketing affiliate should be regulated. In the light of these conclusions, I find it puzzling that the customers of interstate pipelines support the concept of pipeline marketing affiliates. I find this support informative, however, and I must respect it. Therefore, I have rejected my initial inclination to prohibit marketing affiliates altogether.

When analyzing the pipeline-marketing affiliate relationship, the Commission must keep in mind its regulatory duty of ensuring that pipelines do not exercise their monopoly power to the disadvantage of the natural gas consumer. When the Commission is committed to serving the consumer by disciplining pipelines and producers with market forces, it must attempt to create a market structure for the industry that discourages anticompetitive behavior. Attempts to regulate behavior will be futile if a market structure is left intact that encourages anticompetitive behavior. I believe the Commission has two choices as to how to fulfill its obligation. First, the Commission can prohibit pipelines from creating marketing affiliates altogether; alternatively, it can create a structure whereby competition will effectively discipline the pipeline and its marketing affiliate.

A competitive structure for gas marketing affiliates requires the removal of barriers to the entry and exit of other gas sellers. Producers and non-affiliated marketers need assured access to the pipelines. Additionally, the Commission has a duty under the Natural Gas Act to make sure that pipelines do not shift their monopoly power to unregulated marketing affiliates. The shifting of the monopoly power can occur in two ways: it can occur by the pipeline absorbing some of the cost of the affiliate, and it can occur by the pipeline shifting certain revenue sources to the marketing affiliate. The only feasible way to prevent this manipulation of the pipeline's marketing power is to create circumstances wherein competition will discipline the pipeline and its affiliate. Even then regulators must exercise their ratemaking responsibilities wisely.

In light of these objectives, I believe that an interstate pipeline should be allowed to have a marketing affiliate only when the pipeline has accepted a blanket certificate under Part 284 of our Regulations.[1] The blanket certificate program promulgated under Part 284, along with other recent Commission initiatives, developed a framework designed "to remove certain barriers to competition, to further access to nondiscriminatory transportation and to enhance the environment for market-responsive pricing." [2] Once a pipeline has committed its economic existence to living in a competitive world by accepting a blanket transportation certificate, and thereby has agreed to forego its monopoly power over the sale of gas and much of its monopoly power over transportation, it is plausible to expect market pressures to discipline the pipeline's actions.

This Commission has often blurred the distinction between those pipelines that have accepted a blanket certificate and those that are merely transporting under Part 284 but have not accepted a blanket certificate. In the case of marketing affiliates, the distinction should be drawn. There is one very important distinction between a pipeline that has accepted a blanket certificate and one that is transporting on an open-access basis but has not accepted a blanket certificate. The pipeline that has

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[167] 44 U.S.C. 3501–3520 (1982).

[168] 5 CFR 1320.12 (1987).

[1] 18 U.S.C. 284 *et seq.* (1987).

[2] *See* Notice of inquiry into alleged competitive practices related to marketing affiliates to interstate pipelines, FERC Statutes & Regulations ¶35,520, 35,657.

accepted a blanket certificate has committed itself to competition and nondiscriminatory transportation. On the other hand, pipelines that have not accepted a blanket certificate may be transporting on a nondiscriminatory basis at the present time, but have not committed themselves to do so in the future. It is this commitment that is crucial to the conversion of the industry into one in which nondiscriminatory transportation and competition in gas markets prevails. The pipeline's customers need the pipeline's commitment to transportation to make long-term purchasing commitments.

Even in situations where the pipeline has accepted a blanket certificate, however, I believe there should be a structural and organizational division of the pipeline and its marketing affiliate so that all communication between the parties will be similar to those of the pipeline and independent marketers. Therefore, in addition to the organizational separation required by this rule, I believe there should be separate corporations for the pipeline and the marketing affiliate. The two corporations should not be allowed to share office space or employees. In addition, employees of the two corporations should be prohibited from sharing inside information, and all internal operations and meetings should be carried out separately. If the affiliate is physically and organizationally separate from the pipeline, anticompetitive practices will be more difficult to enter into and easier to detect. Finally, I believe that pipelines with marketing affiliates should be subject to the standards of conduct and reporting requirements established by this rule. With such structural, organizational and behavioral safeguards in place, marketing affiliates of interstate pipelines can exist and operate efficiently with little regulatory intervention.

Charles G. Stalon,
Commissioner.

Concurring Opinion of Commissioner Charles A. Trabandt

I concur in the Final Rule with several observations and a serious reservation with regard to the treatment of organizational separation between interstate natural gas pipelines and their affiliated marketers. I also should note that I share fully the fundamental concerns expressed by Commissioner Stalon in his concurring opinion and support strongly his recommendation that there must be a structural and organizational division of the pipeline and its marketing affiliate in the form of separate corporations. Despite that serious reservation, I am persuaded that the Final Rule will put in place the long-needed regulatory structure to better ensure fair market practices by interstate pipelines and deter (i) undue discrimination against non-affiliated shippers and (ii) preference for marketing affiliates. Consequently, I support the adoption of the Final Rule at this time.

General

The role and significance of unregulated marketing affiliates has grown dramatically since the Commission first focused on this issue in the fall of 1986. Footnote 9 in the Order, at page 5 of the Slip Opinion, cites to a recent trade press survey of major interstate pipelines. From a relatively modest beginning in the 1985–1986 timeframe before and after issuance of Order No. 436, the marketing affiliates by the end of 1987 had achieved a substantial share of transportation volumes on their affiliated pipelines. Reported volumes for some specific interstate pipelines, for example, include the following approximate levels:

Arkla: 182.5 of 297 Bcf total transportation
Coastal: 303 of 1,000 Bcf
Enron: 255 of 900 Bcf
Sonat: 163 of 339 Bcf
Transco: 521 of 1,000 Bcf
United: 326 of 657 Bcf
Williams: 173 of 320 Bcf

Reported volumes for marketing affiliates from only 10 of the 24 major pipelines totaled 2,431 Bcf of the total 9,413 Bcf reported as transportation volumes in 1987 for the 24 pipelines, or approximately 26%. Extrapolation of those levels for all 24 pipelines would suggest that marketing affiliates have a market share at the end of 1987 in the range of approximately 35–43% of total transportation volumes. Also, I would note the growing practice of regulated pipelines to transfer certain functions, such as gas acquisition and aggregation, to unregulated affiliates. By any realistic measure, therefore, the Commission has concluded correctly that such a significant and growing market presence of affiliated, but unregulated, companies must be the subject of generic regulations to establish and enforce standards of competitive conduct.

Such regulations, coupled with reporting requirements to facilitate identification of violations and prompt enforcement action in the event of alleged violations, should have a clear deterrent impact on the activities of otherwise unregulated affiliates. The objective of that regulatory deterrence is to prevent the statutorily prohibited undue preference for affiliates and undue discrimination against non-affiliates under the Natural Gas Act. In the absence of this generic approach, aggrieved parties would be left to case-by-case complaint adjudication under the Natural Gas Act without any established regulatory framework, leading to *ad hoc* processing of complaints and after-the-fact review of alleged violations. Additionally, there should be a regulatory framework for affiliates directly under the Natural Gas Act, rather than the necessity for complainants to seek relief under the antitrust laws. I believe that this generic approach under our Natural Gas Act authorities will provide an appropriate and measured response to the obvious and growing potential for such undue preference and undue discrimination.

Last month, Access Energy Corporation (Access) and Natural Gas Clearinghouse, Inc. (NGC), filed separate Supplemental Comments in this docket. Access and NGC objected strenuously to any suggestion that the abuses that gave rise to this rulemaking in the first instance have somehow diminished or that anticompetitive behavior by pipeline affiliated marketers is diminishing. They argue that the problem is increasing in magnitude, complexity and subtlety, and that these abuses are occurring on pipelines that are operating under blanket certificates pursuant to Order No. 436. Any decrease in the number of complaints to the Enforcement Task Force should not be viewed as a sign that the problem is going away, they state, but rather as attributable to industry awareness of the limitations of the Task Force to address the types of anticompetitive and discriminatory practices which are causing the most problems. While the Task Force has done an admirable job of resolving disputes concerning some of the more blatant forms of discriminatory and anticompetitive practices, it cannot remedy problems which require a structural solution nor practices not yet declared anticompetitive by the Commission. Their petitions discuss a number of such practices which would fall under the provisions of this Final Rule, although the complete organizational separation they seek is not adopted in this Order. Consequently, they argue persuasively, in my judgment, that action on this Final Rule must proceed promptly. Also, their petitions add additional and timely weight to the continued need to require

complete organizational separation in the Final Rule on rehearing.

Observations

1. Exempted Pipelines

The Final Rule exempts from the regulations pipelines which do not conduct any transactions with their affiliated marketer. The Commission emphasizes that any exempted pipelines must immediately come into compliance with these regulations as soon as they conduct any transaction with their marketing affiliate (slip opinion at page 13). To that end, I recommend further that any pipeline claiming exempted status should file a notification to that effect and should file a monthly report stating that there has been no transaction with a marketing affiliate and the exemption continues. Also, at such time a previously exempted pipeline intends to conduct a transaction with an affiliated marketer, the pipeline should come into full compliance with this rule and file a report to that effect at least 15 days before the transaction to ensure application of the rule and public notice.

2. Selective Discounting

a. *Order No. 436 Blanket Certificate Requirement.* With regard to selective discounting by pipelines of transportation rates for marketing affiliates, I agree with the concerns expressed by Consolidated Edison, Hadson, NGC and Access, particularly in light of the earlier discussion about the significant and growing market share of marketing affiliates in the total transportation market and the transfer of regulated functions to unregulated affiliates. Obviously, the combination of the direct access to transportation information and services, the affiliate relationship, discounted transportation rates, and the growing aggregator function provide a potentially potent competitive advantage to marketing affiliates reflected in the recent data and surveys, particularly in terms of market penetration and market share as transportation services become increasingly dominant and expand to new geographic regions. It is clear, therefore, that the Commission must act to ensure that all shippers are on a more or less equal competitive footing.

Unless a pipeline has accepted a blanket certificate under Part 284 to provide transportation services, the pipeline does not provide complete transportation service options and can terminate services without prior Commission approval. Under those services, the pipelines and its marketing affiliate have an inherently preferred position over non-affiliates who remain at the mercy of the pipeline in terms of any longer-range competitive strategy for services. Consequently, the Commission has concluded that pipelines should only be authorized to use selective discounting for any affiliate where the pipeline has accepted a blanket certificate and the competitive positions of affiliates and non-affiliates are on a comparable basis. Similarly, the Commission has acted in Order No. 490, the abandonment policy Final Rule, to limit the additional opportunities for flexibility under that Order to pipelines accepting blanket certificates. Also, the Commission has limited the availability of direct billing for certain take-or-pay costs under Order No. 500 to pipelines accepting a blanket certificate.

I would note that the court in *AGD* approved the selective discounting provisions in Order No. 436, as appropriate to provide pipelines, through their marketing affiliates, a legitimate opportunity to compete with non-affiliates in the open access transportation program. The court noted that such discounting is not *per se* unduly discriminatory, provided that identical discounts are given to non-affiliates in identical circumstances. (*AGD* is discussed in the Slip Opinion at Footnote 49). Since issuance of Order No. 436 and the record in the *AGD* case, however, the Commission has focused more directly on the potential competitive abuses, unduly preferential treatment and unduly discriminatory activity associated with pipeline marketing affiliates in this and other dockets. Also, the market share of such affiliates in the transportation market has grown several orders of magnitude since 1985 and early 1986, and pipelines have the growing tendency of transferring functions to unregulated affiliates. The Commission has concluded that the record here and other statistical data generally demonstrate that marketing affiliates do not need any longer selective discounting to compete against the non-affiliates. That result is particularly clear when the pipeline is providing transportation services under Part 284 without a blanket certificate and where the marketing affiliate thus inherently has a competitive advantage. Consequently, the Commission has determined that the selective discounting authority of the pipeline should not apply to any affiliates unless the pipeline has accepted a blanket certificate.

I also would note that the general thrust of the *AGD* court's analysis of Order No. 436 focused on the negative impacts of undue discrimination against natural gas consumers. Here, the potential for undue preference, undue discrimination, and a regulatory-created competitive advantage for marketing affiliates would persist, unless the Commission conditioned selective discounting for marketing affiliates on acceptance of a blanket certificate, consistent with the *AGD* court's concerns about the negative impact on consumers. In effect, the Commission now believes that selective discounting without a blanket certificate does not conform to the requirements of the NGA. I would also note that Order No. 500 now provides the basic response to the *AGD* court's concerns about the take-or-pay issue and, in any event, the take-or-pay issue should not be allowed to require or support the clearly anti-competitive effects of continuing selective discounting in the absence of a blanket certificate. Rather, on the basis of the record and other information before us, the Commission is compelled here to cease that continued competitive abuse.

b. *Same Discount for Similarly Situated Shippers.* As an additional protection against competitive abuse with regard to selective discounting for marketing affiliates, I believe the Commission also should require that where a pipeline has accepted a blanket certificate and selective discounting is allowed for marketing affiliates, the pipeline must provide the same discounting to all similarly situated shippers seeking a discount. The Final Rule, in Footnote 49 at page 24 of the Slip Opinion, discusses the relevant provisions of Order No. 436 and the discussion in the *AGD* opinion on this issue. Order No 436 prohibits discounts based solely on affiliation, while the *AGD* court held that identical discounts must be provided to non-affiliates in identical circumstances. In other words, as a general rule, the maximum transportation rate may not be discounted for the marketing affiliate, unless the same discount is available generally to all other such shippers.

In the event of an allegation that the pipeline refused to provide the same discount to another non-affiliated shipper, the pipeline would have to demonstrate that the non-affiliated shipper was not eligible by reason of its completely different request for transportation services. The Commission would conclude that, for the purposes of this provision, the shippers are similarly situated when they are seeking services in the same general geographic region and along the same general pipeline route. A simple difference in receipt points, delivery

points, or volumes should not be considered as rendering a non-affiliated shipper into a differently-situated, as opposed to similarly-situated, shipper. As a policy matter, the Commission should conclude that the potential for competitive abuse, undue preference and undue discrimination is prevented best by requiring broad uniformity of treatment here with regard to selective discounting of transportation rates as between affiliates and non-affiliates, where the pipeline accepts a blanket certificate.

c. *Immediate Public Disclosure of Affiliate Discount.* Order No. 436 would allow a pipeline to extend a selective discount to a marketing affiliate, but not disclose the fact or amount of the discount to the public for a period of fifteen days after the close of the billing period, as part of the original intent to give the marketing affiliate some competitive opportunity under Order No. 436. In the context of the Commission's decision here to ensure relative competitive parity between affiliates and non-affiliates when a pipeline accepts the blanket certificate, and in light of the significant market share already obtained by marketing affiliates, the Commission now concludes that pipelines must be required to disclose immediately any selective discount for an affiliate of the pipeline (sec. 250.16(b)(6)(xix)). Such immediate public disclosure is particularly important in today's natural gas market, where many transactions are negotiated on a thirty day basis with supply from the dominant spot market.

The Supplemental Comments filed by NGC and Access highlight the competitive harm associated with the current practice and urge adoption of a prior notice requirement. Such a period after the selective discount to the affiliate without public disclosure could provide the affiliate with a substantial competitive advantage over non-affiliates who would be eligible for the same discount, if they only were aware of the existence of the original discount, or the amount of it, to the pipeline's affiliate. Hence, under the Final Rule, any selective discount to an affiliate will be disclosed immediately and all other eligible shippers must be granted the same discount in the same timeframe. Thus, the pipeline and affiliates cannot use delayed disclosure and reporting to preserve the competitive advantage and, to that extent, frustrate this Rule.

3. Disclosure of Information to Non-Affiliates

The Final Rule requires that a pipeline must disclose immediately any new or changed information not available to non-affiliated marketers, if it provides such information to affiliates as part of a response to a specific request from an affiliate. The fact that such new or changed information is contained in a response to a specific request does not lessen its potential competitive advantage to the affiliate, nor insulate the pipeline from disclosing the information. (Slip Opinion, at page 45.) Pipelines and affiliates may not use the specific request as a means of circumventing the requirements of the Final Rule for full disclosure. Stated another way, all information provided to an affiliate must be provided contemporaneously to non-affiliates, regardless of the form or procedure by which it was sought by the affiliate and provided by the pipeline. The fact of a specific request and a specific response does not constitute any exception to that general rule. The result to be prevented here is competitive abuse with regard to the affiliate's activities, undue preference to the affiliate and undue discrimination against non-affiliates, and, as a result, the form of the information exchange between the pipeline and affiliate is irrelevant. Consequently, any information provided by the pipeline to the affiliate must be disclosed to all shippers, irrespective of the manner in which it is provided to the affiliate.

4. False or Misleading Information on Take-Or-Pay

The Final Rule states that the Commission will consider any false or misleading information provided under the terms of this Final Rule by pipelines with regard to released gas and take-or-pay credits to be a violation of the reporting requirements. (Slip Opinion at page 53.) The Commission remains concerned about the pipeline or the marketing affiliate providing any false or misleading information about take-or-pay and the amount of billing credit that will flow to the pipelines as a result of a purchase from the marketing affiliate. Obviously, such false and misleading information could provide the marketing affiliate with a decided competitive advantage in marketing gas and other services to customers of its pipeline affiliate.

That form of competitive abuse would be particularly pernicious and unduly discriminatory to non-affiliates, because customers and non-affiliates have no independent capability to challenge or verify the accuracy of such assertions of significant potential value to customers. The Supplemental Comments filed by Access and NGC highlight current practices of this nature, which have led to significant competitive harm. Consequently, the Commission will consider any such use of false and misleading information related to take-or-pay credit or relief to be a violation of the standards of conduct and intends to respond promptly with enforcement action under this Rule to any allegation of a pipeline or marketing affiliate using such false and misleading information.

5. Divorcement as a Remedy

The Final Rule states that, where necessary, the Commission will consider and impose divorcement or divestiture to prevent a pipeline's undue discrimination in favor of its marketing affiliate. (Slip Opinion at page 78). Further, I believe that the Commission would agree generally that divorcement would be an effective remedy for undue discrimination or undue preference with regard to a marketing affiliate, although not necessarily the only one. For example, where a pipeline and its marketing affiliate have engaged in a pattern of competitive abuses providing the affiliate with substantial market share and *de facto* unregulated market power, I believe the Commission would intend to order divorcement, among other possible actions, as an effective remedy and also to ensure that the pipeline does not continue to benefit in the future from the past competitive abuses. At that point, the more measured approach adopted in the Final Rule as a deterrent action would have to be followed by more decisive action to correct the competitively abusive and discriminatory result for the future. Consequently, interstate pipelines should be on notice not only that we believe we have divorcement authority, but also that we would intend to use it when necessary.

6. Standards of Conduct: Presumptions

The Final Order discusses the issue of burden of proof in an enforcement proceeding (Slip Opinion at page 82). I would note that the discussion in the Final Rule about the Standards of Conduct has established particular presumptions with regard to differing treatment by pipelines of affiliated and non-affiliated shippers under specified circumstances. Those presumptions would be used by the Commission in any enforcement proceeding to determine whether there was a satisfactory explanation for the differing treatment or whether, in the alternative, the differing treatment constituted a competitive abuse involving undue discrimination against non-affiliated shippers or undue preference for affiliated shipper.

7. Sunsetting Reporting Requirements

The Final Rule adopts a new provision which sunsets the reporting requirements applicable to interstate pipelines under this Rule on December 31, 1989. The preamble discussion calls for a review of the reporting requirement after one year and a Commission decision on whether continuation of reporting is a necessary element of this new regulatory framework. (Slip Opinion at pages 6 and 7). The rationale for sunsetting the reporting requirements is that the perceived affiliate problem may be transitional in nature and may be mitigated or eliminated by competitive forces, once open access transportation and related Commission initiatives are permanently in place. I supported the December 31, 1989, sunset date at the Commission Meeting as a compromise approach to this provision of the Rule.

As the General discussion at the beginning of this separate opinion makes clear, I am persuaded that there is a serious and long term potential for competitive abuse arising from the affiliated relationship between interstate pipelines and their affiliated marketers. The essence of this Final Rule is deterrence of that potential competitive abuse by the establishment of Standards of Conduct, independent functioning, rapid reporting, and prompt enforcement by the Commission. And, this approach is far less drastic than the divorcement or divestiture of marketing affiliates urged by many commenters.

But, this approach can only be fully effective in its essential design if it includes the rapid reporting requirements in the Final Rule. I am not persuaded that competitive forces will be effective enough under any realistic scenario a year from now to eliminate the serious potential for competitive abuse or, for that matter, at any time in the next several years. Consequently, it is quite clear today, in my judgment, that the Final Rule probably would have far less, if not little, deterrent value or enforcement potential without those reporting requirements after the end of 1989.

I also am concerned that the reporting sunset provision will be perceived by interstate pipelines as a signal that the Commission is not committed completely to the new regulatory framework in the Final Rule. Access and NGC indicated in their supplemental comments that the industry perception already was to that effect, with resulting negative impacts in terms of affiliate preferences and non-affiliate discrimination. I believe the Commission must demonstrate its full and unswerving commitment to the aggressive implementation of this new regulatory framework and prompt enforcement action in the event of any alleged violation. The demonstration now of any lesser commitment would serve to reduce materially, if not destroy, the effectiveness of this regulatory deterrence approach. And, if the Commission cannot make that approach effective, the only remaining alternative would be some form of divorcement or divestiture on a generic basis to prevent competitive abuses by affiliates.

Accordingly, I recommend that the Commission on rehearing consider further the reporting sunset provision in the Final Rule. For example, the Commission might decide that a specific sunset provision in not necessary or appropriate at this time, because of the concern about the Commission's commitment to the deterrence approach. Alternatively, the Commission could establish a much more realistic sunset date such as December 31, 1994, five years after the rules are fully operational on interstate pipelines. The Commission also could schedule a formal review at a more realistic time certain, such as three years, without including a specific sunset provision at this time in the Final Rule. In any event, the Commission should address this provision further on rehearing to ensure the longer term effectiveness and viability of the new regulatory framework.

Reservation: Organizational Separation vs. "Independent Functioning"

1. "China Wall" Organizational Separation

My primary reservation about this Final Rule is the provision on so-called "independent functioning," discussed at page 45 of the Slip Opinion. At the outset, I should note that I continue to support strongly the total separation of the interstate pipeline and its marketing affiliate under a "China Wall" requirement. Any lesser degree of separation only invites organizational structures that reduce the regulatory deterrence of the Final Rule, as was argued by many commenters listed in Footnote 65, Access and NGC. Where there is complete separation, the identification of violations and the enforcement of the regulations is made materially more predictable and straightforward, thus enhancing the deterrent effectiveness of the rule. For example, the mere existence of any insider communication or information would establish a *de facto* presumption of a violation under a China Wall requirement, rather than merely raising questions as to the respective functions of the personnel involved, the nature of the communication or information, the relationship of the communication or information to the respective functions, and so forth. Consequently, I would support strongly modification of the Final Rule to impose a China Wall requirement on rehearing.

2. Independent Functioning: Real vs. Symbolic

If, however, the Commission adopts a limitation on certain personnel functions, it should be more precise than the current draft. Previously, the NOPR proposed that all employees of the pipeline and marketing affiliate function independently of each other to the maximum extent possible. That "to the maximum extent possible" requirement anticipated that there may be the need for some common support organization and personnel. Now the draft would reduce the coverage of the rule significantly from "all employees" to only "operating employees", which are undefined, and also would reduce the extent of separation from "to the maximum extent *possible*" to "to the maximum extent *practicable*." A better, more effective and more predictable formulation would be to require that all non-support personnel (i.e. all management, operational, regulatory and technical personnel) of the pipeline must function independently of the marketing affilitate—period—with no qualifiers of any kind. The only personnel who could function together at all (other than completely independently) would be support personnel not engaged in the marketing, sales, transportation and operations of the affiliated companies. Section 161.3(f) in the draft simply leaves too much ambiguity, discretion and flexibility.

Furthermore, the effectiveness of the independent functioning would be enhanced materially if the Final Rule also required that personnel other than support personnel could not be co-located, but must be in separate offices reflecting the separate corporate organizations. In a sense, the Commission is being asked to respect the affiliated, but separate corporate legal entities here, without piercing the corporate veil (however thin) to regulate common activities. Consequently, it should not be too extreme a measure to require that the two affiliates truly function independently, apart from common support personnel, in separate offices under their separate legal identities to prevent better the ease with which they might discriminate without

detection and make any enforcement action somewhat less difficult, if a complaint alleges that they have discriminated.

I also would note that the order states on page 47 that the approach of the standards of conduct *plus* reporting requirements in this rule will be a sufficient deterrent, because the pipeline's transactions with affiliates will be disclosed and thus subject to enforcement action, while earlier in the rule we sunset the reporting requirements in a year and a half. Sunsetting the reporting requirements there, plus watering down the independent functioning here adds up to a significant aggregate retreat from the stand taken in the NOPR, despite the data showing marketing affiliates are more dominant and still growing in market share and potential unregulated monopoly power. A better result would obtain if we made the independent functioning requirement here much more real, than the current, arguably hollow and barely symbolic gesture in § 161.3(f). If, on rehearing, we stay with the current § 161.3(f) and also sunset the reporting requirement next year, we will have effectively and unfortunately gutted the rule in its final formulation.

Conclusion

I have concluded that the Commission should issue the Final Rule at this time, while seeking on rehearing to refine the rule by requiring complete "China Wall" organizational separation and adopting the several recommendations discussed in my observations. Modification of the reporting sunset provision is of particular importance to the effectiveness of the regulatory deterrence approach and the new affiliate regulatory framework. On balance, the Final Rule finally will establish a minimal set of enforceable Standards of Conduct for the affiliated marketers of interstate pipelines. That task has taken almost two years to accomplish to this point and, subject to the further refinement on rehearing, the Final Rule should provide the much needed regulatory framework to deter materially the potential competitive abuses resulting from affiliation. The Commission is obligated, in my judgment, to provide that regulatory framework as an essential and fundamental element of a more competitive natural gas market and less regulated natural gas industry.

Charles A. Trabandt,

Commissioner.

Part 161 is added to read as follows:

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

Sec.
161.1 Applicability.
161.2 Definitions.
161.3 Standards of conduct.

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp. p. 142.

§ 161.1 Applicability.

This part applies to any interstate natural gas pipeline that transports gas for others pursuant to Subparts B, G, or H of Part 284 or pursuant to Subparts A or E of Part 157 and is affiliated with a marketing or brokering entity, except a pipeline that does not conduct any transactions with its affiliated marketer.

§ 161.2 Definitions.

For purposes of this part:

"Affiliate," when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person.

"Control" (including the terms "controlling," "controlled by," and "under common control with") includes, but is not limited to, the possession, directly or indirectly, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a presumption of control.

"Potential shippers" means all current transportation and sales customers of an interstate natural gas pipeline, and all persons who have pending requests for transportation service or for information regarding transportation service on that pipeline.

§ 161.3 Standards of conduct.

An interstate natural gas pipeline must conduct its business to conform to the following standards:

(a) It must apply a tariff provision relating to transportation in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.

(b) It must strictly enforce a tariff provision for which there is no discretion in the application of the provision.

(c) It may not, through a tariff provision or otherwise, give its marketing affiliate preference over nonaffiliated customers in scheduling, transportation, storage, or curtailment priority.

(d) It must process all similar requests for transportation in the same manner and within the same period of time.

(e) It may not disclose to its affiliate any information to secure transportation service the pipeline receives from a non-affiliated shipper.

(f) To the extent it provides information related to transportation of natural gas and gas sales and marketing to a marketing affiliate, it must do so contemporaneously to all potential shippers, affiliated and non-affiliated, on its system.

(g) To the maximum extent practicable its operating employees and the operating employees of its marketing affiliate must function independently of each other.

(h) It may not condition or tie its agreement to release gas subject to take-or-pay relief to an agreement by the producer, customer, end-user, or shipper relating to any service by its marketing affiliate, any services by it on behalf of its marketing affiliate, or any services in which its marketing affiliate is involved.

(i) If asked by a potential shipper, it must identify any information relating to released gas that is mitigating the pipeline's take-or-pay liability if it has provided this information to its marketing affiliate.

(j) By August 15, 1988, it must file with the Commission procedures that will enable shippers and the Commission to determine how the pipeline is complying with the standards in this section.

PART 250—FORMS

2. The authority citation for Part 250 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp. p. 142; Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

3. Part 250 is amended by adding a new § 250.16 to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must comply.* An interstate natural gas pipeline that transports natural gas for others pursuant to Subparts B, G, or H of Part 284 or pursuant to Subparts A or E of Part 157 and is affiliated, as that term is defined in § 161.2 of this chapter, in any way with a marketing or brokering entity, except a pipeline that does not conduct any transactions with its affiliated marketer must:

(1) File FERC Form No. 592 in the manner prescribed in paragraph (b) of this section.

(2) Maintain and provide the information specified in paragraph (c) of this section, and

(3) Maintain all information required under this section from the time the information is received until December 31, 1989.

(b) *What to file.* An interstate pipeline must file the following information in the FERC Form No. 592:

(1) A complete list of operating personnel and facilities shared by the interstate natural gas pipeline and the affiliated marketing or brokering company;

(2) The specific information and format required from a shipper for a valid request for transportation service, including for transactions in which an affiliated marketer is involved, the items of information in paragraph (b)(6) of this section;

(3) Procedures used to address and resolve complaints by shippers and potential shippers;

(4) Procedures used by the natural gas pipeline to inform affiliated and nonaffiliated shippers and potential shippers on the:

(i) Availability and pricing of transportation service, and

(ii) Capacity of the pipeline available for transportation;

(5)(i) Existing tariff provisions that contain the information and procedures required in paragraphs (b)(1) through (b)(4) of this section, or

(ii) New tariff provisions that contain the information and procedures described in paragraphs (b)(1) through (b)(4) of this section; and

(6) A log that contains the following information on all requests for transportation service made by affiliated marketers or in which an affiliated marketer is involved:

(i) The date of receipt of the request,

(ii) The date that the request was accepted as valid,

(iii) The specific affiliation of the requester with the interstate pipeline, and the extent of the pipeline's affiliation, if any, with the person to be provided transportation service,

(iv) The extent of the supplier's affiliation with the interstate pipeline from whom service is requested,

(v) The identity of the shipper making the request for service including designating whether the shipper is a local distribution company, an interstate pipeline, an intrastate pipeline, an end-user, a producer, or a marketer,

(vi) The maximum daily contract volume of gas requested to be transported and the total contract volume of gas requested to be transported over the life of the contract,

(vii) The producing area of the source of the gas requested to be transported,

(viii) The date service is requested to commence and terminate,

(ix) A list of all receipt and delivery points between which the gas is requested to be transported and the distance in pipeline miles between the receipt point and the delivery point that are the furthest apart,

(x) Whether the service requested is firm or interruptible,

(xi) The state of the ultimate end user of the gas,

(xii) The identity of the transportation rate schedules and the transportation rates applicable for such service,

(xiii) Whether any of the gas being transported is subject to take-or-pay relief and, if so, how much,

(xiv) Whether and by how much the cost of the gas to the affiliated marketer exceeds the price received for the sale of the gas by the affiliated marketer, after deducting associated costs, including those incurred for transportation; *i.e.*, whether the gas is being sold at a loss,

(xv) Current status of the request, including whether the request is:

(A) Incomplete,

(B) Complete and awaiting service,

(C) Complete, a contract signed, and awaiting commencement of service,

(D) Complete, service has begun and the Commission docket number assigned to the transaction,

(E) Withdrawn, or

(F) Denied and the reason why,

(xvi) The position of the request in the transportation request queue,

(xvii) The disposition of the request, including the date the requester was notified of availability of capacity, the date the contract was executed, the date service actually commenced, and any explanation concerning the disposition of the request,

(xviii) Any complaints by the shipper or end user concerning the requested or furnished service and the disposition of such complaints, and

(xix) Whether the transportation is being requested, offered or provided at discounted rates, duration of the discount requested, offered or provided, the maximum rate or fee, the rate or fee actually charged during the billing period, the shipper, corporate affiliation between the shipper and the transporting pipeline, and the quantity of gas scheduled at the discounted rate during the billing period for each delivery point.

(c) *What to maintain.* (1) An interstate pipeline must maintain the information in paragraph (b)(6) of this section for all requests for transportation service made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until December 31, 1989.

(2) The information required to be maintained by this section will be available from August 15, 1988, until December 31, 1989, to:

(i) The Commission on request, and

(ii) The public under Subpart D of Part 385 of this chapter.

(3) The information required to be maintained by this section must be maintained on 9-track magnetic tape or computer disk. The format and specifications for maintenance of the information can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol St. NE., Washington, DC 20426.

(d) *When to file.* (1) The information in paragraphs (b)(1) through (b)(5) of this section and entries in the log specified in paragraph (b)(6) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months must be filed initially with the Commission by August 15, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) of this section until December 31, 1989.

(2) The information required in paragraphs (b)(1) through (b)(5) of this section must be filed quarterly if any changes occur.

(3) The information in paragraph (b)(6) of this section relating to transporation requests must be maintained on a daily basis.

(4) The information in paragraph (b)(6) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending more than six months must be filed:

(i) For the items in paragraphs (b)(6)(i) through (xviii) of this section, at the end of the month following the month any changes occur. A report under this section satisfies a pipeline's obligation to report under § 284.13 of this chapter.

(ii) For the items in paragraph (b)(6)(xix) of this section, within 15 days

of the close of the pipeline's billing period. A report of a discount under this section satisfies a pipeline's obligation to report under § 284.7(d)(5)(iv) of this chapter.

(e) *How to file.* (1) Each filing made with the Commission under this section must be made on 9-track magnetic tape or computer disk. The format and specifications for submission of the information prescribed by this section on magnetic tape or computer disk can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol St. NE., Washington, DC 20426.

(2) The magnetic tape or computer disk must be accompanied by one paper printout of the information submitted on the magnetic tape or computer disk. The format for the paper printout can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol St. NE., Washington, DC 20426.

(3) The magnetic tape or computer disk, and paper printout, submitted must be accompanied by a cover letter. The cover letter must include the file name, file attribute, and recording density of the magnetic tape submitted by the natural gas pipeline company. The cover letter must also include the subscription provided in § 385.2005(a) of this chapter.

(4) The subscription provided in paragraph (d)(3) of this section must certify in addition to the requirements in § 385.2005(a) of this chapter, that the paper printout contains the same information as the magnetic tape or computer disk and that the signer has read and knows the contents of the paper printout are true to the best knowledge and belief of the signer.

(f) *Where to file.* (1) The magnetic tape or computer disk and accompanying paper printout and cover letter must be submitted to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

(2) Hand deliveries of a magnetic tape or computer disk and accompanying paper printout and cover letter may be made to: Office of the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street NE., Washington, DC 20426.

(g) *Public access.* An interstate pipeline must maintain and make available to the public all filings with the Commission under paragraphs (b)(1) through (b)(5) of this section and entries in the log specified in paragraph (b)(6) of this section by providing:

(1) One paper copy at the pipeline's principal place of business during regular business hours;

(2) Copies by mail of any item requested within seven calendar days of a written request, for which the pipeline may charge the cost of postage and fifteen cents per page photocopied or per computer printout page provided; and

(3) 24-hour access, by electronic means, to the data specified in this paragraph that are contained in paragraph (b)(6) of this section.

(h) *Penalty for failure to comply.* (1) Any person who transports gas for others pursuant to Subpart B, G, or H of Part 284 of this chapter and who knowingly violates the requirements of § 161.3, § 250.16, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $5,000 for any one violation.

(2) For purposes of this paragraph, in the case of a continuing violation, each day of the violation will constitute a separate violation.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

4. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 142 (1976).

5. Section 284.7(d)(5)(ii) is revised to read as follows:

§ 284.7 Rates.

* * * * *

(d) *Rate design.* * * *

(5) *Rate flexibility.* * * *

(ii)(A) Except as provided in paragraph (d)(5)(ii)(B) of this section the pipeline may charge an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service.

(B) If a pipeline does not hold a blanket certificate under Subpart G of this part, it may not charge, in a transaction involving its marketing affiliate, a rate that is lower than the highest rate it charges in any transaction not involving its marketing affiliate.

* * * * *

[FR Doc. 88-13344 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8209]

Income Tax; Taxable Years Beginning After December 31, 1953; Treatment of Related Person Factoring Income; Certain Investments in United States Property; and Stock Redemptions Through Related Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the treatment of related person factoring income. The regulations will provide the public with guidance with respect to the interpretation and administration of new provisions concerning the treatment of related person factoring income, which were added by the Tax Reform Acts of 1984 and 1986. This document also contains temporary regulations relating to the determination of the amount of earnings of a controlled foreign corporation invested in United States property. Also included is a temporary regulation providing a special rule for redemptions through the use of related corporations. The temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: Except as otherwise provided, the temporary regulations under §§ 1.864–8T and 1.956–3T apply to accounts receivable and evidences of indebtedness transferred after March 1, 1984 and are effective June 14, 1988.

The temporary regulations under §§ 1.956–1T and 1.956–2T are effective June 14, 1988 with respect to investments made on or after June 14, 1988. The temporary regulations under § 1.304–4T are effective June 14, 1988 with respect to acquisitions of stock occurring on or after June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Regarding §§ 1.864–8T and 1.956–3T, contact Barbara Allen Felker of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL–0323–88). Telephone (202) 634–5406 (not a toll-free call). Regarding §§ 1.304–4T, 1.956–1T, and 1.956–2T, contact Riea M. Lainoff of the Office of the Associate

Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224. Attention: CC:LR:T (INTL–0323–88). Telephone (202) 566–6645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under sections 864(d) and 956(b)(3) of the Internal Revenue Code of 1986. These sections were added to the Internal Revenue Code of 1954 by section 123 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 644, 646) and amended by sections 1201(d)(4), 1221(a)(2), 1223(b)(1), 1275(c)(7) and 1810(c) of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 2525, 2550, 2558, 2599, 2824). Temporary regulations are also issued amending final regulations under sections 956 and 304 of the Internal Revenue Code of 1986. These regulations are issued under authority contained in section 7805 of the Internal Revenue Code of 1986.

Related Party Factoring

Prior Law

In a typical factoring transaction, a seller of goods or services takes back a receivable from the purchaser and sells the receivable to a third party (a "factor") at a discount. The seller's income on the sale of the goods or services is reduced by the amount of the discount. The factor's income is the excess of the amount collected from the obligor over the amount the factor paid for the receivable.

Under prior law, a number of issues arose as to the treatment of a factoring transaction when the factor is a controlled foreign corporation (CFC) related to the seller. A principal issue was whether the income derived by the CFC was subject to United States tax on a gross basis under section 881 and subject to withholding under section 1442, subject to United States tax on a net basis under section 11, or exempt from tax. A second issue was whether the factoring income was currently taxable to the United States shareholders of a CFC as Subpart F foreign base company income. A third issue was whether receivables purchased by a CFC from its United States parent were investments in United States property under section 956.

Statutory Provisions

The Tax Reform Act of 1984 added new subsection (d) to section 864. The Tax Reform Act of 1986 amended section 864(d). Section 864(d)(1) provides that if a person acquires (directly or indirectly) a trade or service receivable from a related person, any income from the acquired receivable will be treated as if it were interest on a loan to the obligor under the receivable. Section 864(d)(7) exempts related person factoring income from this characterization if (a) the person acquiring the receivable and the related transferor are organized under the laws of the same foreign country; (b) a substantial part of the transferor's assets used in its trade or business are located in that same foreign country; and (c) the transferor of the receivable would not have derived any foreign base company income or income effectively connected with a United States trade or business from such receivable if it had collected the receivable.

Section 864(d)(2) provides that the characterization of income as interest under section 864(d)(1) shall apply for purposes of the foreign tax credit limitation, the foreign personal holding company rules, and the subpart F provisions. Section 864(d)(5)(A) provides that certain special rules in these provisions shall not apply to related person factoring income. Section 864(d)(5)(A)(i) provides that factoring income is not eligible for the exceptions in section 904(d)(2) provided for export financing interest. Therefore, for purposes of calculating the foreign tax credit limitation, factoring income will be treated as passive income, high withholding tax interest or financial services income, as appropriate. In addition, section 864(d)(5)(A)(ii) provides that the de minimis rule of section 954(b)(3)(A) shall not apply to exempt related person factoring income from current taxation under Subpart F. Similarly, section 864(d)(5)(A)(iii) provides that related person factoring income is not eligible for the section 954(c)(2)(B) exclusion from subpart F income for export financing interest derived in the conduct of a banking business. Also, under section 864(d)(5)(A)(iv), the section 954(c)(3)(A)(i) exception for interest income received from related persons organized in the same country does not apply to related person factoring income. Instead, the special same country exception of section 864(d)(7) will apply to such income. (However, if a factored receivable bears stated interest, the interest element must qualify under the same country exception of section 954(c)(3)(A)(i) or another exception in order to satisfy the requirement of section 864(d)(7)(B), *i.e.*, that the related transferor would not have derived any foreign base company income (determined without regard to the de minimis rule of section 954(b)(3)(A)) if it had collected the receivable.)

Section 864(d)(3) defines the term "trade or service receivable" to mean any account receivable or evidence of indebtedness arising out of (a) the disposition by a related person of property described in section 1221(1) (hereinafter referred to as "inventory property") or (b) the performance of services by a related person.

Section 864(d)(4) defines the term "related person" (that is, a person related to the person who acquires the receivable) to mean (a) any person who is a related person under section 267(b); (b) any United States shareholder (as defined in section 951(b)); and (c) any person who is related to such United States shareholder within the meaning of section 267(b).

Section 864(d)(5)(B) provides a special rule for the possessions. Under this section, income recharacterized as interest income under section 864(d)(1) is not eligible for the possessions tax credit under section 936(a)(1) (A) or (B) unless the income is considered to be from sources within a possession after application of section 864(d)(1).

Section 864(d)(6) provides that any income derived by a CFC from a loan to a person for the purpose of financing the purchase of inventory property or services of a related person shall be treated as interest described in section 864(d)(1).

Section 956(a)(1) provides the general rule that the amount of earnings of a CFC invested in United States property at the close of any taxable year is the aggregate amount of such property held, directly or indirectly, by the CFC at the close of the taxable year, to the extent such amount, if distributed, would have constituted a dividend.

The Tax Reform Act of 1984 added new paragraph (3) to subsection (b) of section 956. Section 956(b)(3) provides that a trade or service receivable that is acquired directly or indirectly by a CFC from a related United States person shall constitute an investment in United States property by the CFC if the obligor under the trade or service receivable is a United States person. The Tax Reform Act of 1986 amended section 956(b)(3)(A). As amended, section 956(b)(3)(A) provides that the section 956(b)(2)(H) exception applies to trade or service receivables acquired from related United States persons. Thus, excepted from section 956(b)(3) is an amount of the CFC's assets equal to that portion of its post-1962 earnings and profits which is taxable as United States effectively connected income and

thereby excluded from Subpart F income.

Explanation of Provisions

Section 1.864–8T(a)(1) states the general rule that income derived from a trade or service receivable acquired (directly or indirectly) from a related person shall be treated as if it were interest received on a loan to the obligor under the receivable. Paragraph (a)(1) clarifies that this treatment will apply only for purposes of the foreign personal holding company provisions, the Subpart F provisions (relating to controlled foreign corporations), and the provisions relating to the separate limitations on the foreign tax credit.

Paragraph (b) defines the terms "trade or service receivable" and "related person."

Paragraph (c)(1) provides general rules for determining whether a trade or service receivable has been acquired by a related person. Paragraph (c)(3) provides rules for determining whether a trade or service receivable has been indirectly acquired by a related person. Indirect acquisitions include certain acquisitions through accommodation parties, pass-through entities, swap or pooling arrangements, and financing arrangements.

Paragraph (d) provides an exception from the general rule of paragraph (a)(1) for certain factoring transactions conducted by related persons that are created or organized under the laws of the same foreign country.

Paragraph (e) provides special rules relating to certain provisions generally applicable to interest income that do not apply to factoring income. Paragraph (e)(1) provides special rules relating to the foreign personal holding company provisions and the Subpart F provisions. Paragraph (e)(2) provides special rules relating to the separate limitations on the foreign tax credit. Paragraph (e)(3) provides special rules for the treatment of income derived from factoring transactions in the possessions.

Paragraph (f) provides the effective date of the section.

Section 1.956–3T(a) provides that the term "United States property" includes any trade or service receivable that is acquired (directly or indirectly) from a related person who is a United States person if the obligor under the receivable is a United States person. Paragraph (a) provides that the terms "trade or service receivable" and "related person" have the same meaning given to those terms under § 1.864–8T(b) and that the exception contained in § 1.956–2T(d)(2)(i)(B) for short-term service receivables shall not apply.

Paragraph (b)(1) provides general rules for determining whether there has been an acquisition of a trade or service receivable. Paragraph (b)(2) provides rules for determining whether there has been an indirect acquisition of a trade or service receivable. In this context, certain acquisitions involving accommodation parties, pass-through entities, swap or pooling arrangements, and financing arrangements are described.

Paragraph (c) provides a special rule whereby the substitution of obligors to avoid the application of section 956 may be disregarded.

Investment in United States Property

Explanation of Provisions

As presently in effect, § 1.956–1(b)(4) provides that a CFC will be considered to hold indirectly the investments in United States property held by another foreign corporation controlled by the CFC which is created or availed of by the CFC principally for the purpose of holding United States property. The current test allows CFCs, in certain situations, to circumvent the investment in U.S. property rules by allowing those corporations to transfer assets representing earnings and profits to another CFC and having the transferee invest those earnings in U.S. property.

Section 1.956–1T(b)(4) provides that a CFC will be considered to hold indirectly the investments in United States property held on its behalf by a trustee or nominee or by another foreign corporation controlled by the CFC, if one of the principal purposes for creating, organizing, or funding (through capital contributions or debt) the other foreign corporation is to avoid the application of section 956.

Section 1.956–1(e)(1) provides generally that the amount taken into account with respect to any United States property shall be its adjusted basis, reduced by certain liabilities that constitute a specific charge against the property involved. In the case of an indebtedness incurred by a U.S. company which is guaranteed by its CFC, section 956(c) provides that the U.S. parent's indebtedness will be treated as an investment in U.S. property by the CFC to the extent of the CFC's guarantee. The results in the above transaction may also be achieved through a recourse borrowing by the CFC followed by the on lending of the funds to the U.S. parent with the pledge of the parent's note as security for the CFC's borrowing. In each instance, the creditworthiness of both the CFC and the U.S. parent has been pledged for the purpose of providing funds to the U.S. parent. It has been determined that in the case of an investment in U.S. property consisting of an obligation from a related U.S. person, as defined in section 954(d)(3) and paragraph (e) of § 1.954–1, a liability will not be recognized as a specific charge if the liability is with recourse with respect to the general credit or other assets of the investing controlled foreign corporation. This result reflects the interaction between the section 956(c) limitation with the specific charge exception. Therefore, § 1.956–1T adds paragraph (e)(5) to provide that, in the case of property consisting of an obligation of a related person, the specific charge will not be recognized if the liability representing the charge is with recourse with respect to the general credit or other assets of the investing CFC.

As presently in effect, § 1.956–2(d)(2) provides that a debt obligation of a related domestic corporation which (a) is collected within one year from the time it is incurred, or (b) matures within one year from the time it is incurred but is not collected within such period solely by reason of the inability or unwillingness of the debtor to make payment within such period, is excluded from the definition of "United States property" in determining the amount of a controlled foreign corporation's earnings invested in United States property.

The Service is concerned that, under the current regulations, CFC's may make successive loans with a maturity of less than one year as a means of loaning their earnings to related U.S. corporations on a long term basis in avoidance of section 956.

Section 1.956–2T(d)(2) provides that, for purposes of determining whether an investment is an investment in U.S. property, the term "obligation" shall not include any indebtedness of a U.S. person arising in connection with the provision of services by a controlled foreign corporation to the U.S. person if the amount of such obligation outstanding at any time during the taxable year of the controlled foreign corporation does not exceed an amount which would be ordinary and necessary to carry on the trade or business of the controlled foreign corporation and the U.S. person if they were unrelated. The amount of such obligations shall be considered to be ordinary and necessary to the extent of such receivables that are paid within 60 days.

Redemptions Through Use of Related Corporations

Explanation of Provision

Section 304(a)(1) of the Code generally provides that the acquisition for property by one corporation (other than by a subsidiary) of the stock of another commonly owned corporation (the issuing corporation) is treated as a distribution of such property in redemption of the stock of the acquiring corporation. Section 304(a)(2) of the Code provides that the acquisition for property by one corporation of the stock of another corporation (the issuing corporation) that is in control of the acquiring corporation shall be treated as a distribution in redemption of the stock of the issuing corporation. Section 304(b)(2) provides that the determination of the amount which is a dividend (and the source thereof) is made as if the property were distributed by the acquiring corporation to the extent of its earnings and profits, and then by the issuing corporation to the extent of its earnings and profits.

In the context of acquisitions by a foreign affiliate from a domestic affiliate of a commonly owned corporation, section 304 serves precisely the same function as section 956. Section 956 treats loans by a CFC to U.S. affiliates as taxable repatriations. Similarly, section 304 treats an acquisition for cash or other property by a foreign affiliate from a domestic affiliate of a third commonly owned affiliate as a dividend to the extent of the foreign affiliate's earnings and profits. Like section 956, cash or other property paid by the acquiring foreign affiliate to the U.S. selling affiliate is treated as a taxable repatriation to the extent of the acquiring affiliate's earnings and profits.

The regulations under section 956 prevent the avoidance of section 956 by a CFC by providing that an investment in U.S. property made by a foreign corporation that is created or availed of by the CFC principally for the purpose of holding the U.S. property shall be considered to be an investment held by the CFC. *See* § 1.956–1(b)(4). This rule generally prevents a CFC from contributing cash to a lower-tier CFC with no earnings and profits to be used to make an investment in U.S. property in avoidance of section 956. Under § 1.956–1T(b)(4), the anti-abuse rule under section 956 will apply if one of the principal purposes for creating, organizing, or funding (through capital contributions or debt) another foreign corporation is to avoid the application of section 956.

In order to prevent the similar avoidance of section 304, the regulations are amended to adopt a rule, contained in § 1.304–4T, that is similar to the anti-abuse rule of § 1.956–1(b)(4), as modified by § 1.956–1T(b)(4).

Special Analyses

It has been determined that these temporary rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). There is a need for immediate guidance with respect to the provisions contained in this Treasury decision because the provisions of the Internal Revenue Code concerning related person factoring income (sections 864(d) and 956(b)(3)) are applicable with respect to accounts receivable and evidences of indebtedness transferred after March 1, 1984. In addition, there is an immediate need to revise the rules for determining whether there is an investment in United States property under the section 956 regulations and the rules under the section 304 regulations to prevent the avoidance of United States tax. For this reason, it is found impracticable to issue the regulations with notice and public procedure under section 553 of Title 5 of the United States Code.

Drafting Information

The principal authors of these temporary regulations are Barbara Allen Felker, Riea M. Lainoff, Marnie J. Carro, and Ann Zukas of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.301–1 Through 1.385–6 and 1.861–1 Through 1.997–1

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Reorganizations, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended to read as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Sections 1.864–8T and 1.956–3T also issued under 26 U.S.C. 864(d)(8).

Par. 2. New § 1.864–8T is added immediately after § 1.864–7. The added section reads as follows:

§ 1.864–8T Treatment of related person factoring income (temporary).

(a) *Applicability*—(1) *General rule.* This section applies for purposes of determining the treatment of income derived by a person from a trade or service receivable acquired from a related person. Except as provided in paragraph (d) of this section, if a person acquires (directly or indirectly) a trade or service receivable from a related person, any income (including any stated interest, discount or service fee) derived from the trade or service receivable shall be treated as if it were interest received on a loan to the obligor under the receivable. The characterization of income as interest pursuant to this section shall apply only for purposes of sections 551–558 (relating to foreign personal holding companies), sections 951–964 (relating to controlled foreign corporations), and section 904 (relating to the limitation on the foreign tax credit) of the Code and the regulations thereunder. The principles of sections 861 through 863 and the regulations thereunder shall be applied to determine the source of such interest income for purposes of section 904.

(2) *Override.* With respect to income characterized as interest under this section, the special rules of section 864(d) and this section override any conflicting provisions of the Code and regulations relating to foreign personal holding companies, controlled foreign corporations, and the foreign tax credit limitation. Thus, for example, pursuant to section 864(d)(5) and paragraph (e) of this section, stated interest derived from a factored trade or service receivable is not eligible for the Subpart F de minimis rule of section 954(b)(3), the same country exception of section 954(c)(3)(A)(i), or the special rules for export financing interest of sections 904(d)(2) and 954(c)(2)(B), even if in the absence of this section the treatment of such stated interest would be governed by those sections.

(3) *Limitation.* Section 864(d) and this section apply only with respect to the tax treatment of income derived from a trade or service receivable acquired

from a related person. Therefore, neither section 864(d) nor this section affects the characterization of an expense or loss of either the seller of a receivable or the obligor under a receivable. Accordingly, the obligor under a trade or service receivable shall not be allowed to treat any part of the purchase price of property or services as interest (other than amounts treated as interest under provisions other than section 864(d)).

(b) *Definitions.* The following definitions apply for purposes of this section and § 1.956–3T.

(1) *Trade or service receivable.* The term "trade or service receivable" means any account receivable or evidence of indebtedness, whether or not issued at a discount and whether or not bearing stated interest, arising out of the disposition by a related person of property described in section 1221(1) (hereinafter referred to as "inventory property") or the performance of services by a related person.

(2) *Related person.* A "related person" is:

(i) A person who is a related person within the meaning of section 267(b) and the regulations thereunder;

(ii) A United States shareholder (as defined in section 951(b)); or

(iii) A person who is related (within the meaning of section 267(b) and the regulations thereunder) to a United States shareholder.

(c) *Acquisition of a trade or service receivable*—(1) *General rule.* A trade or service receivable is considered to be acquired by a person at the time when that person is entitled to receive all or a portion of the income from the trade or service receivable. A person who acquires a trade or service receivable (hereinafter referred to as the "factor") is considered to have acquired a trade or service receivable regardless of whether:

(i) The acquisition is characterized for federal income tax purposes as a sale, a pledge of collateral for a loan, an assignment, a capital contribution, or otherwise;

(ii) The factor takes title to or obtains physical possession of the trade or service receivable;

(iii) The related person assigns the trade or service receivable with or without recourse;

(iv) The factor or some other person is obligated to collect the payments due under the trade or service receivable;

(v) The factor is liable for all property, excise, sales, or similar taxes due upon collection of the receivable;

(vi) The factor advances the entire face amount of the trade or service receivable transferred;

(vii) All trade or service receivables assigned by the related person are assigned to one factor; and

(viii) The obligor under the trade or service receivable is notified of the assignment.

(2) *Example.* The following example illustrates the application of paragraphs (a), (b), and (c)(1) of this section.

Example. P, a domestic corporation, owns all of the outstanding stock of FS, a controlled foreign corporation. P manufactures and sells paper products to customers, including X, an unrelated domestic corporation. As part of a sales transaction, P takes back a trade receivable from X and sells the receivable to FS. Because FS has acquired a trade or service receivable from a related person, the income derived by FS from P's receivable is interest income described in paragraph (a)(1) of this section.

(3) *Indirect acquisitions*—(i) *Acquisition through unrelated person.* A trade or service receivable will be considered to be acquired from a related person if it is acquired from an unrelated person who acquired (directly or indirectly) such receivable from a person who is a related person to the factor. The following example illustrates the application of this paragraph (c)(3)(i).

Example. A, a United States citizen, owns all of the outstanding stock of FPHC, a foreign personal holding company. A performs engineering services within and without the United States for customers, including X, an unrelated corporation. A performs engineering services for X and takes back a service receivable. A sells the receivable to Y, an unrelated corporation engaged in the factoring business. Y resells the receivable to FPHC. Because FPHC has indirectly acquired a service receivable from a related person, the income derived by FPHC from A's receivable is interest income described in paragraph (a)(1) of this section.

(ii) *Acquisition by nominee or pass-through entity.* A factor will be considered to have acquired a trade or service receivable held on its behalf by a nominee or by a partnership, simple trust, S corporation or other pass-through entity to the extent the factor owns (directly or indirectly) a beneficial interest in such partnership or other pass-through entity. The rule of this paragraph (c)(3)(ii) does not limit the application of paragraph (c)(3)(iii) of this section regarding the characterization of trade or service receivables of unrelated persons acquired pursuant to certain swap or pooling arrangements. The following example illustrates the application of this paragraph (c)(3)(ii).

Example. FS1, a controlled foreign corporation, acquires a 20 percent limited partnership interest in PS, a partnership. PS purchases trade or service receivables resulting from the sale of inventory property by FS1's domestic parent, P. PS does not purchase receivables of any person who is related to any other partner in PS. FS1 is considered to have acquired a 20 percent interest in the receivables acquired by PS. Thus, FS1's distributive share of the income derived by PS from the receivables of P is considered to be interest income described in paragraph (a)(1) of this section.

(iii) *Swap or pooling arrangements.* A trade or service receivable of a person unrelated to the factor will be considered to be a trade or service receivable acquired from a related person and subject to the rules of this section if it is acquired in accordance with an arrangement that involves two or more groups of related persons that are unrelated to each other and the effect of the arrangement is that one or more related persons in each group acquire (directly or indirectly) trade or service receivables of one or more unrelated persons who are also parties to the arrangement, in exchange for reciprocal purchases of the first group's receivables. The following example illustrates the application of this paragraph (c)(3)(iii).

Example. Controlled foreign corporations A, B, C, and D are wholly-owned subsidiaries of domestic corporations M, N, O, and P, respectively. M, N, O, and P are not related persons. According to a prearranged plan, A, B, C, and D each acquire trade or service receivables of M, N, O, and/or P, except that neither A, B, C nor D acquires receivables of its own parent corporation. Because the effect of this arrangement is that the unrelated groups acquire each other's trade or service receivables pursuant to the arrangement, income derived by A, B, C, and D from the receivables acquired from M, N, O, and P is interest income described in paragraph (a)(1) of this section.

(iv) *Financing arrangements.* If a controlled foreign corporation (as defined in section 957(a)) participates (directly or indirectly) in a lending transaction that results in a loan to the purchaser of inventory property, services, or trade or service receivables of a related person (or a loan to a person who is related to the purchaser), and if the loan would not have been made or maintained on the same terms but for the corresponding purchase, then the controlled foreign corporation shall be considered to have indirectly acquired a trade or service receivable, and income derived by the controlled foreign corporation from such a loan shall be considered to be income described in paragraph (a)(1) of this section. For purposes of this paragraph (c)(3)(iv), it is immaterial that the sums lent are not, in fact, the sums used to finance the purchase of a related person's inventory

property, services, or trade or service receivables. The amount of income derived by the controlled foreign corporation to be taken into account shall be the total amount of income derived from a lending transaction described in this paragraph (c)(3)(iv), if the amount lent is less than or equal to the purchase price of the inventory property, services, or trade or service receivables. If the amount lent is greater than the purchase price of the inventory property, services or receivables, the amount to be taken into account shall be the proportion of the interest charge (including original issue discount) that the purchase price bears to the total amount lent pursuant to the lending transaction. The following examples illustrate the application of this paragraph (c)(3)(iv).

Example (1). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation engaged in the financing business in Country X. P manufactures and sells toys, including sales to C, an unrelated corporation. Prior to P's sale of toys to C for $2,000, D, a wholly-owned Country X subsidiary of C, borrows $3,000 from FS1. The loan from FS1 to D would not have been made or maintained on the same terms but for C's purchase of toys from P. Two-thirds of the income derived by FS1 from the loan to D is interest income described in paragraph (a)(1) of this section.

Example (2). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation organized under the laws of Country X. FS1 has accumulated cash reserves. P has uncollected trade and service receivables of foreign obligors. FS1 makes a $1,000 loan to U, a foreign corporation that is unrelated to P or FS1. U purchases P's trade and service receivables for $2,000. The loan would not have been made or maintained on the same terms but for U's purchase of P's receivables. The income derived by U from the receivables is not interest income within the meaning of paragraph (a) of this section. However, the interest paid by U to FS1 is interest income described in paragraph (a)(1) of this section.

Example (3). The facts are the same as in Example (2), except that U is a wholly-owned Country Y subsidiary of FS1. Because U is related to P within the meaning of paragraph (b)(2) of this section, under paragraph (c)(1) of this section, income derived by U from P's receivables is interest income described in paragraph (a)(1) of this section. In addition, the income derived by FS1 from the loan to U is interest income described in paragraph (a)(1) of this section.

(d) *Same country exception*—(1) *Income from trade or service receivables.* Income derived from a trade or service receivable acquired from a related person shall not be treated as interest income described in paragraph (a)(1) of this section if:

(i) The person acquiring the trade or service receivable and the related person are created or organized under the laws of the same foreign country;

(ii) The related person has a substantial part of its assets used in its trade or business located in such foreign country; and

(iii) The related person would not have derived foreign base company income, as defined in section 954(a) and the regulations thereunder, or income effectively connected with a United States trade or business from such receivable if the related person had collected the receivable.

For purposes of paragraph (d)(1)(ii) of this section, the standards contained in § 1.954–2(e) shall apply in determining the location of a substantial part of the assets of a related person. For purposes of paragraph (d)(1)(iii) of this section, a determination of whether the related person would have derived foreign base company income shall be made without regard to the de minimis test described in section 954(b)(3)(A). The following examples illustrate the application of this paragraph (d)(1).

Example (1). FS1, a controlled foreign corporation incorporated under the laws of Country X, owns all of the outstanding stock of FS2, which is also incorporated under the laws of Country X. FS1 has a substantial part of its assets used in its business in Country X. FS1 manufactures and sells toys for use in Country Y. The toys sold are considered to be manufactured in Country X under § 1.954–3(a)(2). FS1 is not considered to have a branch or similar establishment in Country Y that is treated as a separate corporation under section 954(d)(2) and § 1.954–3(b). Thus, gross income derived by FS1 from the toy sales is not foreign base company sales income. FS1 takes back receivables without stated interest from its customers. FS1 assigns those receivables to FS2. The income derived by FS2 from the receivables of FS1 is not interest income described in paragraph (a)(1) of this section, because it satisfies the same country exception under paragraph (d)(1) of this section.

Example (2). The facts are the same as in Example (1), except that the toys sold by FS1 are purchased from FS1's U.S. parent and are sold for use outside of Country X. Thus, any income derived by FS1 from the sale of the toys would be foreign base oompany sales income. Therefore, income derived by FS2 from the receivables of FS1 is interest income described in paragraph (a)(1) of this section. FS2 is considered to derive interest income from the receivable even if, solely by reason of the de minimis rule of section 954(b)(3)(A), FS1 would not have derived foreign base company income if FS1 had collected the receivable.

(2) *Income from financing arrangements.* Income derived by a controlled foreign corporation from a loan to a person that purchases inventory property or services of a person that is related to the controlled foreign corporation, or from other loans described in paragraph (c)(3)(iv) of this section, shall not be treated as interest income described in paragraph (a)(1) of this section if:

(i) The person providing the financing and the related person are created or organized under the laws of the same foreign country;

(ii) The related person has a substantial part of its assets used in its trade or business located in such foreign country; and

(iii) The related person would not have derived foreign base company income or income effectively connected with a United States trade or business:

(A) From the sale of inventory property or services to the borrower or from financing the borrower's purchase of inventory property or services, in the case of a loan to the purchaser of inventory property or services of a related person; or

(B) From collecting amounts due under the receivable or from financing the purchase of the receivable, in the case of a loan to the purchaser of a trade or service receivable of a related person.

For purposes of paragraph (d)(2)(ii) of this section, the standards contained in § 1.954–2(e) shall apply in determining the location of a substantial part of the assets of a related person. For purposes of paragraph (d)(2)(iii) of this section, a determination of whether the related person would have derived foreign base company income shall be made without regard to the de minimis test described in section 954(b)(3)(A). The following examples illustrate the application of this paragraph (d)(2).

Example (1). FS1, a controlled foreign corporation incorporated under the laws of Country X, owns all of the outstanding stock of FS2, which is also incorporated under the laws of Country X. FS1, which has a substantial part of its assets used in its business located in Country X, manufactures and sells toys for use in Country Y. The toys sold are considered to be manufactured in Country X under § 1.954–3(a)(2). FS1 is not considered to have a branch or similar establishment in Country Y that is treated as a separate corporation under section 954(d)(2) and § 1.954–3(b). Thus, the gross income derived by FS1 from the toy sales is not foreign base company sales income. FS2 makes a loan to FS3, a wholly-owned subsidiary of FS1 which is also incorporated under the laws of Country X, in connection with FS3's purchase of toys from FS1. FS3 does not earn any subpart F gross income. Thus, FS1 would not have derived foreign personal holding company interest income if FS1 had made the loan to FS3, because the interest would be covered by the same country exception of section 954(c)(3).

Therefore, the income derived by FS2 from its loan to FS3 is not treated as interest income described in paragraph (a)(1) of this section, because it satisfies the same country exception under paragraph (d)(2) of this section. Such income is also not treated as foreign personal holding company income described in section 954(c)(1)(A) because the same country exception of section 954(c)(3) also applies to the interest actually derived by FS2 from its loan to FS3.

Example (2). FS1, a controlled foreign corporation incorporated under the laws of Country X, owns all of the outstanding stock of FS2, which is also incorporated under the laws of Country X. FS1 purchases toys from its U.S. parent and resells them for use outside of Country X. As part of a sales transaction, FS1 takes back trade receivables. FS2 makes a loan to U, an unrelated corporation, to finance U's purchase of FS1's trade receivables. Because FS1 would have derived foreign base company income if FS1 had collected the receivables or made the loan itself, the same country exception of paragraph (d)(2) of this section does not apply. Accordingly, under paragraph (c)(3)(iv) of this section, the income derived by FS2 from its loan to U is treated as interest income described in paragraph (a)(1) of this section.

(e) *Special rules*—(1) *Foreign personal holding companies and controlled foreign corporations.* For purposes of sections 551–558 (relating to foreign personal holding companies), the exclusion provided by section 552(c) for interest described in section 954(c)(3)(A) shall not apply to income described in paragraph (a)(1) of this section. For purposes of the sections 951–964 (relating to controlled foreign corporations), income described in paragraph (a)(1) of this section shall be included in a United States shareholder's pro rata share of a controlled foreign corporation's Subpart F income without regard to the de minimis rule under section 954(b)(3)(A). However, income described in paragraph (a)(1) of this section shall be included in the computation of a controlled foreign corporation's foreign base company income for purposes of applying the de minimis rule under section 954(b)(3)(A) and the more than 70 percent of gross income test under section 954(b)(3)(B). In addition, income described in paragraph (a)(1) of this section shall be considered to be Subpart F income without regard to the exclusions from foreign base company income provided by section 954(c)(2)(B) (relating to export financing interest derived in the conduct of a banking business) and section 954(c)(3)(A)(i) (relating to certain interest income received from related persons).

(2) *Foreign tax credit.* Income described in paragraph (a)(1) of this section shall be considered to be interest income for purposes of the section 904 foreign tax credit limitation and is not eligible for the exceptions for export financing interest provided in section 904(d)(2) (A)(iii)(II), (B)(ii), and (C)(iii). In addition, such income will be subject to the look-through rule for Subpart F income set forth in section 904(d)(3) without regard to the de minimis exception provided in section 904(d)(3)(E).

(3) *Possessions corporations*—(i) *Limitation on credit.* Income described in paragraph (a)(1) of this section shall not be treated as income described in section 936(a)(1) (A) or (B) unless the income is considered under the principles of § 1.863–6 to be derived from sources within the possessions. Thus, the credit provided by section 936 is not available for income described in paragraph (a)(1) of this section unless the obligor under the receivable is a resident of a possession. In the case of a loan described in section 864(d)(6), the credit provided by section 936 is not available for income described in paragraph (a)(1) of this section unless the purchaser of the inventory property or services is a resident of a possession.

(ii) *Eligibility determination.* Notwithstanding the limitation on the availability of the section 936 credit for income described in paragraph (a)(1) of this section, if income treated as interest income under paragraph (a)(1) of this section is derived from sources within a possession (determined without regard to this section), such income shall be eligible for inclusion in a corporation's gross income for purposes of section 936(a)(2)(A). If such income is derived from the active conduct of a trade or business within a possession (determined without regard to this section), such income shall be eligible for inclusion in a corporation's gross income for purposes of section 936(a)(2)(B). (These rules apply for purposes of determining whether a corporation is eligible to elect the credit provided under section 936(a).)

(iii) *Example.* The following example illustrates the application of paragraph (e)(3) of this section.

Example. Corporation X is operating in a possession as a possessions corporation. In 1985, X earned $50,000 from the active conduct of a business in the possession, including $5,000 from trade or service receivables acquired from a related party. Obligors under the receivables acquired by X are not residents of the possession. Corporation X also earned $20,000 from activities other than its active conduct of business in the possession. The $5,000 derived by X from the receivables is not eligible for the section 936 credit. However, the $5,000 may be used by X to meet the percentage tests under section 936(a)(2) to the extent that such income is considered to be derived from sources within the possession (for purposes of section 936(a)(2)(A)) or is considered to be derived from the active conduct of a trade or business in the possession (for purposes of section 936(a)(2)(B)), in either case determined without regard to the characterization of such income under this section.

(f) *Effective date.* The provisions of this section shall apply with respect to accounts receivable and evidences of indebtedness transferred after March 1, 1984 and are effective June 14, 1988.

Par. 3. New § 1.956–3T is added immediately after § 1.956–2. The added section reads as follows:

§ 1.956–3T Certain trade or service receivables acquired from United States persons (temporary).

(a) *In general.* For purposes of section 956(a) and § 1.956–1, the term "United States property" also includes any trade or service receivable if the trade or service receivable is acquired (directly or indirectly) after March 1, 1984, from a related person who is a United States person (as defined in section 7701(a)(30)) (hereinafter referred to as a "related United States person") and the obligor under the receivable is a United States person. A trade or service receivable described in this paragraph shall be considered to be United States property notwithstanding the exceptions (other than subparagraph (H)) contained in section 956(b)(2). The terms "trade or service receivable" and "related person" have the respective meanings given to such terms by section 864(d) and the regulations thereunder. For purposes of this section, the exception contained in § 1.956–2T(d)(2)(i)(B) for short-term obligations shall not apply to service receivables described in this paragraph.

(b) *Acquisition of a trade or service receivable*—(1) *General rule.* The rules of § 1.864–8T(c)(1) shall be applied to determine whether a controlled foreign corporation has acquired a trade or service receivable.

(2) *Indirect acquisitions*—(i) *Acquisition through unrelated person.* A trade or service receivable will be considered to be acquired from a related person if it is acquired from an unrelated person who acquired (directly or indirectly) such receivable from a person who is a related person to the acquiring person.

(ii) *Acquisition by nominee or pass-through entity.* A controlled foreign corporation will be considered to have acquired a trade or service receivable of a related United States person held on its behalf:

(A) By a nominee or by a partnership, simple trust, S corporation or other pass-

through entity to the extent the controlled foreign corporation owns (directly or indirectly) a beneficial interest in such partnership or other pass-through entity; or

(B) By another foreign corporation that is controlled by the controlled foreign corporation, if one of the principal purposes for creating, organizing, or funding such other foreign corporation (through capital contributions or debt) is to avoid the application of section 956. *See* § 1.956–1T.

The rule of this paragraph (b)(2)(ii) does not limit the application of paragraph (b)(2)(iii) of this section regarding the characterization of trade or service receivables of unrelated persons acquired pursuant to certain swap or pooling arrangements. The following examples illustrate the application of this paragraph (b)(2)(ii).

Example (1). FS1, a controlled foreign corporation with substantial accumulated earnings and profits, contributes $2,000,000 to PS, a partnership, in exchange for a 20 percent limited partnership interest in PS. PS purchases trade or service receivables of FS1's domestic parent, P. The obligors under the receivables are United States persons. PS does not purchase receivables of any person who is related to any other partner in PS. Under paragraph (b)(2)(ii)(A) of this section, there is an investment of the earnings of FS1 in United States property equal to 20 percent of PS's basis in the receivables of P.

Example (2). FS1, a controlled foreign corporation, has accumulated more than $3,000,000 in earnings and profits. It organizes a wholly-owned foreign corporation, FS2, with a $2,000,000 equity contribution. FS2 has no earnings and profits. FS2 uses the funds to purchase trade or service receivables of FS1's domestic parent, P. The obligors under the receivables are United States persons. Under paragraph (b)(2)(ii)(B) of this section, there is an investment of the earnings of FS1 in United States property equal to $2,000,000.

(iii) *Swap or pooling arrangements.* A trade or service receivable of an unrelated person will be considered to be a trade or service receivable acquired from a related United States person and subject to the rules of this section if it is acquired in accordance with an arrangement that involves two or more groups of related persons that are unrelated to each other and the effect of the arrangement is that one or more related persons in each group acquire (directly or indirectly) trade or service receivables of one or more unrelated United States persons who are also parties to the arrangement, in exchange for reciprocal purchases of receivables of United States persons in the first group. The following example illustrates the application of this paragraph (b)(2)(iii).

Example. Controlled foreign corporations A, B, C, and D are wholly-owned subsidiaries of domestic corporations M, N, O, and P, respectively. M, N, O, and P are not related persons. According to a prearranged plan, A, B, C, and D each acquire trade or service receivables of M, N, O, and/or P. The obligors under some or all of the receivables acquired by each of A, B, C, and D are United States persons. Because the effect of this arrangement is that the unrelated groups acquire each other's trade or service receivables of United States persons pursuant to the arrangement, there is an investment of the earnings of each of A, B, C, and D in United States property to the extent of the purchase price of those receivables under which the obligors are United States persons.

(iv) *Financing arrangements.* If a controlled foreign corporation participates (directly or indirectly) in a lending transaction that results in a loan to a United States person who purchases property described in section 1221(1) (hereinafter referred to as "inventory property") or services of a related United States person, or to any person who purchases trade or service receivables of a related United States person under which the obligor is a United States person, or to a person who is related to any such purchaser, and if the loan would not have been made or maintained on the same terms but for the corresponding purchase, then the controlled foreign corporation shall be considered to have indirectly acquired a trade or service receivable described in paragraph (a) of this section. For purposes of this paragraph (b)(2)(iv), it is immaterial that the sums lent are not, in fact, the sums used to finance the purchase of the inventory property or services or trade or service receivables of a related United States person. The amount to be taken into account with respect to the controlled foreign corporation's investment in United States property (resulting from application of this paragraph (b)(2)(iv)) shall be the amount lent pursuant to a lending transaction described in this paragraph (b)(2)(iv), if the amount lent is equal to or less than the purchase price of the inventory property, services, or trade or service receivables. If the amount lent is greater than the purchase price of the inventory property, services or receivables, the amount to be taken into account shall be the purchase price. The following examples illustrate the application of this paragraph (b)(2)(iv).

Example (1). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation. P sells equipment for $2,000,000 to X, an unrelated United States person. FS1 makes a $1,000,000 short-term loan to X, which loan would not have been made or maintained on the same terms but for X's purchase of P's equipment. Because FS1 directly participates in a lending transaction described in this paragraph (b)(2)(iv), FS1 is considered to have acquired the receivable of a related United States person. Thus, there is an investment of FS1's earnings and profits in United States property in the amount of $1,000,000.

Example (2). The facts are the same as in Example (1), except that instead of loaning money to X directly, FS1 deposits $3,000,000 with an unrelated financial institution that loans $2,000,000 to X in order for X to purchase P's equipment. The loan would not have been made or maintained on the same terms but for the corresponding deposit. Accordingly, the deposit and the loan are treated as a direct loan from FS1 to X. *See* Rev. Rul. 87–89, 1987–37 I.R.B. 16. Because FS1 indirectly participates in a lending transaction described in this paragraph (b)(2)(iv), FS1 is considered to have acquired the receivable of a related United States person. Thus, there is an investment of FS1's earnings and profits in United States property in the amount of $2,000,000.

Example (3). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation. FS1 makes a $3,000,000 loan to U, an unrelated foreign corporation, in connection with U's purchase for $2,000,000 of receivables from the sale of inventory property by P to United States obligors. Because FS1 directly participates in a lending transaction described in this paragraph (b)(2)(iv), FS1 is considered to have acquired receivables of a related United States person. Thus, there is an investment of FS1's earnings and profits in United States property in the amount of $2,000,000.

(c) *Substitution of obligor.* For purposes of this section, the substitution of another person for a United States obligor may be disregarded. Thus, if a purchaser who is a United States person arranges for a foreign person to pay a United States seller of inventory property or services and the seller transfers by sale or otherwise to its own controlled foreign corporation the foreign person's obligation for payment, then the acquisition of the foreign person's obligation shall constitute an investment in United States property by the seller's controlled foreign corporation, unless it can be demonstrated by the parties to the transaction that the primary purpose for the arrangement was not the avoidance of section 956. The following example illustrates the application of this paragraph.

Example. P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation with substantial accumulated earnings and profits. P sells equipment to X, a domestic corporation unrelated to P. To pay for the equipment, X arranges for a foreign financing entity to issue a note to P. P then sells the note to FS1. FS1 has made an investment in

United States property in the amount of the purchase price of the note.

§ 1.956–1 [Amended]

Par. 4. In § 1.956–1, the heading and text for paragraph (b)(4), are removed and (b)(4) is reserved.

Par. 5. The following new section is added immediately after § 1.956–1.

§ 1.956–1T Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property (temporary).

(a) [Reserved]

(b)(1)–(3) [Reserved]

(4) *Treatment of certain investments of earnings in United States Property*—(i) *Special rule.* For purposes of § 1.956–1(b)(1) of the regulations, a controlled foreign corporation will be considered to hold indirectly (A) the investments in United States property held on its behalf by a trustee or a nominee or (B) at the discretion of the District Director, investments in U.S. property acquired by any other foreign corporation that is controlled by the controlled foreign corporation, if one of the principal purposes for creating, organizing, or funding (through capital contributions or debt) such other foreign corporation is to avoid the application of section 956 with respect to the controlled foreign corporation. For purposes of this paragraph (b), a foreign corporation will be controlled by the controlled foreign corporation if the foreign corporation and the controlled foreign corporation are related parties under section 267(b). In determining for purposes of this paragraph (b) whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). The following examples illustrate the application of this paragraph.

Example (1). P, a domestic corporation, owns all of the outstanding stock of FS1, a controlled foreign corporation, and all of the outstanding stock of FS2, also a controlled foreign corporation. FS1 sells products to FS2 in exchange for trade receivables due in 60 days. FS2 has no earnings and profits. FS1 has substantial accumulated earnings and profits. FS2 loans to P an amount equal to the debt it owes FS1. FS2 pays the trade receivables according to the terms of the receivables. FS1 will not be considered to hold indirectly the investment in United States property under this paragraph (b)(4), because there was no transfer of funds to FS2.

Example (2). The facts are the same as in Example (1), except that FS2 does not pay the receivables. FS1 is considered to hold indirectly the investment in United States property under this paragraph (b)(4), because there was a transfer of funds to FS2, a principal purpose of which was to avoid the application of section 956 to FS1.

(ii) *Effective date.* This section is effective June 14, 1988, with respect to investments made on or after June 14, 1988.

(c)–(d) [Reserved]

(e)(1)–(4) [Reserved]

(e)(5) *Excluded charges*—(i) *Special rule.* For purposes of § 1.956–1(e)(1) of the regulations, in the case of an investment in United States property consisting of an obligation of a related person, as defined in section 954(d)(3) and paragraph (e) of § 1.954–1, a liability will not be recognized as a specific charge if the liability representing the charge is with recourse with respect to the general credit or other assets of the investing controlled foreign corporation.

(ii) *Effective Date.* This section is effective June 14, 1988, with respect to investments made on or after June 14, 1988.

§ 1.956–2 [Amended]

Par. 6. In § 1.956–2, the heading and text for paragraph (d)(2) are removed and paragraph (d)(2) is reserved.

Par. 7. The following new section is added immediately after § 1.956–2.

§ 1.956–2T Definition of United States Property (temporary).

(a)–(c) [Reserved]

(d)(1) [Reserved]

(2) *Obligation defined*—(i) *Rule.* For purposes of § 1.956–2 of the regulations, the term "obligation" includes any bond, note, debenture, certificate, bill receivable, account receivable, note receivable, open account, or other indebtedness, whether or not issued at a discount and whether or not bearing interest, except that such term shall not include:

(A) Any indebtedness arising out of the involuntary conversion of property which is not United States property within the meaning of paragraph (a)(1) of § 1.956–2, or

(B) Any obligation of a United States person (as defined in section 957(c)) arising in connection with the provision of services by a controlled foreign corporation to the United States person if the amount of such obligation outstanding at any time during the taxable year of the controlled foreign corporation does not exceed an amount which would be ordinary and necessary to carry on the trade or business of the controlled foreign corporation and the United States person if they were unrelated. The amount of such obligations shall be considered to be ordinary and necessary to the extent of such receivables that are paid within 60 days.

See § 1.956–2(b)(1)(v) for the exclusion from United States property of obligations arising in connection with the sale or processing of property where such obligations are ordinary and necessary as to amount.

(ii) *Effective Date.* This section is effective June 14, 1988, with respect to investments made on or after June 14, 1988.

Par. 8. The following new section is added immediately after § 1.304–3.

§ 1.304–4T Special rule for use of a related corporation to acquire for property the stock of another commonly owned corporation (temporary).

(a) *In general.* At the discretion of the District Director, for purposes of determining the amount constituting a dividend, and source thereof, under section 304(b)(2), a corporation (deemed acquiring corporation) will be considered to have acquired for property the stock of a corporation (issuing corporation) acquired for property by another corporation (acquiring corporation) that is controlled by the deemed acquiring corporation, if one of the principal purposes for creating, organizing, or funding the acquiring corporation, through capital contributions or debt, is to avoid the application of section 304 to the deemed acquiring corporation. The following example illustrates the application of this paragraph (a).

Example. P, a domestic corporation, owns all of the stock of CFC1, a controlled foreign corporation with substantial accumulated earnings and profits. CFC1 is organized in Country X, which imposes a high rate of tax on CFC1's income. P also owns all of the stock of CFC2, another controlled foreign corporation, which has accumulated earnings and profits of $200x. CFC2 is organized in Country Y which imposes a low rate of tax on CFC2's income. P wishes to own all of its foreign corporations in a direct chain and to effectuate a repatriation of CFC2's cash to P. In order to avoid having to obtain Country X approval for the acquisition of CFC1 (a Country X corporation) by CFC2 (a Country Y corporation) and to avoid a dividend to P out of CFC2's earnings and profits that would otherwise occur as a result of the application of section 304, P causes CFC2 to form RFC as a Country X wholly-owned subsidiary and to contribute $100x to RFC. RFC will purchase, for $100x, all of the stock of CFC1 from P. Because one of P's principal purposes for having CFC1 owned by RFC is to avoid section 304, under § 1.304–4T(a), CFC2 is considered to have acquired the stock of CFC1 for $100x for purposes of determining the amount constituting a dividend (and source thereof) for purposes of section 304(b)(2).

(b) *Availability to taxpayers.* Nothing in this regulation shall be construed to provide a taxpayer the right to compel the Internal Revenue Service to disregard the form of its transaction for Federal income tax purposes.

(c) *Effective date.* This section is effective June 14, 1988, with respect to acquisitions of stock occurring on or after June 14, 1988.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: May 4, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-13131 Filed 6-13-88; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3397-3]

Standards of Performance for New Stationary Sources; Supplemental Delegation of Authority to South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The State of South Carolina requested delegation of authority for the implementation and enforcement of several additional categories of National Standards of Performance for New Stationary Sources (NSPS). EPA's review of South Carolina's laws, rules, and regulations showed them to be adequate for the implementation and enforcement of these federal standards, and the Agency made the delegation as requested.

EFFECTIVE DATE: This request for delegation of authority to South Carolina was effective March 16, 1988.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV Office, 345 Courtland Street NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards should not be submitted to the EPA Region IV Office, but should instead be submitted to the following address: Mr. Otto E. Pearson, Chief, Bureau of Air Quality Control, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson of the EPA Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365, telephone 404/347-2864 (FTS 257-2864).

SUPPLEMENTARY INFORMATION: Sections 101, 110, and 111 of the Clean Air Act authorize the Administrator to delegate his authority to implement and enforce the National Standards of Performance for New Stationary Sources (NSPS) to any State which has submitted adequate implementation and enforcement procedures.

On October 26, 1976, EPA delegated to the State of South Carolina, the authority to implement the NSPS. On February 9, 1988, South Carolina requested a delegation of authority for implementation and enforcement of the following recently promulgated or revised NSPS categories found in 40 CFR Part 60:

1. Rubber Tire Manufacturing Industry, Subpart BBB, as promulgated September 15, 1987.
2. Fossil-Fuel Fired Steam Generators, Subpart D, as revised November 25, 1986.
3. Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines, Subpart TTT, as promulgated January 29, 1988.

ACTION

Since review of the pertinent South Carolina laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned categories of NSPS, I delegated to the State of South Carolina my authority for the source categories listed above on March 16, 1988.

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

This notice is issued under the authority of sections 101, 110, 111, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7411, and 7601).

Dated: June 3, 1988.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 88-13346 Filed 6-13-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6793]

List of Communities Eligible for the Sale of Flood Insurance; Louisiana et al.

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective of October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATE: As shown in fifth column.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: P.O. Box 457 Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction Federal Insurance Administration, (202) 646-2717, Federal Center Plaza 500 C Street, Southwest, Room 416 Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom

authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to reads as follows:

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

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, the suspension for each listed community has been withdrawn. The entry read as follows:

§ 64.6 List of eligible communities.

State	Community name	County or parish	Community No.	Effective date
Louisiana	Carencro, town of	Lafayette	220103	May 4, 1988, suspension withdrawn.
Do	Covington, city of	St. Tammany	220200	Do.
Do	Donaldsonville, city of	Ascension	220014	Do.
Do	Elton, town of	Jefferson Davis	220096	Do.
Do	Gilbert, village of	Franklin	220073	Do.
Do	Goldonna, village of	Natchitoches	220290	Do.
Do	Greensburg, town of	St. Helena	220330	Do.
Do	Henderson, town of	St. Martin	220189	Do.
Do	Jackson, town of	East Feliciana	220333	Do.
Do	Lockport, town of	Lafourche	220254	Do.
Do	Morse, village of	Acadia	220007	Do.
New Mexico	Gallup, city of	McKinley	350042	Do.
Oklahoma	Boynton, town of	Muskogee	400120	Do.
Do	Howe, town of	LeFlore	400091	Do.
Do	Spencer, city of	Oklahoma	400412	Do.
Do	Warr Acres, city of	Oklahoma	400449	Do.
Texas	Albany, city of	Shackelford	480565	Do.
Do	Beverly Hills, city of	McLennan	480925	Do.
Do	Brookshire, town of	Waller	481097	Do.
Do	Burkburnett, city of	Wichita	480658	Do.
Do	Cedar Hill, city of	Dallas	480168	Do.
Do	Celina, city of	Collin	480133	Do.
Do	Chandler, city of	Henderson	480326	Do.
Do	Diboll, city of	Angelina	480008	Do
Do	Fulton, town of	Aransas	480012	Do.
Do	Glenn Heights, city of	Ellis	481265	Do.
Do	Grey Forest, city of	Bexar	480039	Do.
Do	LaJoya, city of	Hidalgo	480341	Do.
Do	La Villa, city of	do	480342	Do.
Do	McAllen, city of	do	480343	Do.
Do	Rockwall, city of	Rockwall	480547	Do.
Do	Rollingwood, city of	Travis	481029	Do.
Do	San Benito, city of	Cameron	480113	Do.
Do	San Juan, city of	Hidalgo	480348	Do.
Do	San Leanna, city of	Travis	481305	Do.
Do	Silsbee, city of	Hardin	480285	Do.
Do	Whitney, town of	Hill	480865	Do.
New York	Arkwright, town of	Chautauqua	361105	May 17, 1988, suspension withdrawn.
Do	Ashland, town of	Chemung	360284	Do.
Do	Augusta, town of	Oneida	360517	Do.
Do	Aurelius, town of	Cayuga	360103	Do.
Do	Bath, village of	Steuben	360767	Do.
Do	Baxter Estates, village of	Nassau	360498	Do.
Do	Bayville, village of	do	360988	Do.
Do	Benton, town of	Yates	360955	Do.
Do	Bethany, town of	Genesee	361138	Do.
Do	Brighton, town of	Monroe	360410	Do.
Do	Cairo, town of	Greene	360286	Do.
Do	Canajoharie, town of	Montgomery	360442	Do.
Do	Canajoharie, village of	do	360443	Do.
Do	Carlisle, town of	Schoharie	361193	Do.
Do	Catskill, town of	Greene	361116	Do.
Do	Catskill, village of	do	360287	Do.
Do	Cayuga, village of	Cayuga	360107	Do.
Do	Cicero, town of	Onandago	360572	Do.
Do	Clifton Springs, village of	Ontario	361450	Do.
Do	Cold Springs, village of	Putnam	360670	Do.
Do	Cuba, town of	Allegany	361099	Do.
Do	Cuyler, town of	Cortland	361386	Do.
Do	Dansville, village of	Livingston	360383	Do.
Do	Davenport, town of	Delaware	360192	Do.
Do	Dayton, town of	Cattaraugus	360066	Do.
Do	Delanson, village of	Schenectady	360737	Do.

State	Community name	County or parish	Community No.	Effective date
Do	Dunkirk, city of	Chautauqua	360137	Do.
Do	Durham, town of	Greene	360289	Do.
Do	Earlville, village of	Chenango	360397	Do.
Do	East Greenbush, town of	Rensselaer	361133	Do.
Do	East Randolph, village of	Cattaraugus	360068	Do.
Do	East Rochester, village of	Monroe	360414	Do.
Do	Edmeston, town of	Otsego	361270	Do.
Do	Ellery, town of	Chautauqua	361072	Do.
Do	Freetown, town of	Cortland	361325	Do.
Do	Fremont, town of	Steuben	360821	Do.
Do	Geneseo Falls, town of	Wyoming	361003	Do.
Do	Geneseo, village of	Livingston	361452	Do.
Do	Geneva, town of	Ontario	360600	Do.
Do	Greenburg, town of	Westchester	360911	Do.
Do	Harrison, town of	do	360912	Do.

Issued: June 7, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-13339 Filed 6-13-88; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6794]

List of Communities Eligible for the Sale of Flood Insurance; Mississippi, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Mississippi	Grenada county Unincorporated Areas	280060	Jan. 28, 1974, Emerg.; Dec. 1, 1978, Reg.; Feb. 4, 1988, Susp.; May 2, 1988, Rein.	Dec. 1, 1978.
North Carolina	Bolton, town of, Columbus County	370274	Sept. 23, 1977, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; May 2, 1988, Rein.	July 1, 1987
Iowa	Union,* city of, Harding County	190142	Dec. 15, 1975, Emerg.; June 1, 1987, Reg.; Sept. 30, 1987, Susp.; May 6, 1988, Rein.	June 1, 1987.
New York	Franklin, village of, Delaware County	360199	Aug. 8, 1975, Emerg.; Aug. 1, 1987, Reg.; Aug. 1, 1987, Susp.; May 6, 1988, Rein.	Aug. 1, 1987.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Tennessee	Cocke county, Unincorporated Areas	470033	March 14, 1978, Emerg.; Jan. 6, 1988, Reg.; Jan. 6, 1988, Susp.; May 6, 1988, Rein.	Jan. 6, 1988.
Alabama	Brighton, town of, Jefferson County	010117	July 11, 1975, Emerg.; Jan. 2, 1981, Reg.; Feb. 4, 1988, Susp.; May 6, 1988, Rein.	Jan. 2, 1981.
Pennsylvania	Monroe, township of, Juniata County	421744	April 22, 1980, Emerg.; Nov. 4, 1987, Reg.; Nov. 4, 1987, Susp.; May 11, 1988, Rein.	Nov. 4, 1987.
West Virginia	Grant Town, town of, Marion County	540102	April 7, 1975, Emerg.; March 4, 1988, Reg.; March 4, 1988, Susp.; May 11, 1988, Rein.	Mar. 4, 1987.
Do	Junior,* town of, Barbour County	540003	Nov. 21, 1975, Emerg.; April 17, 1987, Reg.; April 17, 1987, Susp.; May 11, 1988, Rein.	Mar. 17, 1987.
Illinois	Lee county, Unincorporated Areas	170413	June 6, 1975, Emerg.; April 15, 1988, Reg.; April 15, 1988, Susp.; May 11, 1988, Rein.	Mar. 15, 1987.
Do	Nelson, village of, Lee County	170418	Sept. 30, 1976, Emerg.; April 15, 1988, Reg.; April 15, 1988, Susp.; May 11, 1988, Rein.	Mar. 15, 1987.
Minnesota	Sibley county, Unincorporated Areas	270620	April 11, 1974, Emerg.; Jan. 6, 1988, Reg.; Jan. 6, 1988, Susp.; May 13, 1988, Rein.	Jan. 6, 1988.
Tennessee	Jefferson county, Unincorporated Areas	470097	March 29, 1982, Emerg.; March 29, 1982, Reg.; Feb. 17, 1988, Susp.; May 16, 1988, Rein.	July 14, 1978.
Do	Brownsville, city of, Haywood County	470087	July 30, 1974, Emerg.; March 4, 1988, Reg.; March 4, 1988, Susp.; May 16, 1988, Rein.	Mar. 4, 1988.
North Carolina	Polk county, Unincorporated Areas	370194	Jan. 15, 1974, Emerg.; March 16, 1988, Susp.; May 16, 1988, Rein.	May 19, 1978.
Do	Maiden, town of, Catawba County	370056	May 8, 1975, Emerg.; Sept. 30, 1980, Reg.; April 5, 1988, Susp.; May 16, 1988, Rein.	Sept. 30, 1980.
Pennsylvania	Cannan, township of, Wayne County	422160	Aug. 28, 1975, Emerg.; Sept. 30, 1987, Reg.; Sept. 30, 1987, Susp.; May 17, 1988, Rein.	Sept. 30, 1980.
Texas	Santa Rosa, city of, Cameron County	480114	Aug. 29, 1980, Emerg.; May 5, 1981, Reg.; May 4, 1988, Susp.; May 17, 1988, Rein.	May 5, 1981.
Iowa	Millville,* city of, Clayton County	190081	July 9, 1975, Emerg.; July 2, 1987, Reg.; July 2, 1987, Susp.; May 23, 1988, Rein.	July 2, 1987.
Louisiana	Ponchatoula, city of, Tangipahoa Parish	220211	June 5, 1975, Emerg.; April 17, 1979, Reg.; May 4, 1988, Susp.; May 24, 1988, Rein.	April 17, 1979.
Texas	Woodsboro, town of, Refugio County	480987	March 31, 1981, Emerg.; July 16, 1981, Reg.; May 4, 1988, Susp.; May 24, 1988, Rein.	July 7, 1981.
Missouri	Bolckow, town of, Andrew County	290006	May 17, 1988, Emerg	April 30, 1976.
Kentucky	Inez, city of, Martin County	210362	May 19, 1988, Emerg	
Wisconsin	*Rush county, Unincorporated Areas	550602	May 31, 1988, Emerg.; May 31, 1988, Reg	Mar. 4, 1987.
Texas	Pleak,[1] village of, Fort Bend County	481615	May 31, 1988, Emerg.; May 31, 1988, Reg	
Ohio	Lakeline, village of, Lake County	390888	May 27, 1988, Emerg	
Do	North Kingsville, village of, Ashtabula County	390889	May 27, 1988, Emerg	
Do	Timberlake, village of, Lake County	390890	May 27, 1988, Emerg	
New York	Amenia, town of, Dutchess County	361332	Feb. 4, 1976, Emerg.; Sept. 24, 1984, Reg.; May 17, 1988, Susp.; May 31, 1988, Rein.	Sept. 24, 1984.
Do	Danby, town of, Tompkins County	360845	May 27, 1975, Emerg.; May 15, 1985, Reg.; May 17, 1988, Susp.; May 31, 1988, Rein.	May 15, 1985.
Georiga	Darlen, city of, McIntosh County	130131	April 24, 1975, Emerg.; July 2, 1981, Reg.; Feb. 17, 1988, Susp.; May 27, 1988, Rein.	July 2, 1981.
Oklahoma	Sperry, town of, Tulsa County	400213	June 17, 1975, Emerg.; July 16, 1981, Reg.; May 4, 1988, Susp.; May 31, 1988, Rein.	July 16, 1981.
Do	Sulphur, city of, Murray County	400119	May 12, 1975, Emerg.; Feb. 18, 1981, Reg.; May 4, 1988, Susp.; May 31, 1988, Rein.	Feb. 18, 1981.
Texas	Waller, city of, Waller County	480641	June 10, 1975, Emerg.; Sept. 14, 1979, Reg.; May 4, 1988, Susp.; May 31, 1988, Rein.	Sept. 14, 1979.
Illinois	Evansville, village of, Randolph County	170577	June 25, 1975, Emerg.; April 15, 1988, Reg.; April 15, 1988, Susp.; May 31, 1988, Rein.	April 15, 1988.

[1] The Village of Pleak, Texas has adopted Fort Bend County's FIS and FIRM effective August 5, 1986, for floodplain management and insurance purposes.
* Minimal.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region V—Minimal Conversions:				
Minnesota	Grant County, Unincorporated Areas	270549	May 1, 1988, Suspensions Withdrawn	May 1, 1988.
Ohio	New London, village of, Huron County	390284	do	May 1, 1988.
Region I—Regular Conversions:				
Maine	Benton, town of, Kennebec County	230233	May 4, 1988. Suspensions Withdrawn	May 4, 1988.
Do	Camden, town of, Knox County	230074	do	May 4, 1988.
Do	Cherryfield, town of, Washington County	230135	do	May 4, 1988.
Do	Durham, town of, Androscoggin County	230002	do	May 4, 1988.
Do	Masardis, town of, Aroostook County	230027	do	May 4, 1988.
Do	Mattawamkeag, town of, Penobscot County	230174	do	May 4, 1988.
Region II:				
New York	Owasco, town of, Cayuga County	360120	do	May 4, 1988.

State	Location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Current effective map date
Region III:				
Pennsylvania.	Lower Nazareth, township of, Northampton County.	422253	do	May 4, 1988.
Region IV:				
Florida	Bowling Green, city of, Hardee County	120104	do	May 4, 1988.
Do	Wauchula, city of, Hardee County	120105	do	May 4, 1988.
Mississippi	Long Beach, city of, Harrison County	285257	do	May 4, 1988.
Tennessee	Claiborne County, Unincorporated Areas	470212	do	May 4, 1988.
Region V:				
Wisconsin	Manawa, city of, Waupaca County	550498	do	May 4, 1988.
Do	Marion, city of, Waupaca County	550499	do	May 4, 1988.
Michigan	Memphis, city of, St. Clair and Macomb Counties.	260202	do	May 4, 1988.
Do	Sault Ste. Marie, city of, Chippewa County	260059	do	May 4, 1988.
Region VI:				
Arizona	Cherry Valley, city of, Cross County	050057	do	May 4, 1988.
Louisiana	Washington County, Unincorporated Areas	220230	do	May 4, 1988.
Region X:				
Washington.	Columbia County, Unincorporated Areas	530029	do	May 4, 1988.
Do	Dayton, city of, Columbia County	530030	do	May 4, 1988.
Do	Starbuck, city of, Columbia County	530031	do	May 4, 1988.
Region I—Regular Conversions:				
Maine	Georgetown, town of, Sagadahoc County	230209	May 17, 1988. Suspensions Withdrawn	May 17, 1988.
Do	Passadumkeag, town of, Penobscot County	230114	do	May 17, 1988.
Do	Rome, town of, Kennebec County	230246	do	May 17, 1988.
Do	Southport, town of, Lincoln County	230221	do	May 17, 1988.
Massachusetts.	Carlisle, town of, Middlesex County	250187	do	May 17, 1988.
New Hampshire.	Alton, town of, Belknap County	330001	do	May 17, 1988.
Do	Canaan, town of, Grafton County	330049	do	May 17, 1988.
Do	Enfield, town of, Grafton County	330052	do	May 17, 1988.
Do	Farmington, town of, Strafford County	330147	do	May 17, 1988.
Do	Hopkinton, town of, Merrimack County	330116	do	May 17, 1988.
Vermont	Barnet, town of, Caledonia County	500024	do	May 17, 1988
Do	Jamaica, town of, Windham County	500131	do	May 17, 1988.
Region III:				
Virginia	St. Paul, town of, Wise and Russell Counties	515530	do	May 17, 1988.
Region IV:				
South Carolina.	Hampton, town of Hampton County	450100	do	May 17, 1988.
Tennessee	Pikeville, city of, Bledsoe County	470011	do	May 17, 1988.
Region V:				
Michigan	Castleton, township of, Barry County	260641	do	May 17, 1988.
Do	Vernon, village of, Shiawassee County	260524	do	May 17, 1988.
Region VI:				
New Mexico.	Socorro, city of, Socorro County	350077	do	May 17, 1988
Region X:				
Washington.	Spokane County, Unincorporated Areas	530174	do	May 17, 1988.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: June 8, 1988.

[FR Doc. 88-13340 Filed 6-13-88; 8:45 am]
BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6795]

Suspension of Community Eligibility; North Carolina and Idaho

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: July 4 1988.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42

U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulation after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this rinal rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State	Community name	County	Community No.	Effective date
North Carolina	Enfield, town of	Halifax	370115	July 4,1988.
Do	Fuquay-Varina, town of	Wake	370239	Do.
Do	Gaston, town of	Northampton	370413	Do.
Do	Unincorporated areas	Halifax	370327	Do.
Do	Nashville, town of	Nash	370167	Do.
Do	Ramseur, town of	Randolph	370198	Do.
Do	Rocky Mount, city of	Edgecombe and Nash	370092	Do.
Do	Sanford, city of	Lee	370143	Do.
Do	Severn, town of	Northampton	370422	Do.
Do	Whitakers, town of	Edgecombe and Nash	370095	Do.
Do	Woodland, town of	Northampton	370177	Do.
Do	Unincorporated areas	Blaine	165167	Do.
Do	Dubois, city of	Clark	160134	Do.
Do	Harrison, city of	Kootenai	160080	Do.
Do	Malta, city of	Cassia	160197	Do.
Do	Post Falls, city of	Kootenai	160083	Do.
Do	Rathdrum, city of	Kootenai	160187	Do.
Do	Rockland, city of	Power	160110	Do.
Do	White Bird, city of	Idaho	160072	Do.
Do	Worley, city of	Kootenai	160085	Do.

Issued: July 8, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-13341 Filed 6-13-88; 8:45 am]

BILLING CODE 6718-21-M

Proposed Rules

Federal Register
Vol. 53, No. 114
Tuesday, June 14, 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

Agricultural Marketing Service

7 CFR Part 27

[CN-88-100]

Revision of Regulations for Determining Price Quotations for Spot Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service is proposing to revise the regulations concerning spot markets and price quotations for spot cotton. Presently, such regulations provide for the establishment of quotations committees, made up of members of the cotton trade, which have the express function of quoting the prices and price differences for spot cotton on a daily basis. Recently, a significant number of trade representatives have indicated that they will no longer participate in quotations committee meetings. Under this proposal the committee system of determining price quotations would be suspended indefinitely by deleting the provisions of the regulations concerning committees and their duties. The duties of the committees would be assumed by the Cotton Division of the Agricultural Marketing Service.

This proposal would also redesignate and rename the spot markets which are used daily to determine prices and differences for cotton. Presently, the designated spot markets are established on a (local area) basis bearing the names of the cities where cooperating cotton exchanges are located. This amendment would expand such markets to cover seven larger geographic areas.

In addition, the present method of quoting prices and price differences for spot cotton would be modified and such modifications would be reflected in the regulations. Presently, price quotations and differences are determined in each designated market for a wide range of qualities, including those qualities which are not normally produced or traded in a particular market. This proposal would provide that prices and differences be quoted for those qualities of cotton which are tenderable or deliverable on active futures contracts in five designated markets, as at present. Price quotations and differences for other qualities of cotton traded in these five designated markets and for all qualities in the remaining two designated spot markets would be limited to those qualities which are normally produced or traded in a particular designated market. The volume of bales traded that is used to determine a quotation would be published along with the quotation. These proposed modifications are expected to enhance the accuracy and reliability of the quotations.

DATE: Comments must be received on or before July 14, 1988.

ADDRESS: Written comments may be sent to Garr Lewicki, USDA/AMS/Cotton Division, Room 2641, P.O. Box 96456, Washington, DC, 20090-6456.

FOR FURTHER INFORMATION CONTACT: Garry Lewicki, (202) 447-2145.

SUPPLEMENTARY INFORMATION: This rule has been revised in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as determined in the Order.

The Administrator of the Agricultural Marketing Service has determined that this rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the proposed revisions: (i) Would enhance the accuracy of the information gathered and disseminated; (ii) would not affect the competitive position or market access of small entities in the cotton industry; (iii) would not impose any new costs on the affected industry.

The information collection requirements contained in this proposed rule have been previously approved by the Office of Management and Budget and assigned OMB control number 0581-0029 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Background

The Secretary of Agriculture is authorized under the U.S. Cotton Futures Act (7 U.S.C. 15b) to make such regulations as determined necessary to carry out the provisions of the Act. The Act provides for the designation of at least five bona fide spot markets from which spot cotton price information can be collected. Presently, there are eight such designated markets. Five of the eight are used to determine prices and differences for the settlement of futures contracts. Only the No. 2 New York Cotton Exchange futures contracts are currently active. To facilitate the collection of price information, quotation committees were established in the designated markets. These committees are made up of members of the cotton exchanges or their employees. The regulations contain provisions whereby the committees provide information on prices and price differences of cotton to the Cotton Division of the Agricultural Marketing Service on a daily basis. The Cotton Division also provides market information under the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)).

Spot Cotton Quotations Committees

Recently, a significant number of trade representatives have indicated that they will no longer participate in quotations committee meetings. In three of the eight markets, the committees have ceased to function, and the Cotton Division is determining price quotations in these markets without the assistance of the committees. Therefore, it is necessary to amend the regulations to provide for a new method of determining price quotations. This proposal would indefinitely suspend the committee system of determining price quotations, with the Cotton Division assuming the duties of the committees. To accomplish this, we propose to delete the provisions pertaining to the committee system of determining price quotations. The new method of quoting prices, if adopted, would be assessed by the Cotton Division after a period of operation to determine if it needs to be adjusted or changed. Section 27.97 would be deleted and § 27.98 would be revised to reflect the proposed changes.

Trading Volume on Which Quotations are Based

Price quotations for all qualities in all markets which are based on data from actual sales would be prefixed by the volume of bales traded. Price quotations that are determined when there has been no trading would be prefixed with a zero.

Quotations in Markets Designated for Contract Settlement Purposes

Price quotations for all qualities of cotton deliverable on cotton futures contracts would be determined each business day in the markets used to quote prices or values and to determine actual differences for the settlement of futures contracts. The price or value of other qualities of cotton which are normally produced or traded in a particular market would also be determined for that market. In the process of determining price quotations, market reporters of the Cotton Division of AMS would interview, in person or by telephone, at least three persons in each bona fide market. Individuals or firms engaged in the buying and/or selling of cotton would be requested to provide information concerning prices and volume of cotton purchased to the Cotton Division. Analysis of all data obtained would be made to ascertain the current value of all deliverable qualities in each market and of the non-deliverable qualities normally produced or traded in each particular market. Quotations for qualities where no sale shall have been made and for which there is no price data would continue to be determined as provided in § 27.99 of the regulations. All quotations would be reviewed and approved by the Branch Chief or the Assistant Branch Chief of the Cotton Division's Market News Branch before publication.

Quotations in Other Markets

In markets not designated for contract settlement purposes, price quotations for all qualities of cotton normally produced or traded in a particular market would be determined on each business day in the same manner as stated above.

Additional Revisions

Presently, price quotations and differences are determined in eight designated markets where cooperating cotton exchanges, whose members comprise the quotations committees, are located. These markets bear the names of the cities in which the exchanges are located. However, the advent of telephonic and electronic marketing in recent years has expanded the area of trade for each of the designated markets making the geographic limitations of the local area no longer necessary. Therefore, this proposal would redesignate and rename the spot markets as seven regional markets which conform to the seven growth areas widely recognized by the cotton industry. This proposed expansion of the designated spot markets is expected to enhance the accuracy of the quotations by broadening the price data base.

Section 27.93 would be revised to list the seven designated markets as follows:

Southeastern

All counties in the states of Alabama, Florida, Georgia, North Carolina and South Carolina and all counties in the state of Tennessee east of and including Stewart, Houston, Humphreys, Perry, Wanye and Hardin counties.

North Delta

All counties in the states of Arkansas and Missouri and all counties in Tennessee west of and including the counties of Henry, Benton, Henderson, Decatur, Chester and McNairy counties and the Mississippi counties of Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Presntiss, Tate, Tippah, Tishomingo, Union and Yalobusha.

South Delta

All counties in the state of Louisiana and all counties in the state of Mississippi not included in the North Delta market.

East Texas, Oklahoma

All counties in the state of Oklahoma and the Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

West Texas

All Texas counties not included in the East Texas, Oklahoma and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt and Lea.

Desert Southwest

The Texas counties of Val Verde, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Culberson, Hudspeth and El Paso, all New Mexico counties except those included in the West Texas market, all counties in the state of Arizona and the California counties south of and including Riverside and Orange counties.

San Joaquin Valley

All California counties except those included in the Desert Southwest market.

Section 27.94 would be revised to list only designated markets for the settlement of No. 2 contracts, since those are the only contracts which are presently active.

Section 27.96 would be revised by deleting the reference to the price or value of Strict Low Middling 1 1/16 inches cotton and by referring to cotton in its generic term. Strict Low Middling 1 1/16 inches cotton is used as the base quality in the No. 2 New York Cotton Exchange futures contract, which is the only cotton futures contract presently active. In the event that other contracts are established with a different base quality, the proposed section would be applicable to these as well. Other changes would be made to clarify the regulations and to remove unnecessary language.

This proposed rule would amend and revise the language in §§ 27.93 through 27.99 of Part 27 of Title 7 of the Code of Federal Regulations to accommodate the changes necessary in the spot quotations system. Section 27.97 would be removed and the provisions of § 27.100 would be added to proposed § 27.98. All subsequent sections would be redesignated.

List of Subjects in 7 CFR Part 27

Spot markets, Price quotations, Differences.

For the reasons set forth in the preamble, 7 CFR Part 27 would be amended as follows:

PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

1. The authority citation for Part 27 is amended to read as follows:

Authority: 7 U.S.C. 15b; 7 U.S.C. 4736; 7 U.S.C. 1622(g).

2. The table of contents concerning "spot markets" and "price quotations and differences" is amended to read as follows:

Spot Markets

Sec.
27.93 Bona fide spot markets.
27.94 Spot markets for contract settlement purposes.

Price Quotations and Differences

27.95 Spot markets to conform to Act and regulations.
27.96 Quotations in bona fide spot markets.
27.97 Ascertaining the accuracy of price quotations.

Sec.
27.98 Value of grade where no sale; determination.
27.99 Prices and values; expression.
27.100 Administration.
* * * * *

3. Section 27.93 is revised to read as follows:

§ 27.93 Bona fide spot markets.

The following markets have been determined, after investigation, and are hereby designated to be bona fide spot markets within the meaning of the act:

Southeastern, North Delta, South Delta, East Texas and Oklahoma, West Texas, Desert Southwest and San Joaquin Valley. Such markets will comprise the following areas:

Southeastern

All counties in the states of Alabama, Florida, Georgia, North Carolina and South Carolina and all counties in the state of Tennessee east of and including Stewart, Houston, Humphreys, Perry, Wayne and Hardin counties.

North Delta

All counties in the states of Arkansas and Missouri and all counties in Tennessee west of and including the counties of Henry, Benton, Henderson, Decatur, Chester and McNairy counties and the Mississippi counties of Alcorn, Benton, Calhoun, Chickasaw, DeSoto, Grenada, Itawamba, Lafayette, Lee, Marshall, Monroe, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union and Yalobusha.

South Delta

All counties in the state of Louisiana and all counties in the state of Mississippi not included in the North Delta market.

East Texas, Oklahoma

All counties in the state of Oklahoma and the Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

West Texas

All Texas counties not included in the East Texas, Oklahoma and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt and Lea.

Desert Southwest

The Texas counties of Val Verde, Crockett, Terrell, Pecos, Brewster, Presidio, Jeff Davis, Culberson, Hudspeth and El Paso, all New Mexico counties except those included in the West Texas market, all counties in the state of Arizona and the California counties south of and including Riverside and Orange counties.

San Joaquin Valley

All California counties except those included in the Desert Southwest market.

4. Section 27.94 is revised to read as follows:

§ 27.94 Spot markets for contract settlement purposes.

The following are designated as spot markets for the purpose of determining as provided in paragraph 15b(f)(3) of the act, the differences above or below the contract price which the receiver shall pay for grades tendered or deliverable in settlement of a basis grade contract:

For cotton delivered in settlement of any No. 2 contract on the New York Cotton Exchange:

Southeastern, North Delta, South Delta, Eastern Texas and Oklahoma and Desert Southwest.

5. Section 27.95 is revised to read as follows:

§ 27.95 Spot markets to conform to Act and regulations.

Every bona fide spot market shall, as a condition of its designation and of the retention thereof, conform to the act and any applicable regulations.

6. Section 27.96 is revised to read as follows:

§ 27.96 Quotations in bona fide spot markets.

The price or value and differences between the price or value of grades and staple lengths of cotton shall be based solely upon the official cotton standards of the United States and shall be the actual commercial value or price and differences as determined by the sale of spot cotton in such spot market. Quotations shall be determined and maintained in each designated spot market by the Cotton Division, Agricultural Marketing Service, USDA, as follows:

(a) In spot markets designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volumne the prices or values of base qualities which are deliverable on any active futures contracts, as well as the differences for all other qualities deliverable on such contracts. The prices or differences for non-deliverable qualities will be determined and quoted by bale volume in each such spot market for those qualities normally produced or traded in that particular market.

(b) In spot markets not designated to determine differences for the settlement of futures contracts, the Cotton Division will on each business day determine and quote by bale volume the prices or differences for all qualities of cotton normally produced or traded in each such spot market.

§ 27.97 [Removed]

7. Section 27.97 is removed.

§ 27.98 [Redesignated as § 27.97]

8. Section 27.98 is redesignated as § 27.97 and is revised to read as follows:

§ 27.97 Ascertaining the accuracy of price quotations.

The buyers and sellers of cotton in each spot market shall be responsible for providing accurate and timely price, quality, and volume of purchases data by growth area to the Cotton Division. The Cotton Division is responsible for ascertaining the accuracy of the price quotations in each designated spot market. The Cotton Division will carry out this responsibility by performing the following duties and functions:

(a) The Cotton Division will collect and analyze pertinent information on the prices and values of spot cotton from each spot market.

(b) In the process of determining price quotations, the Cotton Division will contact a minimum of three buyers and sellers of cotton in each bona fide market at least two times per week during the active trading season and one time per week during the remainder of the year to obtain information on prices, qualities, volume, and terms of sales in sufficient detail to determine quotations.

(c) The Cotton Division will summarize the price and quality data and, based on analysis of this summary, make determinations regarding quotations of price, value and differences.

(d) Quotations for each spot market shall be reviewed and approved by the Cotton Division's Market News Branch Chief or Assistant Branch Chief prior to publication.

(e) The Cotton Division will publish the appropriate quotations by bale volume for grades, staple lengths, micronaire determinations, and other quality factors for each spot market on a daily basis.

(The information collection requirements contained in this section were approved by the Office of Management and Budget under OMB control number 0581–0029.)

§ 27.99 [Redesignated as § 27.98]

9. Section 27.99 is redesignated as § 27.98 and is revised to read as follows:

§ 27.98 Value of grade where no sale; determination.

As provided in § 27.96, whenever no sale of a particular grade of cotton shall have been made on a given day in a particular spot market, the value of such grade in the market on that day will be determined as follows:

(a) If on such given day there shall have been in such market both a sale of any higher grade and a sale of any lower

grade, the average of the declines, or advances, or decline and advance, as the case may be, of the next higher grade and the next lower grade so sold shall be deducted from, or added to, as the case may be, the value, on the last preceeding business day, of the grade the value of which on such given day is sought to be ascertained.

(b) If on such given day there shall have been in such market a sale of either a higher or a lower grade, but not sales of both, the decline or advance of the next higher or the next lower grade so sold shall be deducted from, or added to, as the case may be, the value on the last preceeding business day of the grade the value of which on such given day is sought to be ascertained.

(c) If on such given day there shall have been in such market no sale of spot cotton of any grade, the value of each grade shall be deemed to be the same as its value therein on the last preceding business day, unless in the meantime there shall have been bona fide bids and offers, or sales of hedged cotton, or other sales of cotton, or changes in prices of futures contracts made subject to the act, which in the usual course of business would clearly establish a rise or fall in the value of spot cotton in such market, in which case such rise or fall may be calculated and added to or deducted from the value on the preceding business day of cotton of all grades affected thereby.

§ 27.100 [Removed]

10. Section 27.100 is removed.

§ 27.101 [Redesignated as § 27.99]

11. Section 27.101 is redesignated as § 27.99.

§ 27.102 [Redesignated as § 27.100]

12. Section 27.102 is redesignated as § 27.100.

Dated: June 9, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-13415 Filed 6-13-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ANE-21]

Airworthiness Directives; Davis Aircraft Products Company, Inc., Safety-Belts, FDC 6400B Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that will require replacement of certain Davis Aircraft Products Co., Inc., safety-belts. The proposed AD is needed to prevent safety-belts from becoming difficult to release with possible jamming of the buckle release mechanism when required during emergency evacuation of affected aircraft.

DATES: Comments must be received on or before July 20, 1988.

ADDRESSES: Comments pertaining to this proposed AD may be mailed in duplicate to Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-ANE-21, 12 New England Executive Park, Burlington, Massachusetts 01803; or delivered in duplicate to Room 311 at the above address. Comments delivered must be marked: Docket No. 88-ANE-21.

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from Davis Aircraft Products Company, Inc., 1150 Walnut Avenue, P.O. Box 525, Bohemia, New York 11716.

A copy of the applicable service information is contained in Rules Docket No. 88-ANE-21, at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01813.

FOR FURTHER INFORMATION CONTACT: Mr. C. Kallis, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or comments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 88-ANE-21". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain safety-belt buckles manufactured by Davis Aircraft Products Co., Inc., and used on various aircraft have been cracking and creating difficulty in releasing the belt. These buckle latch-covers are of a black "Ultem" plastic, 1000 type. Davis Aircraft Products Co., Inc., has performed extensive research towards determining the cause for these cracks. It was concluded that the cracks are caused by a metallic adapter which wears into the plastic cover with eventual jamming between the adapter and cover. Subsequently, the excessive force required to release the belt would eventually create cracks in the plastic cover. It was also determined that the cracks occurred on the buckles which are designed to release the belt when the latch-cover is pulled through 90 degrees; no cracks were found on any 45 degree type of buckles. As a result of these findings, Davis Aircraft Products Co. Inc., redesigned the adapter (P/N FD-7658 Rev. D) to replace P/N FD-7658 Rev. A thru C. Also the black "Ultem" (Type 1000) latch-cover, P/N FD-6412M Rev. A thru H, has been made thicker with increased bend-radii and will be replaced by P/N FD 6412M Rev. J.

There are approximately 5,000 safety-belts that are affected by buckles with these latch-covers. The FAA has determined that if these buckles are not corrected, difficulty in releasing the safety-belt may result in a dangerous condition during emergency evacuation of affected aircraft.

Davis Aircraft Products Co., Inc., has issued recall (Service Bulletin No. 1, dated January 29, 1988) notices to all known operators who have purchased these safety-belts with the black "Ultem" latch-covers (90 degree release type), requesting them to check for certain part numbers designated on the

labels and to return affected safety-belts to Davis Aircraft Products Co. Inc., for replacement at no charge for the rework and parts.

Since this condition is likely to exist or develop on other buckles of the same type design, the proposed AD will require replacement of the affected safety-belts unless modified to an approved type.

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.

Conclusion

The FAA has determined that this proposed regulation involves 5,000 of the FDC-6400B Series safety-belts; the cost per aircraft will involve minimal expense that would be required for shipping the safety-belts to Davis Aircraft Products Co., Inc. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 39 of the Federal Aviation Regulations (FAR) 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 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Davis Aircraft Products Co., Inc.: Applies to Safety-Belts which incorporate the black "Ultem" plastic cover and the 90 degree type pull-release mechanism, as listed below:

Affected Safety-Belts Part Numbers (P/N's)

FDC-6400B-6
FDC-6400B-7***
FDC-6400B-12
FDC-6400B-12B
FDC-6400B-18-3
FDC-6400B-18-5
FDC-6400B-18-21
FDC-6400B-18-23
FDC-6400B-18-25
FDC-6400B-18-27
FDC-6400B-18-29
FDC-6400B-18-505
FDC-6400B-19
FDC-6400B-20
FDC-6400B-22
FDC-6400B-27-3
FDC-6400B-29-1
FDC-6400B-29-2
FDC-6400B-29B-1
FDC-6400B-29B-2
FDC-6400B-30B
FDC-6400B-21-**
FDC-6400B-32
FDC-6400B-36-***
FDC-6400B-39
FDC-6400B-50-***-**
FDC-6400B-51
FDC-6400B-54
FDC-6400B-56
FDC-6400B-63-2
FDC-6400B-63-4
FDC-6400B-63-50
FDC-6400B-63-50
FDC-6400B-64-***
FDC-6400B-71-***
FDC-6400B-80B
FDC-6400B-85-1
FDC-6400B-85-2
FDC-6400B-90-1
FDC-6400B-90-3
FDC-6400B-90-7
FDC-6400B-**-***-**-**

Note: * Denotes numerical (arabic) digit.

Compliance required within the next 100 flights after the effective date of this AD unless already accomplished.

To prevent the possibility of the applicable safety-belts becoming difficult to release or becoming jammed when actuated through 90 degrees, accomplish the following:

(a) Inspect safety-belts to determine if they have any of the above P/N's inscribed on the FAA-TSO-C22f metallic tag.

(b) Replace all safety-belts with the above P/N's with an approved safety-belt.

Notes: (1) Safety-belt assemblies that have been modified by Davis Aircraft Products Co., Inc., are marked with a -1 suffix number at the end of the Part Numbers (listed above) on the FAA-TSO-C22f metallic tag and are approved.

(2) Davis Aircraft Products Co. Inc., has issued (recall) Service Bulletin No. 1, dated January 29, 1988, which reflects that the affected safety-belts may be returned to them for replacement at no charge for the rework and parts.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(d) Upon submission of substantiating data, by an owner or operator, through an FAA maintenance inspector, the Manager, New York Aircraft Certification Office may adjust the compliance schedule specified by this AD.

Issued in Burlington, Massachusetts on June 6, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-13297 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-AGL-9]

Proposed Alteration of VOR Federal Airways; Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-412 located in the vicinity of Redwood Falls, MN, by realigning that segment via a north dogleg. This action would improve traffic in the Minneapolis-St. Paul International Airport Terminal, thereby reducing delays and controller workload.

DATES: Comments must be received on or before July 28, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 88-AGL-9, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

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

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

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-412 located in the vicinity of Redwood Falls, MN. The realignment will retain traffic in the same general arrival corridor, but permit more flexibility for maneuvering traffic in the Minneapolis-St. Paul terminal area. This action would reduce delays and reduce controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal airways.

The Proposed Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-412 [Revised]

From Redwood Falls, MN, INT Redwood Falls 061°T(054°M) and Flying Cloud, MN, 262°T(256°M) radials; to Flying Cloud.

Issued in Washington, DC, on June 3, 1988.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-13295 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 87-AGL-24]

Proposed Alteration of VOR Federal Airway and Jet Routes; Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Federal Airway V-128 and Jet Route J-18 and establish J-232 located in the vicinity of Rockford, IL. These airway and jet route description changes would alleviate air traffic congestion in and around the Chicago O'Hare International Airport, IL. This action would reduce en route and terminal delays, save fuel, and reduce controller workload.

DATES: Comments must be received on or before July 28, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 87-AGL-24, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

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

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

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AGL-24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of V-128 and J-18 and establish J-232 located in the vicinity of Rockford, IL. These description changes would alleviate traffic congestion and compression in the Chicago O'Hare International Airport, IL, terminal area. These actions would reduce en route and terminal delays, save fuel and reduce controller workload. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and jet routes.

The Proposed Amendments

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-128 [Amended]

By removing the words "From Rockford, IL, via INT Rockford 154° and Peotone, IL, 281° radials;" and substituting the words "From Dubuque, IA; Janesville, WI; Rockford, IL; INT Rockford 169°T(168°M) and Peotone, IL, 281°T(279°M) radials;"

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

3. The authority citation for Part 75 continues to read as follows:

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

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J-18 [Amended]

By removing the words "St. Joseph, MO; Bradford; to Joliet, IL." and substituting the words "St. Joseph, MO; to Moline, IL."

J-232 [New]

From Moline, IL; to Kirksville, MO.

Issued in Washington, DC, on June 3, 1988.

Shelomo Wugalter,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-13296 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 243, 262, and 350

Transfer, Assignment, or Waiver of Payments

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to adopt regulations with respect to the transfer or assignment of benefits and waiver of benefits under the Railroad Retirement Act.

DATE: Comments must be received on or before July 14, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4929 (FTS 386-4929).

SUPPLEMENTARY INFORMATION: Benefits paid by the Board are generally exempt from attachment, assignment, or other legal process. However, most such benefits are subject to legal process in satisfaction of a support or alimony obligation in accord with Part 350 of the Board's regulations.

Certain portions of annuities paid by the Board under the Railroad Retirement Act are subject to property divisions set forth in state court decrees and court-approved property settlements in accord with Part 295 of the regulations. Although annuities paid under the Railroad Retirement Act are subject to Federal income tax and a portion of certain annuities computed under the social security minimum guaranty provision of the Railroad Retirement Act may be assigned, the Board's regulations pertaining to these matters do not currently so state and are thus out of date. The Board's regulations also provide for waiver of receipt of annuity payments at Part 262. Accordingly, the Board in this part intends to consolidate in these regulations references to Parts 262, 295 and 350, and to add regulations concerning the taxation of annuities and the assignment of the amount or a portion of the amount payable under the

social security minimum guaranty provision.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. There are no information collections associated with this proposed rule within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects

20 CFR Part 243

Railroad employees, Railroad retirement.

20 CFR Part 262

Railroad employees, Railroad retirement.

20 CFR Part 350

Railroad employees, Railroad retirement.

1. The Board's regulations under the Railroad Retirement Act (20 CFR Parts 200—299) are hereby amended by adding thereto a new Part 243 to read as follows:

PART 243—TRANSFER, ASSIGNMENT, OR WAIVER OF PAYMENTS

Sec.

Authority: 45 U.S.C. 231f(b)(5).

§ 243.1 Prohibition against garnishment.

Except as hereinafter provided in this part, no benefits paid under the Railroad Retirement Act are assignable or subject to any tax or to garnishment, attachment, or other legal process (including any order issued by any court in connection with a bankruptcy proceeding), nor shall any payment be anticipated.

§ 243.2 Legal process for the enforcement of child support and alimony obligations.

Benefits paid by the Board are subject to legal process brought for the enforcement of legal obligations to provide child support or to make alimony payments, as provided in Part 350 of these regulations.

§ 243.3 Payments pursuant to court decree or court-approved property settlement.

Certain annuity components are subject to division pursuant to a court decree or to a court-approved property settlement incident to any such decree, as provided in Part 295 of these regulations.

§ 243.4 Taxation of benefits.

(a) Annuities paid by the Board are subject to Federal income tax in accord with the Internal Revenue Code. The annuity portion equivalent to the amount of the benefit that the person would have actually received under the Social Security Act if railroad service had been creditable under that Act is treated for Federal income tax purposes the same way as a social security benefit. Annuity payments computed under the social security minimum guaranty provision contained in section 3(f)(3) of the Railroad Retirement Act (see § 243.5 of this part) are also treated as social security benefits for Federal income tax purposes. Railroad retirement annuity amounts exceeding social security equivalent payments, vested dual benefits, and supplemental annuities are taxed in the same manner as benefits provided under an employer plan which meets the requirements of section 401(a) of the Internal Revenue Code.

(b) Pursuant to section 14 of the Railroad Retirement Act, no annuity or supplemental annuity, in whole or in part, is subject to any tax by any state or any political subdivision thereof.

§ 243.5 Assignment of a portion of an annuity paid under the social security minimum guaranty provision.

Section 3(f)(3) of the Railroad Retirement Act, the social security minimum guaranty provision, guarantees that an annuitant will receive, in combined benefits under the Railroad Retirement and Social Security Acts, not less than the amount which would have been paid to the employee and to members of his or her family under the Social Security Act if the employee's railroad service had been creditable under that Act. An annuitant whose annuity is computed under that provision may assign all or any portion of that annuity to any of the members of his or her family who are or who could be included in the computation of the annuity. Any assignment issued pursuant to this section will terminate:

(a) When revoked by the annuitant by notification to the Board, or

(b) When the annuity is no longer computed under the social security minimum guaranty provision.

§ 243.6 Waiver of annuity payments.

(a) Any individual who has been awarded an annuity under the Railroad Retirement Act shall have the right to waive such annuity in whole or in part by filing with the Board a statement to that effect signed by him or her.

(b) Such a waiver shall be effective as of the date specified in the waiver statement, except that if an annuity has been awarded, a waiver shall not be effective before the first day of the month after the month in which the waiver form is received at an office of the Board and shall not be effective as to any annuity payment which has already been made or which cannot be prevented.

(c) For the period during which a waiver is in effect, no payment of the amount of the annuity waived can ever be made to any person. A waiver of an anniity shall not, however, have any effect on the amount of a spouse's annuity otherwise payable or on a lump sum under section 6(c) of the Act otherwise due, nor shall it serve to make an individual eligible for a lump-sum death benefit under section 6(b) of the Act or any insurance benefit under the Social Security Act on the basis of the wages of the same deceased employee.

(d) A waiver once made shall continue in effect until the annuitant requests in writing that it be terminated.

PART 262—MISCELLANEOUS

2. The authority citation for Part 262 is revised to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 231n.

3. The table of contents for Title 20, Chapter II, Subchapter A, Part 262, is amended by removing "262.5 Exemption.", "262.6 Waiver; statutory provisions.", and "262.7 Waiver of annuity of pension payments."

4. Part 262 is amended by removing §§ 262.5, 262.6, and 262.7 thereof.

PART 350—GARNISHMENT OF BENEFITS PAID UNDER THE RAILROAD RETIREMENT ACT, THE RAILROAD UNEMPLOYMENT INSURANCE ACT AND UNDER ANY OTHER ACT ADMINISTERED BY THE BOARD

5. The authority citation for Part 350 continues to read as follows:

Authority: 15 U.S.C. 1673(b)(2); 42 U.S.C. 659, 661, and 662; and 45 U.S.C. 231f(b)(5) and 362(1).

§ 350.1 [Amended]

6. Section 350.1(c) is amended by adding "and § 295 of this chapter," after "section,";

§ 350.2 [Amended]

7. Section 350.2(c) is amended by revising the final two sentences to read as follows: "For purposes of this

subchapter, legal process additionally includes assignments in lieu of garnishment, but only where grounds for the issuance of legal process in the nature of garnishment exist. Such assignments are revocable."

Dated: June 7, 1988.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-13363 Filed 6-13-88; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-49-86]

Treatment of Related Person Factoring Income; Certain Investments in United States Property; and Stock Redemptions Through Related Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to the treatment of related person factoring income, as well as proposed changes to regulations relating to the determination of the amount of earnings of a controlled foreign corporation invested in United States property. Also included is a proposed regulation relating to redemptions of stock through the use of related corporations. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to the treatment of related person factoring income, investments in United States property and redemptions through the use of related corporations. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations under §§ 1.864-8T and 1.956-3T are proposed to be effective [date that is 30 days after publication of final regulations in the **Federal Register**] and are proposed to be applicable, as of their dates of transfer, with respect to accounts receivable and evidences of indebtedness transferred after March 1, 1984. The regulations under §§ 1.956-1T and 1.956-2T are proposed to be effective [date that is 30 days after publication of final regulations in the **Federal Register**] with respect to investments in U.S. property made on or after June 14, 1988. The regulations under § 1.304-4T are proposed to be effective [Date that is 30 days after publication of final regulations in the **Federal Register**] with respect to acquisitions of stock occurring on or after June 14, 1988.

Written comments and requests for a public hearing must be delivered or mailed by August 15, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-49-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Regarding §§ 1.864-8T and 1.956-3T contact Barbara Allen Felker of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL-49-86). Telephone (202) 634-5406 (not a toll-free call). Regarding §§ 1.304-4T, 1.956-1T and 1.956-2T, contact Riea M. Lainoff of the Office of the Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (INTL-49-86). Telephone (202) 556-6645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.864-8T and 1.956-3T to Part 1 of the Title 26 of the Code of Federal Regulations. These regulations implement sections 864(d) and 956(b)(3), which were added to the Internal Revenue Code of 1954 by section 123 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 644, 646) and amended by sections 1201(d)(4), 1221(a)(2), 1223(b)(1), 1275(c)(7) and 1810(c) of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2525, 2550, 2558, 2599, 2824). New §§ 1.956-1T and 1.956-2T amend §§ 1.956-1(b)(4), 1.956-1(e), and § 1.956-2(d)(2), respectively, under section 956 of the Internal Revenue Code of 1986. The temporary regulations published in the Rules and Regulations protion of this issue of the **Federal Register** also add new § 1.304-4T to Part 1 of Title 26 of the Code of Federal Regulations. The preamble to the temporary regulations explains these additions to the Income Tax Regulations.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal authors of these proposed regulations are Barbara Allen Felker, Riea M. Lainoff, Marnie J. Carro, and Ann Zukas of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.301-1 through 1.385-6 and 1.861-1 Through 1.997-1

Income taxes, Aliens, Corporations, Corporate distributions, Corporate adjustments, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Reorganizations, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

The temporary regulations, FR Doc. 88-13131 [T.D. 8209] published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under Title 26, Part 1, of the Code of Federal Regulations.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88-13132 Filed 6-13-88; 8:45 am]

BILLING CODE 4830-01-M

Notices

Federal Register
Vol. 53, No. 114
Tuesday, June 14, 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

Office of Advocacy and Enterprise; Citizens' Advisory Committee on Equal Opportunity; 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: Citizens' Advisory Committee on Equal Opportunity.

Date: July 24–26, Juneau, AK; July 27–30, Anchorage, AK. Place: Westmark Baranof, 127, N. Franklin Street, Juneau, AK. 99801; International Inn, 3333 West International Airport Road, Anchorage, AK. 99502.

Time: 8:30 a.m.–5:00 p.m. Purpose:

—Review aspects of the U.S. Department of Agriculture's policies, practices and procedures on Equal Opportunity;
—Recommend changes in Department rules, regulations, and orders to ensure USDA activities are free of discrimination;
—Advise the Secretary of the effectiveness of compliance program directives;

Additionally, the Committee will focus on:

—Title VI and Title VII programs within Farmers Home Administration and Soil Conservation Service;
—Managing diversity in the workforce within Forest Service;
—Problems peculiar to Eskimos, Americans Indians, indigenous groups and women relative to recruitment, employment, training and program delivery, and;
—Farming issues of Native Americans.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Naomi Churchill, Esq., Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Room 1226 South Building, Washington, DC 20250, (202) 447–5681.

Written statements may be submitted until July 19, 1988.

Naomi Churchill,
Associate Director Equal Opportunity.

[FR Doc. 88–13354 Filed 6–13–88; 8:45 am]
BILLING CODE 3410–94–M

Forest Service

East Fork/Penney Ridge Multi-Timber Sale Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for the development of a series of timber sales on the Yolla Bolla Ranger District, Shasta-Trinity National Forests, Trinity County, California. The agency invites written comments and suggestions on the scope on the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by September 15, 1988.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Peggy Fox, District Ranger, Yolla Bolla Ranger District, Platina, California 96076.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Kenneth Smith, Team Leader, Yolla Bolla Ranger District, Platina, California 96076, phone (916) 352–4221.

SUPPLEMENTARY INFORMATION: This project proposes the development of currently unroaded areas which were identified during the RARE II (Roadless Area Review and Evaluation) analysis as East Fork and Penney Ridge. These areas were released for miltiple-use management in the 1984 California Wilderness Act.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans. The analysis will set standards and guidelines for management activities, and provide a schedule of these activities. Alternative locations of timber harvest units and roads will be identified and evaluated.

A ranger of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will be No Action. Other alternatives will consider various levels, types, and locations of harvest and alternative locations and methods of access.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, Redding, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS).

The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploration of additional alternatives.
5. Identification of potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and task assignments.

The District Ranger will hold a public scoping meeting at the Yolla Bolla Ranger District Office, Platina, California, at 7:00 p.m., Wednesday, July 27, 1988.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for

public review by November 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the EPA notice of availability appears in the Federal Register. It is very important that those interested in the management of the above described areas participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is maaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S.; 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in prêparing the final environmental impact statement. The final EIS is scheduled to be completed by May 1990. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to the administrative review process.

Date: June 6, 1988.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 88-13405 Filed 6-13-88; 8:45 am]

BILLING CODE 3410-11-M

IMISSION ON CIVIL RIGHTS

ama Advisory Committee; Agenda Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 6:00 p.m. on June 23, 1988, at the Civic Center, 300 Bibb Street, Montgomery, Alabama. The purpose of the meeting is to receive information on policies and practices of the Alabama State government in the recruitment, hiring and utilization of minorities and women.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Rodney Max, or Melvin Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the schedule date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-13355 Filed 6-13-88; 8:45 am]

BILLING CODE 6335-01-M

Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on June 30, 1988, at the Holiday Inn Downtown, Atlanta, Georgia 30326. The purpose of the meeting is to discuss the status of "Proceedings on Bigotry and Violence in Georgia" and plans for a Statewide conferecne on civil rights. Staff will give an administrative orientation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rose Strong or John I. Binkley, Director of the Eastern Regional Division at (202) 523-5264, (TTD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 2, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88-13356 Filed 6-13-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-357-801]

Postponement of Preliminary Countervailing Duty Determination: Certain Welded Carbon Steel Pipe and Tube Products From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the Subcommittee on Standard Pipe, the Subcommittee on Line Pipe, the Subcommittee on Structural Tubing and the Subcommittee on Mechanical Tubing of the Committee on Pipe and Tube Imports and the individual producer members of each subcommittee, the Department of Commerce (the Department) is postponing its preliminary determination in the countervailing duty investigations of certain welded carbon steel pipe and tube products from Argentina. The preliminary determination will be made on or before July 7, 1988.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Vincent P. Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5414.

SUPPLEMENTARY INFORMATION: On April 19, 1988, the Department initiated countervailing duty investigations on certain welded carbon steel pipe and tube products from Argentina. In our notice of initiation we stated that we would issue our preliminary determination on or before June 23, 1988 (53 FR 13431-13432, April 25, 1988).

On May 31, 1988, the petitioners filed a request that the preliminary determination in this investigation be postponed for 14 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that a preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioners in these investigations, the Department is postponing its preliminary determination until no later than July 7, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

June 3, 1988.

[FR Doc. 88-13396 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review

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

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on live swine from Canada. We preliminarily determine the total bounty or grant to be *de minimis* for slaughter sows and boars and Can$0.022/lb. for all other live swine during the period April 3, 1985 through March 31, 1986. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: .

Background

On August 15, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32880) a countervailing duty order on live swine from Canada. On August 27, 1986, the Government of Canada requested in accordance with 19 CFR 355.10 an administrative review of the order. We published the initiation on September 16, 1986 (51 FR 32817). The Department has now conducted that administrative review in accordance with section 751(a) of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS 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 Canadian live swine. Such merchandise is currently classifiable under TSUSA item 100.8500. These products are currently classifiable under HS item numbers 0103.91.00 and 0103.92.00. We invite comments from all interested parties on these HS classifications.

The review covers the period April 3, 1985 through March 31, 1986, and 28 programs.

P. Quintaine & Sons Ltd. of Brandon, Manitoba, and exporter of sows and boars, has requested that: (1) The scope of the countervailing duty order be changed to exclude slaughter sows and boars, (2) Quintaine and Sons Ltd. be excluded from the order, or (3) slaughter sows and boars be given a separate rate of zero. Quintaine contends that sows and boars are generally used for breeding and that they are used as slaughter hogs only when they can on longer be used effectively as breeding stock. Quintaine also contends that slaughter sows and boars have never received any benefits from the programs found countervailable by the Department in the final affirmative countervailing duty determination in this case (50 FR 25097, June 17, 1985).

We have considered Quintaine's arguments and come to the following conclusions: First, sows and boars are clearly within the scope of the order. The order covers all live swine except breeding swine. As stated in the TSUSA, such breeding animals must be "certified to the collector of customs by the Department of Agriculture as being pure bred of a recognized breed and duty registered in a book of record recognized by the Secretary of Agriculture for that breed, imported . . . specially for breeding purposes." During the period of review, Quintaine's animals were not certified to Customs as breeding animals. Rather, they entered the United States as slaughter animals. Since the petition and the preliminary and final determinations of both the Department and the International Trade Commission have consistently included all live swine, except breeding animals, within the same class or kind of merchandise covered by this order, we cannot now exclude the slaughter sows and boars.

Second, we cannot exclude a company from a countervailing duty order once the order is issued. Requests for company exclusions must be submitted within 30 days of publication of a notice to initiate an investigation, and the decision as to the exclusion must be made in the Department's final determination (19 CFR 355.38).

Finally, the Department has considerable discretion in determining whether to differentiate among products within a class or kind of merchandise. We only differentiate among products in exceptional circumstances. Among the criteria we consider are the extent to which the product qualifies as a distinct product subclass within the applicable class or kind of merchandise and the extent to which the subsidy on the product differs from the subsidy on the other products within the same class or kind of merchandise.

To determine the existence of a product subclass, we compare the specific product to the overall class or kind of merchandise. This comparison is made according to the following four criteria: (1) The general physical characteristics of the product; (2) the expectations of the ultimate purchaser; (3) the ultimate use of the product in question; and (4) the channels of trade in which the product moves. The differences between the products do not need to be so great as to distinguish between a separate class or kind of merchandise. However, the differences between the products must be considerable. Slaughter sows and boars are within the same class or kind of

merchandise as other live swine currently provided for under TSUSA item 100.8500. Slaughter sows and boars, however, can be distinguished from other live swine generally as follows:

Most live swine are bred to be slaughtered; sows and boars are primarily used for breeding. Slaughter hogs (sometimes called "bacon" hogs), in general, are slaughtered when their carcasses yield an acceptable product value; sows and boars are slaughtered only when they can no longer be used effectively as breeding animals. Slaughter hogs, in general, are slaughtered when they weigh between 170 and 240 pounds; sows weigh, on average, 450 pounds when slaughtered, boars, as much as 700 pounds. Slaughter hogs are slaughtered when they are about six months old; sows and boars are two to five years old when they are slaughtered. Slaughter hogs are graded by an index table developed to differentiate between the yield levels in hog carcasses. The value of a carcass is primarily determined by two factors, weight and the maximum backfat thickness at the loin. Slaughter sows and boars are not graded because they are too heavy and have an unacceptably high fat content. In general, about 35 percent of a slaughter hog is sold as prime cuts while the remaining 65 percent is cured for bacon and ham. Slaughter sows and boars are ground up and used exclusively in processed meat products, such as sausage and lunchmeat.

Because of the different expectations of the ultimate purchaser for slaughter sows and boars as opposed to other live swine, and the different ultimate use of the various products in question, the plant facilities used to process the slaughter sows and boars differ substantially from the facilities used to process live swine. For example, the facilities for slaughter sows and boars must be able to grind meat for use in processed meat products. The facilities for other live swine must be able to cut fresh meat. Slaughter sows and boars are marketed separately from live swine, and they command different prices. Finally, and most importantly, it is impossible to convert a sow or boar designated for slaughter into what is generally considered a "bacon" slaughter hog. Therefore, the distinction between slaughter sows and boars and other live swine cannot be used as a means to circumvent the countervailing duty order.

Based on the considerable differences between slaughter sows and boars and other live swine, we preliminarily determine that slaughter sows and boars are a distinct subclass or kind of merchandise within the class or kind of merchandise covered by this order.

Given this conclusion, we reviewed the programs preliminarily found to be countervailable in this review in order to determine whether there are sufficient grounds for setting a separate rate. Sows and boars are not eligible for any of the federal or provincial stabilization programs, expect Quebec's. We preliminarily find the net subsidy on sows and boars from all other programs to be *de minimis*. Therefore, we preliminarily determine that it is appropriate to set a separate rate of zero for sows and boars.

Analysis of Programs

(1) Agricultural Stabilization Act (ASA)

(a) ASA Stabilization Payments

The Agricultural Stabilization Act (the "Act") of 1957–58 was passed by the federal government to provide for the price stabilization of certain agricultural commodities. On June 27, 1985, the Act was amended by Bill C–25, which changed several aspects of the program. Four groups of commodities are explicitly provided for, or "named," in the Act: cattle, hogs, lambs and wool (previously this group included cattle, hogs, and sheep); industrial milk and industrial cream; corn and soybeans; and spring wheat, winter wheat, oats and barley (previously this group did not include spring wheat or winter wheat). Other natural or processed products of agriculture may be designated by the Governor in Council as agricultural commodities for purposes of this Act. "Named" and "designated" agricultural commodities are now eligible for stabilization payments at any time. Previously, coverage was limited to those periods in which the market situation was different in one region of Canada from the rest of Canada, as determined by the Governor in Council.

Programs of the ASA are administered by the Agricultural Stabilization Board (the "Board"), the members of which are appointed by the Governor in Council. The Board calculates the stabilization payments for both named and designated products in the following manner: (1) It establishes a "base price," which is the average price of the commodity in the five-year period immediately preceding the period in review; (2) it calculates a "prescribed price" by taking a minimum of 90 percent of the base price and adjusting it by a factor reflecting differences in production costs between the five-year base period and the current review period (previously, the 90-percent minimum applied only to named commodities; it now applies to both named and designated commodities); and (3) it compares the prescribed price to the "average market return price," which is the published average sales price of the commodity in the review period. The difference between the prescribed price and the average market return price is the amount of the stabilization payment.

Stabilization payments are now calculated quarterly instead of annually. Base and prescribed prices are based on the quarterly periods in the previous five years that correspond to the quarterly review period. For example, if the Board is calculating a stabilization payment for the second quarter of 1985, it uses the average prices of the second quarters of the previous five years to calculate the base and prescribed prices.

Despite there no longer being different methodologies for calculating the rates of support for named and designated commodities, we preliminarily determine that the ASA program continues to be countervailable because it is provided to specific industries. Several major agricultural commodities, such as most wheat, dairy products, and poultry, are still ineligible for payments. Furthermore, the distinction between named and designated products still exists, and hogs are guaranteed eligibility because they are on the named product list.

In accordance with a Ministry of Justice opinion, no ASA stabilization payments are made from September 1984 until Bill C–25 was enacted (June 27, 1985). During the time that no payments were made from ASA, the provinces made payments under their own programs. In November 1985, the Board announced it would make payments retroactively for the first two quarters of fiscal year 1985–86 (April 1, 1985 to March 31, 1986). To avoid double payment, the Board reimbursed provincial governments for stabilization payments already made to producers by the provincial governments. The Board also made payments directly to producers in cases where producers' sales exceeded the maximum number of swine allowed under provincial stabilization programs or where producers were not members of a provincial marketing board.

In fiscal year 1985–86, because the average market price of hogs fell short of the prescribed price in the first two quarters, the Board made delayed payments of Can $1.58 per hunderdweight ("cwt") for the first quarter and Can $3.54 per cwt for the second quarter. No payments on hogs were made for the last two quarters of

fiscal year 1985–86 because the average market price of hogs did not fall below the prescribed price during those periods. As before, the payments were made only on hogs indexing 80 or above. By definition, this exludes sows and boars, which are not indexed. Thus, no benefit accrued to sows and boars from this program during the review period.

According to Statistics Canada, 26 percent of total Canadian production of live swine was exported (to all markets) during the period of review. The Board reduced all payments on hogs (both to producers and provincial governments) during the period of review by 26 percent. Payments on other commodities were not reduced. The Canadian government argues that this 26-percent reduction eliminates any potential countervailable benefit from this program on exported swine.

We have considered the Canadian Government's arguments and preliminarily determine that this program continues to confer a benefits on swine exported to the United States. All swine marketed in Canada were eligible to receive ASA payments, regardless of whether the swine were exported or sold in the domestic market. That the payment rate was lowered by 26 percent to account for total exports does not change that fact that each hog marketed in Canada was eligible to receive a payment, albiet at a lower rate.

The federal reduction only affects Board payments made directly to producers. We have estimated that only 16 percent of Board payments was made directly to producers during the period of review. The rest was paid to provincial governments. During the period of review, the provinces continued to calculate their stabilization payments on 100 percent of sales—with no reduction for exports.

Furthermore, it is impossible to tie the federal stabilization payments to specific export or demestic sales by most swine producers. Producers who sell through marketing boards are unaware of the ultimate destination of their merchandise. According to Statistics Canada, approximately 63 percent of all hogs was sold through marketing boards during the period of review. Therefore, most stabilization payments for hogs cannot be tied to specific sales.

Finally, even for the remaining 37 percent that was sold directly by the producers during the period review, in which case the producer was aware of the ultimate destination of his hogs, the individual producer has no control over the rate of the stabilization payment made directly to him by the Board. The producer did not receive a higher payment rate from the Board if he sold more in the domestic market. From the individual producer's point of view, he simply received a lower stabilization payment on his total sales.

For these reasons, despite the 26-percent reduction, we consider the ASA payments to be a domestic subsidy benefiting all sales, not just domestic sales.

To calculate the benefit, we divided the total ASA payments made directly to individual producers in each province by the total live weight of swine (minus sows and boars) produced in that province during the period of review. The ASA payments made to the provincial governments are part of the funding for the provincial stabilization programs. ASA payments are made on a per cwt basis. We used 220 pounds as the average weight of slaughter hogs (excluding sows and boars) in Canada. We confirmed this figure with both Agriculture Canada and the United States Department of Agriculture. We weight-averaged the resulting benefits by each province's proportion of total Canadian exports of this merchandise (minus sows and boars) to the United States during the review period. On this basis, we preliminarily determine the benefit to be zero for sows and boards and Can$0.00075/lb. for all other swine during the period of review.

(b) National Tripartite Red Meat Stabilization Program Bill C–25 amended the ASA to authorize the Minister of Agriculture, with the approval of the Governor in Council (Order-in-Council PC 1985–3343), to enter into agreements with the provinces and/or producers to provide price stabilization schemes for any natural or processed product of agriculture. Previously the ASA had been purely a federal program. The Minister may enter into these "Tripartite Agreements" only after he determines that they will not give a financial advantage to some producers in the production or marketing of the product not enjoyed by other producers of the same product in Canada and that the agreements will not provide an incentive to over-produce.

All the provinces signed agreements on swine. The agreements were implemented on January 1, 1986, except for Manitoba's agreement, which was implemented on July 1, 1986. Under the terms of the Tripartite Agreements on Hogs, the provinces may not offer separate stabilization plans or other *ad hoc* assistance for hogs, nor may the federal government offer compensation to swine producers in a province not a party to an agreement. The Tripartite Scheme provides for a five-year phase-in period to adjust for differences between the Tripartite Scheme and the provincial programs. Existing provincial stabilization plans are to be completely phased out by 1990. During the period of review, all of the provincial stabilization programs remained in effect, and they all conferred benefits.

"Hogs" under the Tripartite Agreements must index 80 or above (thus, sows and boars are excluded by definition). The agreements specify that: all Canadian producers of hogs will receive the same level of support per unit or production; the schemes will be funded equally by the Government of Canada, the provinces and the hog producers; and participation will be voluntary. Payments will cover only the proportion of production used for domestic consumption, and the agreements must specify the method of determining that proportion.

During the period of review, no payments for hogs were made under the Tripartite Agreements. On January 15, 1988, the Canadian Government informed the Department that no payments have been made under the National Tripartite Stabilization Program for Hogs through December 31, 1987. Since all the provinces have signed Tripartite Agreements which have replaced the ASA stabilization program and the provincial stabilization programs, the Canadian government requests that the Department consider the lack of payment in 1987 in setting the cash deposit rates for the Tripartite programs, the ASA hog stabilization program, and the provincial stabilization programs.

We have considered the Canadian government's request. In setting cash deposit rates of estimated countervailing duties, we attempt to establish a rate which most accurately reflects the level of subsidization for entries subject to the estimated rate. Thus, it is our practice to take into account program-wide changes which occur prior to our preliminary notice.

In this case, a program-wide change has occurred. Nevertheless, we have no indication of the benefits that will result from this change because payments will fluctuate depending on swine prices and costs of production. The fact that no payments were made under the ASA or Tripartite Agreements through December 31, 1987, does not mean that payments will not be made on future shipments. Lacking specific data on how the new program will raise or lower the level of benefits now conferred under the ASA and provincial programs, we have no basis for establishing a deposit rate other than that derived from the

programs which are being replaced by the Tripartite Agreements. Therefore, we preliminarily determine that the cash deposit rates for the ASA hog stabilization program and the provincial hog stabilization programs are the review period assessment rates determined for those programs.

(2) Record of Performance Program

The Canadian Swine Record of Performance Program (ROP) is a joint federal and provincial herd testing program for the purpose of improving breeding stock and developing high quality pork at minimal production costs. Purebred sows and boars are tested for backfat, growth rate, feed conversion and breeding performance. The program identifies and ranks genetically superior animals whose progeny cold potentially command increased market prices. Similar performance testing programs exist for all domesticated animals and any animals used in products sold for consumption, including beef and dairy cattle, sheep, poultry, and honey bees.

In our final determination (50 FR 25097), we found this program countervailable because it was limited to a specific group of enterprises or industries. In this review, we have obtained additional information regarding the testing conditions, the applicability of the research, and the availability of the research results.

Agriculture Canada publishes is list of ROP programs in progress, as well as detailed testing requirements regarding housing, hygiene, management, and herd health control. It also publishes detailed specifications for feed ration ingredients and carcass adjustments for weight and sex. Therefore, the test conditions and specifications can be duplicated by anyone.

The results of the tests are publicly available. The provincial governments publish the test results quarterly for producers and annually for the general public. In addition, the provincial governments send biweekly updates to those on their mailing lists. Any person, of Canadian or foreign citizenship, may be put on the mailing lists.

Although the Canadian federal and provincial governments bear most of the cost of this program, producers also contribute to the funding of the research projects. The "cost recovery fees" collected from producers cover the cost of testing, the cost of feed used during testing, and the cost of selling boars after the testing is completed. The cost recovery fee ranged from Can $10 to $50 per head during the period of review.

The International Trade Commission, in its "Conditions of Competition Between the U.S. and Canadian Live Swine and Pork Industries; Report to the United States Senate Committee on Finance on Investigation No. 332–186" (November 1984), page xiv, stated:

> The relatively free flow of information between the United States and Canadian farmers and researchers and the free flow of swine production supplies and equipment tend to result in rapid dispersal of technological innovations.

Further, on page 59:

> Because of the free flow of information between the United States and Canada, technological innovations in the live swine and meat industries in one country are usually readily available in the other country. Information is exchanged informally between U.S. and Canadian farmers through trade publications, scholarly publications and scientific research reports, and conferences . . . Also, animals for breeding purposes are exchanged between the United States and Canada, making available a common genetic pool.

Conditions for growing hogs are similar in the United States and Canada. The genetically superior sows and boars resulting from the ROP program are used in both countries, as well as in other countries. Therefore, the ROP research has broad applicability in the hog industry both inside and outside Canada.

For these reasons, we preliminarily find that this program provides no special benefit to the Canadian swine industry because the results of the research are publicly available to anyone interested, including hog producers in the United States, and because the research results have broad applicability to hog producers the world over, including those in the United States. We therefore preliminarily determine that this program is not countervailable.

(3) Canada-Ontario Stabilization Plan for Hog Producers 1985

The Canada-Ontario Stabilization Plan for Hog Producers, established under section 5 of the Ministry of Agriculture and Food Act, was an interim program set up to provide price stabilization assistance to hog producers during the period April 1, 1985 to September 30, 1985, pending the implementation of the National Tripartite Scheme. This was the only interim stabilization program in effect during the period of review. Because this program provided payments that were limited to a specific industry, we preliminarily determine that it is countervailable.

Funding for the program came from the federal Agricultural Stabilization Board, the Ontario government, and producer premiums of Can$2.80 per head. Payments, which were calculated according to ASA methodology, were made in the two quarters covered by this program. However, unlike the federal ASA payments, no reduction was made to account for exports. Payments were made on hogs indexing 80 or higher to farrow-to-finish producers and finisher producers and on weaner pigs to sow weaner producers. No payments were made on sows and boars.

To calculate the benefit from this program, we divided the gross payments, net of producer contributions, by the total live weight of swine (minus sows and boars) produced in Ontario during the period of review. We then weight-averaged Ontario's benefit by its share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0124/lb. for all other swine during the period of review.

(4) Alberta Red Meat Interim Insurance Program

The Alberta Red Meat Interim Insurance Program operated in a manner similar to the Canada-Ontario Stabilization Plan for Hogs, except that payments were calculated as specified in the proposed National Tripartite Scheme. Payments were made on cattle and on hogs indexing 80 or above (which do not include sows and boars). Cattle and hogs were the only commodities covered by an interim stabilization program in Alberta during the period of review. Because this program provided payments that were limited to specific industries, we preliminarily determine that it is countervailable.

To calculate the benefit from this program, we divided the gross payments, net of producer contributions, by the total live weight of swine (minus sows and boars) produced in Alberta during the period of review. We then weight-averaged Alberta's benefit by its share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0032/lb. for all other swine during the period of review.

(5) Saskatchewan Hog Assured Returns Program (SHARP)

SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act. It provides stabilization payments to hog

producers in Saskatchewan at times when market prices fall below certain production costs. The program, which is scheduled to be discontinued by 1991, is administered by the Saskatchewan Pork Producers' Marketing Board on behalf of the provincial Department of Agriculture. Participation is voluntary and is open to all hog producers in the province. Coverage is limited to 1,500 hogs per producer each calendar quarter. Under the Saskatchewan Agricultural Returns Act, the provincial government may establish a stabilization plan for any agricultural commodity. However, in practice, only hogs and beef have such plans. Because this program provides payments to specific industries, we preliminarily determine that it is countervailable.

The program is funded by levies on the sale of hogs from participating producers and by matching amounts from the provincial government. The levies are charged regardless of whether the fund is in a surplus or deficit position. Producer levies range from 1.5 to 4.5 percent of market returns on the sale of hogs covered by the program. Whenever the balance in the SHARP account is insufficient to make payments to participants, the provincial government lends the needed funds to the program. The principal and interest on these loans are repaid by the Board using the producer and provincial contributions.

The stabilization price under this program is the total of cash production costs plus 75 percent of noncash costs. This price is determined each calendar quarter. Stabilization payments are made at the end of each quarter to each participating producer whose average price for hogs marketed in that quarter is less than the stabilization price. During the period of review, payments were made in all four quarters.

In the final determination (50 FR 25105), we considered the benefit from this program to be the provincial government's contribution to the fund in fiscal year 1984. We treated the provincial government's contribution as a grant. We have reconsidered our calculation methodology. The program is funded by equal contributions from the producers and the provincial government. In theory, producer contributions over time should equal half of the total payments received by producers from the fund. When market prices are significantly lower than stabilization prices for several years in a row, as was the case during the years up to and including the review period, the fund must make payments that are much greater than the accumulated contributions of the producers and the provincial government. In such cases, the provincial government makes up the deficit in the form of a loan. Because all producer contributions are matched by the provincial government, the actual loan liability of the producers is equal to half of the net deficit of the fund. However, there is no benefit from this loan liability because the fund pays interest, at market rates, on its net deficit. Therefore, there is only a grant benefit to the producers, which is equal to half of the total stabilization payments made during the review period.

To calculate the benefit, we divided half of the total stabilization payments received by the total live weight of swine (minus sows and boars) produced in Saskatchewan during the period of review. We then weight-averaged Saskatchewan's share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0024/lb. for all other swine during the period of review.

(6) British Columbia Farm Income Insurance Plan (FIP)

The FIP was established in 1979 in accordance with the Farm Income Insurance Act of 1973 ("the Farm Act") in order to assure income for farmers when commodity market prices fluctuate below basic costs of production. The criteria for eligibility in the FIP programs, which are described in Schedule A of the Farm Act, are the same for all farmers who produce certain commodities. Schedule B of the Farm Act contains the guidelines for the individual commodities receiving benefits. During the period of review, stabilization plans were in effect for beef, blueberries, greenhouse tomatoes and cucumbers, potatoes, processing vegetables, raspberries, sheep, strawberries, swine and tree fruits.

Schedule B4 contains the guidelines for swine producers. The program is administered by the provincial Ministry of Agriculture and Food and the British Columbia Federation of Agriculture. In addition, the British Columbia Pork Producers' Association has a role in the Swine Producers' Farm Income Plan (the title of Schedule B4) in that it verifies claims, collects producer premiums, and consults with the government on matters such as premium levels and the cost of production formula. The program is funded by premiums that are paid in equal proportions by producers and by the provincial government. Producers pay premiums in all quarters regardless of market results.

Participating producers receive FIP payments in calendar quarters during which costs of production exceed market returns. The basic costs of production and market returns are calculated quarterly according to a cost of production model described in the Act. The same per unit cost of production model is used for all products receiving benefits. FIP payments are calculated quarterly based on the difference between costs of production and market returns. The Farm Act requires that ASA payments to individual producers be added to the market return price. Payments were made to hog producers in all quarters of the review period.

Because several major agricultural commodities, such as wheat, dairy products, and poultry, are excluded from the FIP, we preliminarily determine that this program provided payments that were limited to specific industries and is therefore countervailable. To calculate the benefit, we followed the same methodology as described for the Saskatchewan SHARP program (see section 5). On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0003/lb. for all other swine during the period of review.

(7) Manitoba Hog Income Stabilization Plan (HISP)

The HISP was created in 1983 pursuant to the Farm Income Assurance Plans Act to provide income support payments to hog producers in Manitoba. The program was terminated on June 28, 1986. It was administered by the provincial Ministry of Agriculture and the Manitoba Hog Producers' Marketing Board. It was funded by premiums from participating producers (five-sevenths) and from the Government of Manitoba (two-sevenths). Whenever the balance in the HISP account is insufficient to make payments to participants, the provincial government lends the needed funds to the program. The principal and interest on these loans are repaid by the Board using the producer and provincial contributions.

Participation in the program was voluntary, and coverage was limited to a maximum of 1,250 hogs per quarter. Only indexed hogs were eligible for beneifts. Sows and boars were not eligible for benefits. Participating producers received payments at the end of each quarter in which the market price for hogs fell below an established price support level. The price support level was 87 percent of the cost of production model, which was revised by the Ministry of Agriculture each quarter.

Although the enabling legislation for this program permitted the Minister to establish income assurance plans for many natural products, there were only two commodites for which plans were in operation during the period of review. Because payments were limited to these two products, we preliminarily determine that this program was provided to a specific group of industries and is therefore countervailable.

To calculate the benefit, we followed the same methodology as described for the Saskatchewan SHARP program (see section 5). On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.0003/lb. for all other swine during the period of review.

(8) New Brunswick Hog Price Stabilization Plan (NBHPSP)

The NBHPSP was established in 1974 to assure hog producers greater income stability during periods of both high and low market prices. The plan is administered jointly by the New Brunswick Department of Agriculture Hog Stabilization Board and the New Brunswick Hog Marketing Board. Participation in the plan is voluntary. Producers who sell through the Marketing Board are eligible to receive payments on up to 7,500 hogs per year. Hogs indexing 100 or above (which do not include sows and boars) are the only agricultural commodity that received stabilization payments in New Brunswick during the period of review. Because this program provided payments that were limited to a specific industry, we preliminarily determine that it is contervailable.

The Board establishes a base price that is based on production costs. When the market price exceeds the base price by Can$5.00, farmers pay into the stabilization fund. Ninety-five percent of this amount is considered to be the farmer's equity in the program. When the average weekly market price falls below the base price, farmers receive payments to make up the difference between the two prices. Half of the payment is provided by the Government of New Brunswick as an outright grant to the farmer. The other half is drawn from the farmer's equity in the fund. When the farmer has exhausted his equity in the fund, the province assumes the producer's portion of the payment by providing an interest-free loan. This loan is only paid back when the fund is in a surplus position. In fiscal year 1985-86 the base price exceeded the market price throughout the year, and producers received both loan and grant payments from the program in all four quarters.

All outstanding interest-free loans as of April 1, 1985 were subsumed under the New Brunswick Swine Industry Financial Restructuring Program (see section 16). The benefit from the interest-free loans loans provided in fiscal year 1985–86 will accure in fiscal year 1986–87. Therefore, only the grant portion of this program provided a benefit during the review period.

The calculate the benefit, we allocated half the total stabilization payments received during the review period over the total live weight of swine produced in New Brunswick during the review period. We then weight-averaged the result by New Brunswick's share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.000002/lb. for all other swine during the period of review.

(9) Newfoundland Hog Price Support Program

In April 1985, the Executive Council of Newfoundland authorized the Newfoundland Farm Products Corporation, which acts on behalf of the provincial government, to pay 85 cents per pound for all hogs indexing 80 or above (which do not include sows and boars) that were purchased by the Corporation. This price was paid regardless of the prevailing market price. The price was based on monthly determinations of input costs of production. During the period of review, costs were approximately 91 cents per pound, and the market price averaged 70 cents per pound. Producers do not contribute to this program. Hogs are the only agricultural commodity that received stabilization payments in Newfoundland during the period of review. Because the program provided payments that were limited to a specific industry, we preliminarly determine that it is countervailable.

Although Newfoundland did not export hogs to the United States directly during the review period, we verified that Newfoundland exported hogs to Ontario that were later exported to the United States during the review period. These Newfoundland hogs did not qualify for stabilization payments from the Ontario provincial government but did form the basis for stabilization payments from the Newfoundland provincial government. Therefore, to calculate the benefits, we divided the gross payments on swine by the total live weight of swine (minus sows and boars) produced in Newfoundland during the period of review. We than weight-averaged the result by Newfoundland's share (based on its exports through Ontario) of total Canadian exports of this merchandise (minus sows and boars) to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be zero for sows and boars and Can$0.00002/lb. for all other swine.

(10) Nova Scotia Pork Price Stabilization Program (NSPPSP)

Pursuant to the Nova Scotia Natural Products Act, the NSPPSP was administered under the Pork Producers Marketing Plan of August 9, 1983. The program was terminated on September 30, 1987. The purpose of the program was to assure price stability for hogs by compensating farmers for fluctuations in hog prices and by assuring that producers consistently recover direct operating costs. Participation was open to all hog producers who sold through the Nova Scotia Pork Price Stabilization Board. Maximum eligibility was established annually according to the producers' current production levels. Indexed hogs (not sows and boars) were the only agricultural commodity that received stabilization payments during the period of review. Because the stabilization payments were limited to a specific industry, we preliminarily find them to be countervailable.

The NSPPSP was funded by producer and provincial government contributions. Each quarter, the Board set and reviewed the base price to reflect current, direct, out-of-pocket operating costs. During periods of high prices, producers built equity in the fund with their contributions. When the market price fell below the stabilization price, the producers received a deficiency payment, which equaled the difference between the two prices. Half of the payment was contributed by the provincial government. The other half was drawn from the producer's equity in the fund. When the producer's equity was exhausted, the provincial government assumed the producer's portion of the stabilization payment in the form of an interest-free loan. Because market prices did not exceed the base prices during the period of review, payments were made in all four quarters of the review period. During the period of review, the producers did not contribute to the fund. In addition, because of an extended period of low market returns with no support payments, a one-time supplementary payment of Can$2 per cwt was given to producers during the period of review.

On September 20, 1985, the Government of Nova Scotia amended

this program by eliminating the interest-free loan element. The total amount of the stabilization payment is now a grant only. However, producers continue to be liable for interest-free loans provided before fiscal year 1985–86. Therefore, the benefit during the review period consists of the total stabilization payments received in the review period, which are grants, plus the interest on the outstanding loan balance as of the beginning of fiscal year 1985–86. We do not know the outstanding loan balance as of the beginning of fiscal year 1985–86. As the best information available, we have assumed that the outstanding loan balance is equal to half the amount of the total stabilization payments made during the review period.

To calculate the benefit, we considered the total amount of the stabilization payments received in the review period as a grant. We treated the outstanding loan balance as a one-year interest-free loan. We took the difference between the zero interest rate charged on these loans and the national average short-term commercial rate for comparable agricultural loans and multiplied this interest differential by the outstanding loan balance. We allocated the grant and loan benefits over the toal live weight of swine produced in Nova Scotia during the review period. We then weight-averaged the result by Nova Scotia's share of total Canadian exports of this merchandise (minus sows and boars) to the United States. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.000002/lb. for all other swine during the period of review.

(11) Prince Edward Island (PEI) Price Stabilization Program

In accordance with the PEI Natural Products Marketing Act, the PEI Hog Commodity Marketing Board established the PEI Price Stabilization Program in 1974. The purpose of the program is to provide income stability to hog producers. The Stabilization Board and the provincial lending authorities meet quarterly to determine the level of support prices. Support levels are set at 95 percent of the cost of production. If the weekly market price of hogs exceeds the support price by Can$3.00, producers contribute to the fund. If the weekly market price falls below the support price plus Can$3.00, the producers do not contribute to the fund. Whenever the weekly price of hogs is below the support price, the PEI Hog Commodity Board makes stabilization payments from the fund of one-half the difference between the two prices. Half the payment is contributed by the provincial government, and the other half is drawn from the producers' equity in the fund. In the event that producers' equity in the fund is exhausted, the provincial government assumes the producers' portion of the stabilization payment in the form of an interest-free loan, which is repaid when the fund is in a surplus position. During the period of review, the producers did not contribute to the fund.

Payments are made only on hogs indexing between 67 and 114 (not sows and boars). Participation in the program is voluntary, and there are no minimum production requirements. However, producers are only eligible to receive stabilization payments on the number of hogs equal to the average number of hogs marketed in the previous quarter, up to a ceiling of 4,300 hogs per year.

The Natural Products Marketing Act established marketing boards for hogs, dairy products, tobacco, pedigreed seed, pulp trees, meat, eggs, and cole crops. However, hogs were the only agricultural commodity that received stabilization payments during the review period. Because this program provided payments that were limited to a specific industry, we preliminarily find it to be countervailable.

To calculate the benefit, we used the same methodology as described under the Nova Scotia stabilization program (see section 10). On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.00003/lb. for all other swine during the period of review.

(12) Quebec Farm Income Stabilization Insurance Programs (FISI)

In accordance with the "Loi sur l'assurance-stabilisation des revenus agricoles" (the FISI), the Government of Quebec established stabilization schemes for producers of various commodities, including feeder hogs and weaner pigs. The schemes are administered by the Regie des Assurances Agricoles du Quebec (the Regie), a crown corporation. The purpose of the schemes is to guarantee a positive net annual income to participants whose income is lower than the stabilized net annual income. The stabilized net annual income is calculated according to a cost of production model that includes an adjustment for the difference between the average wage of farm workers and the average wage of all other workers in Quebec. When the annual average income is lower than the stabilized net annual income, the Regie makes a payment to the participant at the end of the year.

The schemes are funded two-thirds by the provincial government and one-third by producer assessments. Participation in a stabilization scheme is voluntary. However, once a producer enrolls in a program, he must make a five-year commitment. The maximum number of feeder hogs eligible to be insured is 5,000, and a maximum of 400 sows may be insured. Whenever the balance in the FISI account is insufficient to make payments to participants, the provincial government lends the needed funds to the program. The principal and interest on these loans are repaid by the Regia using the producer and provincial contributions.

The Government of Quebec contends that, because this program covers 11 commodities that together comprise 71 percent of commercial farm production in the province of Quebec, the Department should not consider the program to be targeted to specific industries. We have considered the Government of Quebec's arguments. In calculating total commercial farm production, the Government of Quebec did not include milk products, poultry, and eggs, which made up almost half of Quebec's total agricultural production in 1985. By including these products, we find that the proportion of total farm production in Quebec covered by the FISI in 1985 was much less than that claimed by the Government of Quebec. Therefore, we are not persuaded by the Government of Quebec's arguments and preliminarily determine that this program continues to be countervailable.

To calculate the benefit, we followed the same methodology as described under the Saskatchewan SHARP program (see section 5).

On this basis, we preliminarily determine the benefit to be Can$0.0007/lb. for both sows and boars and all other swine.

(13) New Brunswick Swine Assistance Program

In 1981–82, the Farm Adjustment Board, which was created by the Farm Adjustment Act, provided interest subsidies on medium-term loans to hog producers in order to alleviate high interest charges on the producers' short-term debt for operating credit. The program was available only to hog producers who entered production or underwent expansion since 1979. The loans bore a five-year term and an effective interest rate of 10 percent. Because these loans were provided to a specific industry at noncommecial rates, we preliminarily determine that they are countervailable.

To calculate the benefit from this program, we divided the aggregate interest subsidy by the total live weight of swine produced in New Brunswick. We then weight-averaged the result by New Brunswick's share of total Canadian exports of swine to the United States in the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000003/lb. for both sows and boars and all other swine.

(14) New Brunswick Livestock Incentives Program

This program, which operates under the New Brunswick Livestock Incentives Act, OC 71–544, provides free loan guarantees to producers for purchasing breeder and feeder animals. In addition, a 20-percent refund of the principal is granted to farmers upon repayment of the breeder loans. We preliminarily determine that this program is countervailable because it is provided to a specific industry on terms inconsistent with commercial considerations. This program affects only sows and boars, which are old breeders.

To calculate the benefit, we multiplied the total amount of loans given to hog producers during the period of review by 0.75 percent, which was the average commercial cost of loan guarantees in New Brunswick during the period of the investigation (we used this as the best information available because the Government of New Brunswick did not report the average cost of commercial loan guarantees for the period of review). We allocated the result, plus the total amount of refunds, over the total live weight of sows and boars produced in New Brunswick during the period of review and then weight-averaged that amount by New Brunswick's share of total Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000535/lb. for sows and boars, and zero for all other swine.

(15) New Brunswick Hog Marketing Program

Under this program, the Livestock Branch of the New Brunswick Department of Agriculture paid the New Brunswick Hog Marketing Board 64 cents for each hog sold during the review period in order to equalize the cost of transporting hogs to slaughter facilities in all areas of the province.

Because this program is provided to a specific industry and constitutes government assumption of transportation costs, we preliminarily determine that it is countervailable. To calculate the benefit, we divided the total amount granted under this program by the total live weight of hogs produced in New Brunswick during the the period of review. We then weight-averaged the result by New Brunswick's share of total Canadian exports of swine to the United States in the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000019/lb. for both sows and boars and all other swine.

(16) New Brunswick Swine Industry Financial Restructuring Program

This program was created by the Farm Adjustment Act (OC 85–98) and became effective April 1, 1985. During the period of review, the Government of New Brunswick granted hog producers indebted to the Board a rebate of the interest on that portion of their total debt (the "residual debt") that, on March 31, 1984, exceeded the "standard debt load." The standard debt load is defined in the progarm regulations as the amount of debt which a swine producing unit can, in the opinion of the Board, reasonably be expected to service. The residual debt does not begin to accrue interest again until the debt load is no longer "excessive."

We preliminarily determine that this program is countervailable because it provides noncommercial loan terms to a specific industry. We consider both the interest rebate and the interest holiday to confer benefits. However, because the interest holiday did not begin until April 1, 1985, the benefit from this portion of the program does not occur until April 1, 1986, which is outside this revie period.

To calculate the benefit, we divided the amount of the rebate by the total live weight of hogs produced in New Brunswick during the period of review. We then weight-averaged the result by New Brunswick's share of total Canadian exports of swine to the United States in the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00000154/lb. for both sows and boars and all other swine.

(17) Nova Scotia (NS) Swine Herd Health Policy

The Nova Scotia Department of Agriculture and Marketing administers a herd health program whereby it reimburses veterinarians for housecalls made to breeders of commercial and purebred livestock. Because this program provides payments that are limited to specific industries, we preliminarily determine it is countervailable. This program affects only sows and boars, which are old breeders. To calculate the benefit, we divided the total reimbursements by the total live weight of sows and boars produced in Nova Scotia during the period of review. We then weight-averaged the result by Nova Scotia's share of total Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00000646/lb. for sows and boars, and zero for all other swine.

(18) Nova Scotia (NS) Transportation Assistance

The NS Department of Agriculture and Marketing provides grants to the NS Hog Marketing Board, which in turn distributes the funds to producers, in order to equalize the cost of transporting hogs to slaughter facilities. The funds are available only to farmers who produce and slaughter their hogs in Nova Scotia. Because this program does not affect live swine exported to the United States, we preliminarily determine that it is not countervailable.

(19) Ontario Farm Tax Reduction Program

This program provides eligible farmers with a rebate of 60 percent of municipal property taxes levied on farm properties the products of which have a gross value of Can$5,000 in eastern or northern Ontario, and Can$8,000 elsewhere in Ontario. There is no restriction on the types of farm products that are eligible, nor is it necessary that the products actually be sold. Any resident of Ontario may receive a rebate if he owns and pays taxes on eligible properties. Because the eligibility criteria vary depending on the region of Ontario in which the farm is located, we preliminarily determine that this program is countervailable. Since all farmers in Ontario whose gross output is at least Can$8,000 are eligible to receive payments under this program, this program is countervailable only to the extent that farmers in eastern and northern Ontario whose gross output is between Can$5,000 and Can$8,000 receive benefits.

In our final determination (50 FR 25105), we were not able to determine the portion of hog farmers in eastern and northern Ontario in the $5,000 to $8,000 gross output range. Therefore, we calculated the benefit by dividing the portion of the total payout under this program that represented the proportion of swine produced in all of Ontario to total agricultural production in all of Ontario. In this review, we have collected more accurate information. From the Canadian census, we found

that 16 percent of all Ontario farmers have sales valued between $5,000 and $9,999. Although the subsidy is paid to farmers in the $5,000 to $8,000 range, the census data is the only available breakdown of production according to output level. We have therefore used it as the best information otherwise available. We multiplied the 16 percent by the amount paid under this program to swine farmers in eastern and northern Ontario during the period of review. We allocated this amount over the total live weight of swine produced in Ontario during the period of review. We then weight-averaged the result by Ontario's share of total Canadian exports of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0,00003182/lb. for both sows and boars and all other swine.

(20) Ontario (Northern) Livestock Programs

The Northern Livestock Improvement Program reimburses farmers for up to 20 percent of the purchase cost of breeding stock, including dairy cows, heifers, beef bulls, rams, ewes, and boars. A maximum of Can$1,500 may be reimbursed to an individual during a three-year period. Swine producers are reimbursed for a maximum of Can$100 per boar. The Northern Livestock Transportation Assistance Program reimburses the producers living in northern Ontario 50 percent of the costs of transporting high quality breeding stock from southern and northern Ontario and 33.30 percent from Quebec and western Canada. These programs affect only sows and boars, which are old breeders.

Because these programs provide payments that are limited to livestock producers in northern Ontario, we preliminarily determine that they are countervailable. To calculate the benefit, we divided the total payments to hog producers under these programs by the total live weight of sows and boars produced in Ontario. We then weight-averaged the result by Ontario's share of Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00002666/lb. for sows and boars, and zero for all other swine.

(21) Prince Edward Island (PEI) Hog Marketing and Transportation Subsidies

The PEI Department of Agriculture and Marketing provides grants to one hog packer in order to defray the cost of processing and transportation. We preliminarily determine that this portion of the program is not countervailable because it is given only to a packer of pork products, and the countervailing duty order covers only live swine.

The Government of PEI also provides transportation grants to hog producers in the western part of the province in order to equalize the cost of producing hogs in different parts of the province. Because this portion of the program provides payments that are limited to a specific industry and a specific region, and because this portion benefits live swine, we preliminarily determine that it is countervailable.

In this review, the PEI Government provided no information on this program. Therefore, as the best information available, we used the amended rate determined for the period of the original investigation. On this basis, we preliminarily determine the benefit from this program to be Can$0.00005/lb. during the period of review for both sows and boars and all other swine.

(22) Prince Edward Island (PEI) Swine Development Program

The Department of Agriculture and Marketing pays a bonus to breeders who purchase boars or purebred and crossbred gilts. The boars and gilts must meet certain Record of Performance standards and are sold as breeding stock. Because this program provides payments that are limited to a specific industry, we preliminarily determine that it is countervailable. This program affects only sows and boars, which are old breeders.

To calculate the benefit from this program, we divided the total payments by the total live weight of sows and boars produced in PEI during the period of review. We then weight-averaged the result by PEI's share of total Canadian exports of live swine (the only information available) to the United States during the period of review. On this basis, we preliminarily determine the benefit to be Can$0.00004476/lb. during the peiod of review for sows and boars, and zero for all other swine.

(23) Prince Edward Island Interest Payments on Assembly Yard Loan

The PEI government assumed the interest on a loan granted to hog producers for the purpose of constructing a hog assembly yard. Because this interest assumption is limited to a specific enterprise, we preliminarily determine that it is countervailable.

We treated the interest payment due during the review period as a grant and expensed it in the review period. We divided the grant by the total live weight of hogs produced in PEI during the period of review. We then weight-averaged the result by PEI's share of total Canadian exports of this merchandise to the United States in the period of review. On this basis, we preliminarily determine the benefit from this program to be Can$0.00000002/lb. during the period of review for both sows and boars and all other swine.

(24) Quebec Special Credits for Hog Producers

Under the terms of the "Loi favorisant un credit special pour les producteurs agricoles au cours de periodes critiques," all agricultural producers are eligible for reimbursement of interest on low-interest loans made by chartered banks or savings and loan associations during critical periods. Critical periods are defined as natural disasters, an unexpected and uncontrollable drop in prices, or a lower than designated level of production in a designated region for reasons beyond the control of producers.

In our final determination, we determined that this program was limited to specific industries and was countervailable because it requires a special government regulation in order for a particular commodity group to obtain special assistance. We have reconsidered this issue. Although a special regulation is required, we verified that this program is available to, and used by, all agricultural industries on the same terms. Therefore, we preliminarily determine that it is not countervailable.

(25) Saskatchewan Financial Assistance for Livestock and Irrigation

Pursuant to the Agricultural Credit Corporation of Saskatchewan Act, the Agricultural Credit Corporation of Saskatchewan (ACS) established the Capital Loan Program, which provides loans, grants and loan guarantees to farmers for purposes related primarily to the acquisition and production of livestock. In our final determination, we found this program countervailable because it was limited to specific enterprises or industries. On December 13, 1985, this act was amended by Bill 117, which eliminated the restrictions to livestock production and livestock products from the definition of farming. Farming now includes livetock raising, bee keeping, fur farming, dairying, tilling the soil or any other activity undertaken to produce agricultural products.

The Bill also eliminated the list of specific purposes for which loans are made. Loans and grants are now made

"for prescribed purposes to farmers to assist or enable them to develop or maintain viable farming operations." In order to incorporate the changes made to the Bill, the ACS regulations now include two new programs—the Livestock Cash Advance Program and the Production Loan Program—to the existing Capital Loan Program, the Guaranteed Loan Program, and the Beef Industry Assistance Program. ACS's client base has now been expanded to include almost all Saskatchewan's farmers in a broad array of agricultural operations and in all regions of Saskatchewan. Because this program is now available to, and used by, the entire agricultural sector on equal, objective terms, we preliminarily determine that it is not countervailable.

(26) Saskatchewan Livestock Investment Tax Credit

Saskatchewan's 1984 Livestock Tax Credit Act provides tax credits to individuals, partnerships, co-operatives and corporations who own and feed livestock in Saskatchewan for slaughter. Claimants must be residents of Saskatchewan and pay Saskatchewan income taxes. Eligible claimants receive credits of Can$25 for each bull, steer or heifer, Can$2, for each lamb and Can$3 for each hog. The tax credits may be carried forward for seven years. There is a Can$100 deduction from the credit each year in which the credit is used. The credits must be included as taxable income the year after receipt. The credit is available to hogs indexing 80 or higher. We preliminarily determine that this program is countervailable because it is provided only to specific industries.

The Government of Sasketchewan estimated the aggregate amount of tax credits received by hog producers in fiscal year 1985–86. To calculate the benefit, we divided this amount, minus the Can$100 deduction for each of the estimated number of hog producer claimants, by the total live weight of live swine produced in Saskatchewan. We then weight-averaged the result by Sasketchewan's share of total exports (minus sows and boars) of this merchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit to be zero for sows and boars and Can$0.00008302/lb. for all other swine.

(27) Saskatchewan Livestock Stock Advance Program (SLCAP)

The SLCAP provides livestock producers with interest-free loans to enable the producers to meet immedite cash requirements while retaining their animals for future sale. The first interest payment under this program became due in August 1986. Because there were no interest payments due in fiscal year 1985–86, we preliminarily determine that there was no benefit from this program during the review period.

(28) Ontario Weaner Pig Stabilization Plan

Pursuant to the Farm Income Stabilization Act (FISA), the Government of Ontario operated a weaner pig stabilization program from April 1, 1980 through March 31, 1985. The intent of the program was to provide producers of weaner pigs with support payments in any production peiod in which the average market price for that period fell below a certain support price. The market and support prices were based on data used by the federal government for its ASA slaughter hog program. Participation in the program was voluntary, and funding for the program was provided by the provincial government and the participating producers in the ratio of two to one.

In our final determination (50 FR 25110), we stated that this program had been statutorily terminated on March 31, 1985 and that no payments under this program had been made since 1984. From FISA's annual report for fiscal year 1986, we have learned that payments were made under this program during the review period. Lacking any further information on this program, we preliminarily determine that it is countervailable and that two-thirds of the payment is a grant. We allocated this amount over the total live weight of swine produced in Ontario during the review period and then weight-averaged that result by Ontario's share of total Canadian exports of this mearchandise to the United States during the period of review. On this basis, we preliminarily determine the benefit from this program to be zero for sows and boars and Can$0.000505/lb. for all other swine.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be Can$0.004147/lb. for slaughter sows and boars and Can$0.022/lb. for all other swine for the period April 3, 1985 through March 31, 1986. The rate for sows and boars is equivalent to 0.32 percent *ad valorem*. The Department considers any rate less than 0.50 percent to be *de minimis*.

The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of sows and boars and to assess countervailing duties of Can$0.0022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after April 3, 1985 and exported on or before March 31, 1986.

As provided by section 751(a)(1) of the Tariff Act, the Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of slaughter sows and boars and to collect cash deposits of estimated countervailing duties of Can$0.022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. This deposit requirement will remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request diclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

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 355.10.

Date: June 3, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

[FR Doc. 88–13397 Filed 6–13–88; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review, Application #88–00003.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to TradeNet International of Washington, Inc. (TradeNet). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: John E. Stiner, Director, Office of Export Trading Company Affairs, International

Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the gorund that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

All products.

Related Services

Consulting, product research and design, marketing by means of specialized promotional mailings in conjunction with trade shows and catalog and video exhibits, international market research and statistics, transportation, trade documentation and freight forwarding, communication and processing of foreign orders to and for exporters and foreign purchasers, insurance, legal assistance, foreign exchange, financing, and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

TradeNet may:

1. Enter into agreements with individual suppliers, whereby TradeNet agrees to act as the supplier's exclusive Export Intermediary for the export of Products and the provision of Related Services. These agreements may include the following provisions:

a. The supplier may agree not to sell, directly or indirectly, through any other Export Intermediary, to any Export Market and/or

b. TradeNet will have the exclusive right to choose whether to respond to bids, invitations, or requests for bids, or other sales opportunites.

2. Enter into exclusive agreements with other Export Intermediaries. "Exclusive" means:

a. The Export Intermediary agrees not to represent anyone except TradeNet in the sale of Products or the provision of Related Services in any Export Market, and/or

b. The Export Intermediary agrees not to buy Products or obtain Related Services from anyone except TradeNet.

3. Enter into exclusive agreements with foreign customers of the Products and Related Services. "Exclusive" means that the customer agrees not to buy Products or obtain Related Services from anyone except TradeNet.

4. Specify in the agreements described in paragraphs (1), (2), and (3) above:

a. The price at which Products will be sold and Related Services provided, and/or

b. The terms of any export sale, including quantities, territories, and customers.

5. Meet and negotiate with individual suppliers or groups of suppliers concerning the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in any Export Market.

6. In the course of the negotiations described in paragraph (5) above, exchange the following information:

a. Information that is already generally available to the trade or public,

b. Information that is specific to a particular Export Market, including, but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications by geographic area and by individual customers within the Export Market,

c. Information on expenses specific to exporting to a particular Export Market (such as ocean freight, inland freight to the terminal or port, storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing),

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market, and

e. Information on TradeNet's activities in the Export Markets, including, but not limited to, customers, complaints and quality problems, visits by customers located in the Export Markets, reports by foreign sales representatives, and matters concerning the contracts between TradeNet and its suppliers.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: June 7, 1988.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 88–13320 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service, Marine Fisheries Advisory Committee; Meeting That Is Partially Closed to the Public

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

TIME AND DATE: The meeting will convene at 8:00 a.m., June 28, 1988, and adjourn at approximately 4:00 p.m., June 29, 1988.

PLACE: Radisson Suite Resort, 12 Park Lane, Hilton Head Island, South Carolina.

Status: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). Parts of this meeting will be open to the public. The remainder of the meeting will be closed to the public. MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

Matters To Be Considered

Portions Open to the Public: June 28, 1988, 8:00 a.m.–3:00 p.m., impacts of natural events on fishery resources, NOAA climate and global change program, tuna management, marine debris, model seafood surveillance program, and marine fishing license.

June 29, 1988, 8:30 a.m.–12:00 noon., interjurisdictional fisheries management proposed policy, commercial fisheries subcommittee meeting report, marine

recreational fisheries, fisheries legislation, and fisheries highlights.

Portion Closed to the Public: January 29, 1988, 1:30–4:00 p.m. (Executive Session), budget and program priorities.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with concurrence of the General Counsel, formally determined on June 6, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda item to be covered during the Executive Session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because the item will be concerned with matters that are within the purview of 5 U.S.C. § 552b(c)(9)(B) as information the premature disclosure of which will be likely to significantly frustrate the implementation of proposed agency action. (A copy of the determination is available for public inspection and duplication in the Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.) All other portions of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Constituent Affairs Staff-Fisheries, Office of Legislative Affairs, NOAA, Washington, DC 20235. Telephone: (202) 673–5429.

Date: June 9, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88–13376 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–08–M

[Modification No. 1 to Permit No. 541]

Marine Mammals; Permit Modification: The North Wind Undersea Institute (P339A)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 541 issued to the North Wind Undersea Institute, 610 City Island Avenue, City Island, New York 10464, is modified as follows:

Section B.5 through 7 are added:

5. The Holder may conduct studies of the cognitive and behavioral skills of the three harbor seals authorized in A.1, and their ability to perform useful functions under realistic conditions.

6. The studies authorized in B.5 shall be conducted at the North Wind Undersea Institute, in Orchard Bay, and in the two coves adjacent to Orchard Bay as described in the modification request. These activities shall not be conducted in the open ocean. The Permit Holder shall submit a separate permit application for authorization to conduct open-ocean activities.

7. The authority to do this research is valid until December 31, 1992.

This modification becomes effective on June 8, 1988.

The Permit, as modified, is available for review in the following offices:

Office of Protected Resource and Habitat Programs, National Marine Fisheries Services, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Northest Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930–3799.

Dated: June 8, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Services.

[FR Doc. 88–13387 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Ecogen, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Ecogen, Inc., having a place of business in Langhorne, Pennsylvania an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Starch Encapsulation of Biocontrol Agents," U.S. Patent Application 072,205. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of the published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–13357 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; Larimer & Van Liew Associates

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Larimer & Van Liew Associates, having a place of business at Severna Park, Maryland an exclusive license in the United States and foreign countries under the rights of the United States of America to manufacture, use, and sell products and use methods embodying the invention entitled "Energy Efficient Asymmetric Pre-Swirl Vane and Twisted Propeller Propulsion System," United States Patent Application Serial Number 7–163,578. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Transportation and will be transferred to the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Charles A. Bevelacqua, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88–13329 Filed 6–13–88; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Tri Bio Laboratories, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Tri Bio Laboratories, Inc., having a place of business at State College, Pennsylvania, an exclusive right subject to an existing license, in the United States and certain foreign countries to manufacture, use,

and sell products embodied in the invention entitled "Turkey Semen Extender," U.S. Patent 4,329,337. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of the published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquires, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-13358 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-04-M

Intent To Grant Exclusive Patent License; Tri Bio Laboratories, Inc., et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Tri Bio Laboratories, Inc., having a place of business in State College, Pennsylvania, and Salsbury Laboratories, Inc., having a place of business in Charles City, Iowa, a co-exclusive right in the United States and, perhaps, in certain foreign countries to manufacture, use, and sell products embodied in the invention entitled "Serotype 2 Marek's Disease Vaccine," U.S. Patent Application 071,949. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Agriculture.

The proposed license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 88-13359 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of New and Amended Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

June 9, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits.

EFFECTIVE DATE: July 1, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: During recent negotiations between the Governments of the United States and Jamaica, agreement was reached to amend and extend the current Bilateral Textile Agreement through December 31, 1992.

A copy of the agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 49185, published on December 30, 1987 and 53 FR 8798, published on March 17, 1988.

The letter to the Commissioner of Custom and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chariman, Committee for the Implementation of Textile Agreements

Committee for the Implementation of Textile Agreements

June 9, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on July 1, 1988, the directive of December 24, 1987 is hereby amended to establish new and amend current limits for cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Jamaica and exported during the periods indicated below:

Category	Amended 12-mo limit [1] (Jan 1, 1988-Dec. 31, 1988)
338/339/638/639	695,000 dozen
347/348/647/648	750,000 dozen
352/652	300,000 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987

Category	New 6-mo limit (July 1, 1988-Dec. 31, 1988)
336/636	49,000 dozen.
342/642	125,000 dozen.
349/649	250,000 dozen.
447	5,000 dozen.

Textile products in Categories 336/636, 342/642, 349/649 and 447 which have been exported to the United States prior to July 1, 1988 shall not be subject to this directive.

Textile products in Categories 336/636,

342/642, 349/649 and 447 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation to Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-13379 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

June 9, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUMMARY: During recent negotiations between the Governments of the United States and Jamaica, agreement was reached to establish guaranteed access levels for properly certified cotton, wool and man-made fiber textile products in Categories 336/636, 342/642 and 447 which are assembled in Jamaica from fabric formed and cut in the United States and exported from Jamaica during the period which begins on January 1, 1989 and extends through December 31, 1989.

The purpose of this notice is to advise the public that on July 1, 1988, U.S. Customs will start signing the first section of the form ITA-370P accompanying shipments of cut parts in Category 336/636, 342/642 and 447 exported from the United States for assembly in Jamaica. The goods assembled from these cut parts are for export from Jamaica during the period January 1, 1989 through December 31, 1989. Assembled goods exported from Jamaica prior to January 1, 1989 will be denied entry under the Special Access Program; they may be entered with a regular visa.

A copy of the current bilateral textile agreement is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-13380 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DR-M

New Textile Export Visa Forms and Visa and Exempt Certification Stamps for Certain Textile and Apparel Products from Taiwan

June 9, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of new textile export visa forms and visa and exempt certification stamps.

EFFECTIVE DATE: July 1, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION: A description of the textile categories in terms of T.S.U.S.A. numbers is available in the Correlation: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 37 FR 20745, published on October 3, 1972; 38 FR 10132, published on April 24, 1973; and 46 FR 2162, published on January 8, 1981.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

June 9, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives of September 27, 1972, as amended, and April 19, 1973, as amended, which established, respectively, an export visa arrangement and exempt certification mechanism for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan.

Effective on July 1, 1988, the directives of September 27, 1972 and April 19, 1973 are amended further to provide for the use of new textile export visa forms and visa and exempt certification stamps which will be issued by Taiwan for goods exported from Taiwan on and after July 1, 1988. The new forms are light green in color and shall replace the Special Commercial Invoice currently being used. The new visa stamp will be circular shaped in blue ink. The new exempt certification stamp will be rectangular shaped in blue ink. The original visa or exempt certification shall be stamped on the front of the original export visa only.

Facsimiles of the new forms and stamps are enclosed with this letter.

Goods exported prior to July 1, 1988 that have been visaed or certified for exemption using previously authorized forms and stamps shall not be denied entry for consumption, or withdrawal from warehouse for consumption, into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico), provided they are in accordance with previous requirements.

The actions taken with respect to the authorities in Taiwan and with respect to imports of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Taiwan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

中華民國輸美紡織品出口配額證明書

ORIGINAL

TEXTILE EXPORT VISA / INVOICE OF TAIWAN, R.O.C.

1. 出口商(名稱及地址) SELLER (NAME & ADDRESS)	2. 廠商編號 EXPORTER NO	3. 原產國 COUNTRY OF ORIGIN TAIWAN, R.O.C. (583)	4. 出口日及裝運方式 SHIPPING DATE & MEANS OF TRANSPORT	5. 出口港 PORT OF ENTRY
		6. 商業發票號碼及日期 COMMERCIAL INVOICE NO. & DATE		7. 接單日期 DATE ORDER ACCEPTED
		8. 交易條件及總金額 TERMS OF SALE & TOTAL VALUE		
9. 收貨人(名稱及地址) CONSIGNEE (NAME & ADDRESS)		10. 買主(名稱及地址) PURCHASER (NAME & ADDRESS)		

11. 貨品名稱及有關資料 MARKS & NUMBERS OF PACKAGES; DESCRIPTION OF GOODS & RELATED INFORMATION	12. 數量 QUANTITY	13. 單價 UNIT PRICE (FOB U.S. DOLLARS)	14. 總金額 TOTAL VALUE (FOB U.S. DOLLARS)

15. 備註 REMARKS	16. 其他費用 OTHER COSTS NOT INCLUDED IN FOB TOTAL VALUE
17. 本筆交易負責人名稱 NAME OF RESPONSIBLE INDIVIDUAL OF THE EXPORTER	

18. 本證明書一經塗改即告失效，並送請主管機關依規定處理。
THIS DOCUMENT SHALL BE INVALIDATED IN CASE OF ANY ERASURE, STRIKEOVER, ALTERATION AND INTERPOLATION

19. 簽發機構簽章 COMPETENT AUTHORITIES' STAMP & SIGNATURE	20. 簽發機構 COMPETENT AUTHORITIES OF THE REPUBLIC OF CHINA
中華民國紡織業外銷拓展會 TTF Visa No. : 8TW 022403 Category : 301 Quantity : 500LBS Signature : 程有孝 Date : Mar. 8, 1988 TAIWAN TEXTILE FEDERATION	中華民國紡織業外銷拓展會 TAIWAN TEXTILE FEDERATION TTF BUILDING 22, AI KUO EAST ROAD TAIPEI, TAIWAN REPUBLIC OF CHINA TELEX: 23143 TTFROC TAIPEI CABLE ADDRESS: "TTFROC" TAIPEI TELEPHONE: (02) 341-7251 TELEFAX: (02) 392-3855

ROCTTF-7000

第一聯：本聯供申請廠商寄發客戶

中華民國輸美紡織品出口配額證明書

ORIGINAL

TEXTILE EXPORT VISA / INVOICE OF TAIWAN, R.O.C.

1. 出口商(名稱及地址) SELLER (NAME & ADDRESS)	2. 廠商編號 EXPORTER NO.	3. 原產國 COUNTRY OF ORIGIN TAIWAN, R.O.C. (583)	4. 出口日及裝運方式 SHIPPING DATE & MEANS OF TRANSPORT	5. 進口港 PORT OF ENTRY
		6. 商業發票號碼及日期 COMMERCIAL INVOICE NO. & DATE		7. 接單日期 DATE ORDER ACCEPTED
		8. 交易條件及總金額 TERMS OF SALE & TOTAL VALUE		
9. 收貨人(名稱及地址) CONSIGNEE (NAME & ADDRESS)		10. 買主(名稱及地址) PURCHASER (NAME & ADDRESS)		

11. 貨品名稱及有關資料 MARKS & NUMBERS OF PACKAGES, DESCRIPTION OF GOODS & RELATED INFORMATION	12. 數量 QUANTITY	13. 單價 UNIT PRICE (FOB U.S. DOLLARS)	14. 總金額 TOTAL VALUE (FOB U.S. DOLLARS)
SPECIMEN			

15. 備註 REMARKS	16. 其他費用 OTHER COSTS NOT INCLUDED IN FOB TOTAL VALUE
17. 本筆交易負責人名稱 NAME OF RESPONSIBLE INDIVIDUAL OF THE EXPORTER	

18. 本證明書一經塗改即告失效，並送請主管機關依規定處理。
THIS DOCUMENT SHALL BE INVALIDATED IN CASE OF ANY ERASURE, STRIKEOVER, ALTERATION AND INTERPOLATION.

19. 簽證機構蓋章 COMPETENT AUTHORITIES' STAMP & SIGNATURE	20. 簽證機構 COMPETENT AUTHORITIES OF THE REPUBLIC OF CHINA
中華民國紡織業外銷拓展會 Certificate Nº 100001 Exempt Item: Pincushions Quantity: 500LBS Signature: 陳百齊 Date: April 27, 1988 TAIWAN TEXTILE FEDERATION	中華民國紡織業外銷拓展會 TAIWAN TEXTILE FEDERATION TTF BUILDING 22, AI KUO EAST ROAD TAIPEI, TAIWAN REPUBLIC OF CHINA TELEX: 23143 TTFROC TAIPEI CABLE ADDRESS: "TTFROC" TAIPEI TELEPHONE: (02) 341-7251 TELEFAX: (02) 392-3855

ROCTTF-7061

第一聯：本聯經中華民國商業發客戶

[FR Doc. 88-13381 Filed 6-13-88; 8:45 am]

BILLING CODE 3510-DR-C

Announcement of Request for Bilateral Textile Consultations With the Government of Thailand To Review Trade in Categories 670–L and 870

June 9, 1988.

AGENCY: Committee for the implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: E.O. 11651 of March 3, 1972, as amended; Section 104 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION: On May 25, 1988, the Government of the United States requested consultations with the Government of Thailand regarding luggage in Categories 670–L (TSUSA numbers 706.3415, 706.4130 and 706.4135) and 870, produced or manufactured in Thailand.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultation with Thailand, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of man-made fiber, silk blend and other vegetable luggage, produced or manufactured in Thailand and exported during the twelve-month period which began on May 25, 1988 and extends through May 24, 1989, at levels of 6,082,616 pounds for Category 670–L and 5,917,287 pounds for Category 870.

There is not currently a visa requirement for exports of Categories 670–L and 870 from Thailand to the United States. If visas for these categories will be required at any time in the future, advance notice will be given in the **Federal Register**.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 670–L and 870, or to comment on domestic production or availability of products included in the categories, is invited to submit such comments or information in ten copies to James H. Babb, Chairman, Committee for the Implementation of Textile Agreement, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile Apparel Categories with Proposed Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement

Category 670 Part—Man-Made Fiber, Luggage, Thailand

May 1988.

Summary and Conclusions

U.S. imports of man-made fiber luggage—Category 670 part—from Thailand were 6.1 million pounds during the year ending February 1988, nearly four times the 1.6 million pounds imported a year earlier. In the year ending February 1988, Thailand was the fourth largest supplier of man-made fiber luggage, accounting for four percent of the total imports. In the previous year, Thailand was the eighth largest supplier, supplying one percent of total imports.

The sharp and substantial increase of low-valued man-made fiber luggage imports from Thailand is disrupting the U.S. market.

U.S. Production and Market Share

U.S. production of man-made fiber fabric for luggage remained flat at 21 million pounds from 1985 through 1987. During this two year period the U.S. producers' share of the man-made fiber luggage market dropped four percentage points from 27 percent in 1985 to 23 percent in 1987.

U.S. Import and Import Penetration

U.S. imports of man-made fiber luggage—Category 670 part—at 141 million pounds in 1987 were 22 percent above the 116 million pound 1985 level. The import to domestic production ratio reached 336 percent in 1987, up from 273 percent in 1985.

Duty-Paid Import Values and U.S. Producers' Price

Approximately 97 percent of Category 670 part imports from Thailand during January-February 1988 entered under TSUSA No. 706.4135—man-made fiber luggage, not braided. These imports from Thailand entered at low duty-paid values, resulting in wholesale prices well below those of comparable U.S. produced luggage.

Market Statement

Category 870—Luggage of Silk-Blend and Vegetable Fiber Other than Cotton, Thailand

May 1988.

Summary and Conclusions

U.S. imports of Category 870 luggage—silk-blend and vegetable fiber other than cotton—from Thailand reached 5.9 million pounds for the year ending February 1988, making Thailand the number one supplier accounting for 22 percent of total Category 870 imports. Imports of Category 870 from Thailand were 4.4 million pounds during the seven month period, August 1987 through February 1988, nearly sixteen times the 284 thousand pounds imported during the year earlier comparable period.[1] During the latest seven months, August 1987 through February 1988, Thailand's share of Category 870 imports reached 28 percent.

Imports of silk-blend and vegetable fiber, other than cotton, luggage compete with domestically produced man-made fiber luggage. The U.S. market for man-made fiber luggage, Category 670 part, has been disrupted by imports. The sharp and substantial increase of Category 870 imports from Thailand is exacerbating the disruption.

[1] Import data on silk-blend and vegetable fiber, other than cotton, luggage started to be collected in August 1986. Therefore, directly comparable Category 870 import data exist for the seven month periods August 1986 through February 1987 and August 1987 through February 1988.

Import Penetration and Market Share

The ratio of imports to production in Category 670 part, luggage, increased to 336 percent in 1987. The share of this market held by domestic manufactures dropped to 23 percent in 1987. When imports of the directly competitive Category 870 are included, the import to production ratio increases to 397 percent and the domestic manufacturers' share of the market declines to 20 percent.

Duty Paid Import Values and U.S. Producer's Prices

Approximately 99 percent of Category 870 imports from Thailand during the year ending February 1988 entered under TSUSA No. 706.3850—luggage of vegetable fiber excluding cotton. These imports from Thailand entered at low duty-paid values, resulting in wholesale prices well below those of comparable U.S. produced luggage.

[FR Doc. 88-13378 Filed 6-13-88; 8:45 am]
BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Proposed Amendments Relating to Periodic Adjustments to Locational Price Differentials Applicable to Deliveries on the Soybean Oil Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBOT" or "Exchange") has submitted proposed amendments to the soybean oil futures contract establishing an automatic adjustment mechanism for changing, on an annual basis, the locational price differentials applicable to futures deliveries of soybean oil in regular warehouse facilities located in non-par delivery territories. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that this proposal is of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATE: Comments must be received on or before July 14, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CBOT soybean oil futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, 2033 K Street NW., Washington, DC 20581, telephone (202) 254-7303.

SUPPLEMENTARY INFORMATION: Under the soybean oil futures contract's current terms, the delivery area is divided into five distinct delivery territories. Each delivery territory is assigned a price differential which is applicable to the delivery of soybean oil at any regular warehouse located in that territory. The par delivery territory is the Illinois territory (which includes the central and northern parts of Illinois). The non-par delivery territories and their associated price differentials currently include: the Eastern territory (which includes Indiana and parts of Kentucky) at a $.10/cwt discount; the Eastern Iowa territory at a $.20/cwt. discount; the Southwest territory (which includes parts of Missouri and Kansas) at a $.30/cwt. discount; and the Northwest territory (which includes parts of Minnesota, Iowa, Nebraska and South Dakota) at a $.55/cwt. discount. The current terms of the futures contract do not specify a procedure for routinely changing the contract's locational price differentials.

The proposed amendments to the soybean oil futures contract will establish a method for automatically adjusting, on an annual basis, the locational price differentials applicable to futures deliveries in non-par delivery territories. Under the terms of the proposal, the price differential applicable to deliveries in each non-par delivery territory will change by no more than ten cents per hundredweight ($60 per contract of 60,000 pounds) from year to year when changes are required. Changes will not necessarily be required in each year. Adjustments to territorial differentials will be calculated by the Exchange and published by September 15 of each year for application to all deliveries made in the subsequent calendar year. The boundaries of the existing territories would not be changed.

Under the proposal, the discounts currently specified in the Exchange's regulations, applicable to deliveries in each non-par territory, will be increased (decreased) by five cents per hundredweight whenever (1) the average ratio of the number of registered warehouse receipts outstanding in that territory relative to regular soybean processing capacity in that territory is two or more times (one-half or less) the average ratio for all other territories combined, or (2) when this receipts/capacity ratio for the par Illinois Territory is one-half or less (two or more times) the receipts/capacity ratio for all other territories combined. The adjustment for a particular non-par territory for the following year could be ten cents per hundredweight if both of the above conditions are met. In all cases, delivery in the Illinois Territory will be at the contract price.

According to the Exchange, the proposed amendments will adjust soybean oil futures differentials so that differentials applicable to deliveries in the futures market will consistently reflect those observed in the underlying cash market. In addition, the Exchange expects the amended rules to enhance convergence of cash and futures prices for all delivery territories while achieving an equitable distribution of deliveries throughout the delivery area. The Exchange also believes that implementation of the proposed amendments will result in certain benefits including the following: objective rather than subjective determination of applicable differentials, shortened lag time between determination and implementation of necessary changes in differentials, and gradual adjustment of differentials. The Exchange intends to make the proposed amendments effective for all soybean oil futures contracts listed after Commission approval.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254-6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the

proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC on June 9, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88-13394 Filed 6-13-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning Commerce Patent Regulations.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition and Regulatory Policy, (202) 523-3847.

SUPPLEMENTARY INFORMATION:

a. Purpose

As a result of the Department of Commerce (DOC) publishing a final Rule in the **Federal Register** implementing Pub. L. 98-620, (52 FR 8552, March 18, 1987) a revision to FAR Subpart 27.3 is proposed to implement the DOC regulation in the FAR.

A Government contractor must report all subject inventions to the contracting officer, submit a disclosure of the invention, and identify any publication, or sale, or public use of the invention (52.227-11(c); 52.228-12(c) and 52.227-13(e)(2)). Contractors are required to submit periodic or interim and final reports listing subject inventions (27.303(a)(2); 27.304-1(e)(1) (i) and (ii); 27.304-1(e)(2) (i) and (ii); 52.227-12(e)(7); 52.227-14(e)(3)). In order to ensure that subject inventions are reported, the contractor is required to establish and maintain effective procedures for identifying and disclosing subject inventions (52.228-11, Alternate IV; 52.227-12(f)(5); 52.227-13(e)(1)). In addition, the contractor must require his employees, by written agreements, to disclose subject inventions (52.227-11(f)(2); 52.227-12(f)(2); 52.227-13(e)(4)). The contractor also has an obligation to utilize the subject invention, and agree to report, upon request, the utilization or efforts to utilize the subject invention (27.302(e); 52.227-11(h); 52.227-12(h)).

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1,200; responses per respondent, 9.75; total annual responses, 11,700; preparation hours per response, 3.9; and total response burden hours, 45,630.

Obtaining Copies of Proposals

Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-00XX, Commerce Patent Regulations.

Dated: June 7, 1988.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 88-13362 Filed 6-13-88; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Department of the Army

Intermediate-Range Nuclear Forces Treaty; Elimination of Pershing Missiles; Site Determination

Record of Decision

The U.S. Army is required to eliminate its Pershing missiles under the terms of the Intermediate-Range Nuclear Forces (INF) Treaty. As described in the Environmental Assessment (EA) published in February 1988, four sites were studied as possible elimination sites: Pueblo Army Depot Activity, Colorado; Longhorn Army Ammunition Plant, Marshall, Texas; Tooele Army Depot, Tooele, Utah; Hercules Tekoi Test Range, Skull Valley, Utah. The EA concluded that elimination of the Pershing rocket motors could be accomplished at any of the sites without significant environmental impact. That conclusion was presented in a Finding of No Significant Impact, which was published in the **Federal Register** and local newspapers in late February and early March 1988.

The INF Treaty has now entered into force, and the U.S. in required to specify which sites it intends to use for elimination of Pershing items. Accordingly, the Army has determined that it intends to use Longhorn Army Ammunition Plant and Pueblo Army Depot Activity for elimination of Pershing items. This decision is based on the consideration that this action can be done without significant environmental effects at any of the sites, and that Longhorn is an Army storage site for PIAs and Pueblo is the Army's depot for maintenance and storage of Pershings, and both Longhorn and Pueblo have many years of experience in handling rocket motors. The other two sites remain under consideration at this time.

Further site-specific environmental studies will be conducted at the sites as appropriate.

John W. Shannon,

Assistant Secretary of the Army (Installations and Logistics).

[FR Doc. 88-13441 Filed 6-13-88; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Military/Industry Mobile Homes Symposium; Open Meeting

Announcement is made of meeting of the Military/Industry Mobile Homes Symposium. This meeting will be held on 7 July 1988 at Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34-R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 24 June 1988.

Dated: June 2, 1988.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 88-13360 Filed 6-13-88; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 14, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) title; (3) frequency of collection; (4) the affected public; (5) reporting burden; and/or (6) recordkeeping burden; and (7) abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 9, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Procedures for Certification of Need Analysis Servicers' Systems.
Frequency: Annually.
Affected Public: Individuals or households; businesses or other for-profit; non-profit institutions.
Reporting Burden:
Responses: 70.
Burden Hours: 35.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: Individuals and organizations that operate need analysis systems will enter into agreement with the Department and complete procedural requirements in order to become certified. The Department will use the information to administer the need analysis system for campus-based programs (Perkins Loan, Supplemental Educational Opportunity Grant and College Work-Study), Income Contingent Loan and Guaranteed Student Loan Programs under Part F of the Higher Education Act of 1965, as amended.

Office of Postsecondary Education

Type of Review: Extension.
Title: Application for Fulbright-Hays Seminars Abroad Program.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 1,000.
Burden Hours: 1,000.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by individuals to apply for grants under the Fulbright-Hays Seminars Abroad Program. The Department will use the information to select educators to participate in the program.

Office of Postsecondary Education

Type of Review: Revision.
Title: Application for Grants under the Jacob K. Javits Fellows Program.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 1500.
Burden Hours: 7500.
Recordkeeping:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by graduate students to apply for funding under the Jacob K. Javits Fellows Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: New.
Title: Fiscal Operations Report for the Income Contingent Direct Loan Demonstration Project.
Frequency: Annually.
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions.
Reporting Burden:
Responses: 10.
Burden Hours: 100.
Recordkeeping:
Recordkeepers: 10.
Burden Hours: .2.
Abstract: Postsecondary institutions that have participated in the Income Contingent Direct Loan Program submit this report to the Department. The Department uses the information to monitor assets and liabilities of the fund and to ensure that funds have been properly managed.

[FR Doc. 88-13421 Filed 6-13-88; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No. 84.055E]

Invitation; Applications for New Awards under the Supplemental Funds Program for Cooperative Education Support for Fiscal Year 1988

Purpose: Provides funds to institutions of higher education, on a formula basis, to initiate a program of cooperative education or to improve or expand an existing cooperative education program. The formula is based on the number of students assisted in the institution's cooperative education program and on the amount of unused College Work-Study Program funds that are available for reallotment as supplemental funds.

Deadline for Transmittal of Applications: August 8, 1988.

Applications Available: June 27, 1988.

Available Funds: The amount of College Work-Study funds available for reallotment as supplemental funds for expenditure for this program will not be known until after the deadline date for filing applications.

Estimated Range of Awards: $500 to $169,000.

Estimated Average size of Awards: $9,000.

Estimated Number of Awards: 575.

Project Period: 12 months.

Applicable Regulations: (a) The Supplemental Funds Program for Cooperative Education regulations 34 CFR Part 636, as amended by final regulations published in the **Federal Register** on August 5, 1987 (52 FR 29140); (b) the regulations governing the Cooperative Education Program as published in the **Federal Register** on August 5, 1987 (52 FR 29140); and (c) the Education Department General Administrative Regulations 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Mrs. Darlene B. Collins or Mrs. Karen W. Johnson U.S. Department of Education, 400 Maryland Avenue SW., Room 3022, ROB–3, Mail Stop 3327, Washington, DC 20202. Telephone: (202) 732–4404 or 732–4860.

Authority: 42 U.S.C. 2752(d).

Dated: June 8, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88–13353 Filed 6–13–88; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on June 21, 1988, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 9:30 a.m. The agenda for the meeting is as follows:

1. Opening Remarks
2. Approval of the Record Note of the Industry Advisory Board Meeting of April 11, 1988
3. IEA Test Issues
   —Sixth Allocation Systems Test (AST–6) Preparation and Draft Test Guide
   —Report on Submissions of Questionnaires A and B Data for AST–6
   —Teleconferencing for Voluntary Offer Process
4. Preparation for Governing Board Discussion on Emergency Questions
   —Draft Standing Group on Emergency Questions (SEQ) Report to the Governing Board on Further Improvements to Member Countries' Early Response Capacity
   —Coordinated Emergency Response Measures (CERM) Test Appraisal Report
   —CERM Operations Manual
   —SEQ 1989 Program of Work
5. Other Emergency Preparedness Issues
   —Member Countries' Replies to Questionnaire on Compensation for Early Coordinated Emergency Response Measures
   —Questionnaires A and B Preparation Facility
6. Future Work Program
7. IAB Organization
8. Date of Next Meeting

II. A meeting of the IAB will be held on June 22, 1988, at the Centre de Conferences Internationales, 19 avenue Kleber, Paris, France, beginning at 9:30 a.m., and continuing on June 23, 1988, at the offices of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 9:30 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's SEQ which is scheduled to be held at the aforesaid locations on those dates. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda
2. Summary Record of the 59th Meeting
3. AST–6
   —AST–6 Preparations
   —AST–6 Draft Test Guide
   —Report on Submissions of Questionnaires A and B for AST–6
4. Preparation for the Governing Board Discussions on Emergency Questions
   —Draft SEQ Report to the Governing Board on Further Improvements to Member Countries' Early Response Capacity
   —CERM Activities
   • CERM Test Appraisal Report
   • CERM Operations Manual
   —1989 Program of Work
5. Other Emergency Preparedness Issues
   —Member Countries' Emergency Response Program Reviews—Second Cycle
   • New Zealand
   —Member Countries' Replies to Questionnaire on "Compensation" for Early Coordinated Emergency Response Measures
   —Questionnaires A and B Preparation Facility
6. Other Topics
   —End-May Oil Market Report
   —Base Period Final Consumption (2Q87—1Q88)
7. Any Other Business
8. Date of Next Meeting

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IAB meeting is open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, and invitees of the SEQ.

Issued in Washington, DC, June 8, 1988.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 88–13375 Filed 6–13–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 10480–000]

County of Tuolumne, CA; Availability of Environmental Assessment

June 9, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for exemption from licensing for the proposed Phoenix Lake Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13307 Filed 6–13–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2337-001]

Pacific Power and Light Co.; Availability of Environmental Assessment

June 9, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major license for the proposed Prospect No. 3 Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13308 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-412-000, et al.]

Texas Gas Transmission Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Company

[Docket No. CP88-412-000]

June 7, 1988.

Take notice that on May 26, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-412-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of gas on an interruptible basis for Georgia-Pacific Corporation (Georgia-Pacific) and the construction and operation of certain related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport on an interruptible basis, up to 15,000 MMBtu per day from various points of receipt, for delivery to Georgia-Pacific for use at its pulp, paper and chemical plant, near Crossett, Arkansas. It is stated that the gas would be delivered to Georgia-Pacific at a new point of interconnection between Texas Gas and Georgia-Pacific's pipeline facilities in Morehouse Parish, Louisiana, and would involve the installation of a single six inch Orifice Meter Station and related equipment. The estimated cost of such facilities is $97,000. It is further stated that Texas Gas would be reimbursed for such facility cost by Georgia-Pacific.

It is averred that Texas Gas would charge Georgia-Pacific the appropriate rate for service under Texas Gas's T Rate Schedule. Such service is proposed to be authorized for a primary term beginning on the date approved and extended through the end of that month, and continuing from month to month thereafter unless cancelled by either party upon thirty days prior written notice.

Texas Gas asserts that the proposed service would expand Georgia-Pacific's available supply sources and thus increase its ability to purchase the most economically priced gas for its plant.

Comment date: June 28, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP87-316-004]

June 7, 1988.

Take notice that on May 27, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP87-316-004 an application pursuant to section 7(c) of the Natural Gas Act to amend the certificate in Docket No. CP87-316-000 issued by order dated August 18, 1987, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, FGT states that on April 28, 1988, American Distribution Company (ADC) and FGT entered into an amendment of the interruptible transportation agreement dated March 16, 1988, which provides for: (a) Three new points of delivery, (b) an increase in the maximum daily quantity from 5.0 billion Btu's per day to 10.0 billion Btu's per day, and (c) continuation of the transportation service for another year, consistent with Commission policy.

FGT lists the three proposed new points of delivery as follows:

(1) An existing point of interconnection between FGT and Houston Pipe Line Company in Galveston County, Texas,

(2) An existing point of interconnection between FGT and Amoco Gas Company in Galveston County, Texas,

(3) An existing point in interconnection between FGT and Amoco Gas Company in Orange County, Texas.

FGT indicates that inasmuch as all of the above-described proposed new points of delivery are in existence, it is not requesting authorization to construct any new facilities.

FGT proposes to charge ADC its currently-effective transportation rates for transportation service in its Western Division.

FGT states that ADC requires these new points of delivery in order to sell gas to Houston Lighting and Power Company for use in its electric generating plants.

FGT states that since the transportation service is fully interruptible and is contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers, the transportation service proposed herein cannot have an adverse impact of FGT's existing customers.

Comment date: June 28, 1988, in accordance with the first subpargraph of Standard Paragraph F at the end of this notice.

3. CNG Transmission Corporation

[Docket No. CP88-435-000

June 7, 1988.

Take notice that on June 1, 1988, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed in Docket No. CP88-435-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of various shippers identified in the attached appendix under the authorization issued in Docket No. CP86-311-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CNG proposes to transport natural gas on an interruptible basis for the 17 shippers identified in the attached appendix from various receipt points on its system to various interconnections between CNG and certain local distribution companies (LDC). The receipt and delivery points, maximum daily average daily and annual volumes, commencement date, and ST docket number are identified in the appendix.

CNG states that only existing facilities are necessary to perform the proposed transportation transactions. It is explained that the proposed service is currently being performed pursuant to

the 120-day self implementing provision of § 274.223(a)(1) of the Regulations. However, CNG notes that the 120-day self implemented service is scheduled or has already terminated prior to any authorization which may result from the subject application.

Comment date: July 22, 1988, in accordance with Standard Paragraph G at the end of this notice.

Appendix—CNG Transmission Corporation

PART 284, SUBPART G, TRANSPORTATION TRANSACTIONS

Docket No.	Shipper/customer	Commence date	Maximum daily dt, average daily dt, estimate annual dt	Receipt point	LDC
ST88-2852	1. Ohio Gas Marketing	2/1/88	1,200 137 50,005	Various receipt points in WV/PA	RGE.
ST88-2851	2. Entrade Corp.	2/12/88	30,000 1,578 575,970	TGP-Cornwell	EOG.
ST88-2854	3. Entrade Corp.	2/12/88	60,000 2,339 853,735	do	RGE.
ST88-2850	4. Hadson Gas Systems	2/19/88	20,000 727 265,355	do	NIMO.
ST88-2853	5. Industrial Energy Services Co.	2/20/88	10,000 1,910 40,150	do	NIMO.
ST88-4015	6. Phoenix Diversified Ventures	2/20/88	3,000 1,409 514,285	Various receipt points in WV/PA	NYSEG.
ST88-3630	7. Industrial Energy Services Co.	3/1/88	15,000 6,942 2,533,830	do	PNG.
ST88-3632	8. Direct Gas Supply Corp.	3/1/88	25,000 1,518 544,070	do	RGE.
ST88-3634	9. Direct Gas Supply Corp.	3/1/88	15,000 65 23,725	do	CORN.
ST88-3628	10. Consolidated Fuel Corp.	3/1/88	5,000 151 55,115	do	NYSEG.
ST88-3627	11. Direct Gas Supply Corp.	3/1/88	25,000 5,439 1,985,235	do	NIMO.
ST88-3639	12. Kimball Resources	3/4/88	15,000 600 219,000	do	NIMO.
ST88-3633	13. Consolidated Fuel Corp.	3/5/88	12,000 1,703 621,595	do	RGE.
ST88-3636	14. Consolidated Fuel Corp.	3/10/88	5,000 2,633 961,045	do	NIMO.
ST88-3629	15. Riley Natural Gas Co.	3/29/88	50,000 3,302 1,205,230	do	NIMO.
ST88-3637	16. Energy Marketing Exchange	3/30/88	50,000 15,000 5,475,000	TGP-Cornwell	NIMO.
ST88-3635	17. Direct Gas Supply Corp.	3/31/88	25,000 47 17,155	Various receipt points in WV/PNYSEG	NYSEG.

Legend of Receipt Points and Local Distribution Companies (LDC):
TGP-Cornell—Interconnection between Tennessee Gas Pipeline Company and CNG in Clay County, West Virginia.
RGE—Rochester Gas & Electric Corp.
EOG—East Ohio Gas Co.
NIMO—Niagara Mohawk Power Corp.
NYSEG—New York State Electric & Gas Corp.
PNG—Peoples Natural Gas Co.
CORN—Corning Natural Gas Corp.

4. Trunkline Gas Company

[Docket No. CP88-402-000]

June 8, 1988.

Take notice that on May 23, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP88-402-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing transportation and the construction and operation of tap facilities necessary to implement a direct sale of natural gas to Moore McCormack Energy, Inc. (Moore McCormack), all as more fully set forth in the application which is on file and open for public inspection.

Trunkline states that Moore McCormack produces oil from a field in

Allen Parish, Louisiana. Trunkline further states that Moore McCormack maintains a gas lift operation to enhance oil production from the field. It is indicated that due to problems associated with the gas well production of the casinghead gas used in the gas lift operation, Moore McCormack requested from Trunkline and has been receiving, emergency natural gas service. Inasmuch as Moore McCormack's casinghead gas production is expected to be insufficient for gas lift operations for an indefinite period, Trunkline requests authority to implement a direct sale to Moore McCormack. Trunkline asserts that the sale would provide Moore McCormack with a continuing and reliable source of gas for gas lift operations and thus would assist in the maintenance of oil production.

Trunkline states that the direct sale would be rendered in accordance with an industrial gas contract with Moore McCormack dated May 1, 1988. To effectuate the sale on a permanent basis, Trunkline further requests authority to construct and operate a new 2-inch sales meter which Trunkline estimates would cost $62,000 and would be financed from Trunkline's funds on hand.

Comment date: June 29, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP88-430-000]

June 8, 1988.

Take notice that on May 31, 1988, Natural Gas Pipeline Company of American (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-430-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport, on an interruptible basis, up to a maximum of 75,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Panhandle Trading Company (Panhandle), a marketer of natural gas, under its blanket certificate issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that pursuant to an Interruptible Transportation Service Agreement dated March 17, 1988, Natural is obligated to accept for transportation, on an interruptible basis, no more than 75,000 MMBtu per day for Panhandle. Natural further states that Panhandle may request and Natural may agree to accept additional quantities as overrun gas. Natural states that Panhandle has advised it that the volumes anticipated to be transported on an average day would be 50,000 MMBtu. Natural further states that based on that average day figure, the annual volume to be transported would be 18,250,000 MMBtu. Natural indicates that the receipt points would be located Offshore Texas and Offshore Louisiana and the delivery points would be located in Texas and Louisiana.

Natural indicates that it commenced the transportation of natural gas for Panhandle on April 1, 1988, at Docket No. ST88-3781, for a one hundred and twenty (120) day period ending July 30, 1988, pursuant to § 284.223(a)(1) of the Commission's Regulations (18 CFR 284.223(a)(1)) and the blanket certificate issued to Natural in Docket No. CP86-582-000.

Comment date: July 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

6. Texas Gas Transmission Corporation

[Docket No. CP88-413-000]

June 9, 1988.

Take notice that on May 26, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-413-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas and to construct and operate facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 3,590 MMBtu of natural gas per day on an interruptable basis for Quincy Soybean Company of Arkansas (Quincy). Texas Gas proposes to render the service for a primary term of five years. Texas Gas would receive gas for Quincy's account at various points of receipt and redeliver gas to Quincy's plant near Helena, Arkansas. Texas Gas explains that the delivery point would be at a new interconnect between Texas Gas and Quincy and would involve the construction of about 1.25 miles of 3.5 inch pipeline and a meter station. Texas Gas requests authorization to construct these facilities. It is explained that the estimated cost of the facilities is $226,000.

Texas Gas explains that it would charge Quincy for the service rendered the appropriate rate under Texas Gas' Rate Schedule T. Quincy would also reimburse Texas Gas for the facilities by paying Texas Gas a line charge of $72,420 per year for five years, it is explained. Texas Gas further explains that it would waive the line charge in any year in which Quincy transports at least 319,000 MMBtu of natural gas.

Comment date: June 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP88-414-000]

June 9, 1988.

Take notice that on May 26, 1988, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-414-000 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 Amoco Production Company (Amoco), a producer, 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 an open for public inspection.

Specifically, Applicant requests authority to transport up to 75,000 Dt per day on behalf of Amoco pursuant to a transportation agreement dated April 1, 1988, among Applicant and Amoco. 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 losss to (1) Acadian Gas Pipe Line System (Acadian), in St. Mary Parish, Louisiana, (2) Bridgeline Gas Distribution Company (Bridgeline), in St. Mary Parish, Louisiana, (3) Louisiana Intrastate Gas Corporation, (Lousiana Intra), in Beauregard Parish, Louisiana, (4) Louisiana Intra in St. Mary Parish, Louisiana, (5) Louisiana State Gas Corporation (Louisiana State), in Jefferson Davis Parish, Louisiana, and (6) Monterey Pipeline Company (Monterey), in St. Mary Parish, Louisiana for various end-users.

The Applicant further states that the estimated daily and estimated annual quantities would be 35,000 dt and 12,800,000 dt respectively. It is stated that service under § 284.223(a) commenced on April 1, 1988, as reported in Docket No. ST88-3586.

Comment date: July 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP88-419-000]

June 9, 1988.

Take notice that on May 27, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-419-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation for PSI, Inc. (PSI), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS, for PSI, a marketer of natural gas, from various receipt points located in Oklahoma, Texas, Offshore Texas, Arkansas, Illinois, Kansas, Iowa, New Mexico, Louisiana and Offshore Louisiana, to various delivery points in Texas, Illinois, Louisiana, Oklahoma, New Mexico, Kansas and Iowa. Natural anticipates transporting, on an average day 30,000 MMBtu. Natural states that based on that average day figure, the annual volume it anticipates transporting is 10,950,000 MMBtu.

Natural states that the transportation of natural gas for PSI commenced April 6, 1988, as reported in Docket No. ST88-3601, for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP86-582-000. Natural proposes to continue this service is accordance with §§ 284.211 and 284.223 of the Commission's Regulations.

Comment date: July 25, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Texas Gas Transmission Corporation

[Docket No. CP88-420-000]

June 9, 1988.

Take notice that on May 27, 1988, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP88-420-000 an application pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing an increase in the firm sale of natural gas to two of its existing customers, the City of Brownsville Utility Board (Brownsville), Haywood County, Tennessee, and the Crockett Public Utility District (Crockett), Crockett County, Tennessee, and the construction and operation of 1.1 miles of eight-inch pipeline looping, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to sell and deliver on a firm basis an additional 995 MMBtu of natural gas per day to Brownsville and up to 91 MMBtu of natural gas per day to Crockett. Texas Gas states these additional volumes are necessary for these customers to meet their anticipated contract demand requirements for the 1988 winter heating season and beyond.

To meet these increased contract demand requirements, Texas Gas proposes to construct and operate 1.1 miles of eight-inch pipeline looping its Ripley-Jackson eight-inch pipeline located in Madison County, Tennessee. Texas Gas estimates the cost of the proposed facilities will be $242,000 which includes the required filing fee.

Comment date: June 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

Florida Gas Transmission

[Docket No. CP88-423-000]

June 9, 1988.

Take notice that on May 27, 1988, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-423-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to transport gas for American Cyanamid Company (Cyanamid), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, FGT states that Cyanamid and FGT have entered into an Interruptible Transportation Agreement dated May 9, 1988, which provides for the receipt of gas by FGT for the account of Cyanamid of up to 12,500 MMBtu per day, and for the redelivery of equivalent volumes for Cyanamid's account, less Cyanamid's pro rata share of any gas vented or lost for any reason from that portion of FGT's facilities being utilized for Cyanamid at the time of such loss, and less Cyanamid's pro rata share of the total compressor fuel utilized by FGt in rendering all transportation services. FGT states that the gas will be received at the following existing points of interconnection between FGT and other entities:

(1) Existing point of interconnection between FGT and Houston Pipe Line Company near Sinton in San Particio County, Texas.

(2) Existing point of interconnection between FGT and Houston Pipe Line Company in the Magnet Withers Field Area, Matagorda County, Texas.

(3) Existing point of interconnection between FGT and Houston Pipe Line Company in Orange County, Texas.

(4) Existing point of interconnection between FGT and Exxon Company, U.S.A. in Pearl River county, Mississippi.

(5) Existing point of interconnection between FGT and Prosper Energy Corporation in Pearl River County, Mississippi.

(6) Existing point of interconnection between FGT and the Big Escambia Creek Plant, operated by Exxon Company, U.S.A., in Escambia County, Alabama.

(7) Existing point of interconnection with the Jay Processing Plant, operated by Exxon Company, U.S.A., in Santa Rosa County, Florida.

(8) Existing point of interconnection between FGT and Houston Pipe Line Company in Brazoria County, Texas.

(9) Existing point of interconnection between FGT and Transcontinental Gas Pipe Line Corporation in St. Helena Parish, Louisiana.

(10) Existing point of interconnection between FGT and Southern Natural Gas Company in Washington Parish, Louisiana.

(11) Existing point of interconnection between FGT and United Gas Pipe Line Company in St. Helena Parish, Louisiana.

(12) Existing point of interconnection between FGT and United Gas Pipe Line Company in St. Landry Parish, Louisiana.

It is stated that FGT proposes to deliver the gas to or for the account of Cyanamid, less Cyanamid's pro rata share of compressor fuel and vented and lost gas, at the following locations:

(1) Existing point of interconnection between FGT and Five Flags Pipeline Company in Santa Rosa County, Florida.

Inasmuch as all of the above-described points of receipt and delivery are in existence, FGT states that it is not requesting authorization to construct any new facilities.

FGT states that is proposes to charge Cyanamid the Maximum Rate applicable to this service. The Maximum Rate currently consists of a Facility Charge of 7.3 cents per MMBtu delivered and a Service Charge of 3.9 cents per

MMBt per 100 miles of forward haul. These charges are in addition to FGT's currently effective Gas Research Institute surcharge of 1.47 cents per MMBtu and FGT's ACA surchage of 0.21 cents per MMBtu which became effective on October 1, 1987.

FGT states that the term of the transportation agreement is for a primary term of five years from the date of inital deliveries under the contract, and from year to year thereafter.

FGT states that Cyanamid requires this transportation service in order to receive gas for its own use at its acrylic fiber plant in Santa Rosa County, Florida served by Five Flags.

FGT states that since the transportation service is fully interruptible and is contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers, the transportation service proposed herein cannot have an adverse impact on FGT's existing customers.

Comment date: June 30, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further nptice 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. 88-13390 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Project 8889-001, et al.]

Hydroelectric Applications (Cordova Electric Coop., Inc.) et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. *Type of Application:* Minor License.

b. *Project No.:* 8889-001.

c. *Date Filed:* July 17, 1987.

d. *Applicant:* Cordova Electric Cooperative, Inc.

e. *Name of Project:* Humpback Creek.

f. *Location:* On Humpback Creek near the town of Cordova, on Orca inlet of Prince William Sound, Alaska; T.14S., R.3W., section 36, Cooper River Meridian.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ronald O. Goodrich, President, Cordova Electric Cooperative, Inc., P.O. Box 20, Cordova, AK 99574.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 376-9821.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed run-of-river project would consist of: (1) A 13-foot-high, 50-foot-long timber and rock-filled diversion dam with a crest elevation of 205 feet; (2) a timber intake structure; (3) a 42-inch-diameter, 2,000 foot-long steel penstock; (4) a 30-foot-by 50-foot steel powerhouse containing three turbine-generator units with a total installed capacity of 1,250 KW; (5) a 60-inch-diameter, 50-foot-long tailrace discharging into; (6) a 70-foot-long, 8-foot-wide gabion channel; (7) 12.5-kV generator leads; (8) a 2.8 mile-long, 12.5-kV transmission line from the powerhouse to the town of Orca; (8) a 12.5-kV line extension from Orca to a distribution point, 2 miles north of the Project; and (9) appurtenant facilities.

l. *Purpose of Project:* Power produced from the project would be utilized by Cordova Electric Cooperative, Inc.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10574-000.

c. *Date Filed:* April 11, 1988.

d. *Applicant:* Faulkner Land and Livestock Company, Inc.

e. *Name of Project:* Freeway Drop Hydroelectric Project.

f. *Location:* On the Y Canal, an irrigation canal and tributary to the Snake River, near the town of Glenn Ferry, in Elmore County, Idaho. The project would occupy lands of the United States administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* John C. Arkoosh, Attorney at Law, P.O. Box 32, Gooding, ID 83330, (208) 934-8401.

i. *FERC Contact:* Thomas Dean, (202) 376-9562.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A diversion structure with an inlet elevation of 3,000 feet msl; (2) a 10,000-foot-long, 36-inch-diameter penstock leading to; (3) a powerhouse at elevation 2,505 feet msl containing a single generating unit with a capacity of 1,400 kW operating at 495 feet of hydraulic head; (4) a tailrace emptying into the Snake River; and (5) a 200-foot-long, 12.5-kV transmission line.

The applicant estimates the average annual energy production to be 6,000 MWh. The approximate cost of the studies under the permit would be $5,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. *Type of Application:* Transfer of license.

b. *Project No.:* 8296–006.

c. *Date Filed:* March 29, 1988.

d. *Applicants:* Malacha Power Project, Inc. (licensee), Malacha Hydro Limited Partnership and Juniper Ridge Ranches, Inc. (transferees).

e. *Name of Project:* Muck Valley.

f. *Location:* On the Pit River in Lassen County, California, partially on the U.S. Bureau of Land Management land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:*

Malacha Hydro Limited Partnership, c/o Constellation Development, Inc., 250 West Pratt Street, Baltimore, MD 21201–2423, (301 783–2423

Thomas J. Vestal, President, Juniper Ridge Ranches, Inc., P.O. Box 250, Fall River Mills, CA 96028

Mr. E. Robert Mooney, President, Malacha Power Project, Inc., P.O. Box 6640, Boise, ID 83707

Gary D. Bachman, Esq., VanNess, Feldman, Sutcliffe & Curtis, 1050 Thomas Jefferson St. NW., Washington, DC 20007

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 376–9821.

j. *Comment Date:* July 8, 1988.

k. *Description of Transfer:* On December 2, 1986, a major license was issued to Malacha Power Project, Inc. for the construction, operation, and maintenance of the Muck Valley Project No. 8296. Malacha Power Project, Inc., has proposed to transfer the license to Malacha Hydro Limited Partnership and Juniper Ridge Ranches, Inc.

The transferees are a limited parternship organized under the laws of the state of Maryland and a corporation organized under the laws of the state of California.

The licensee certifies that it has fully complied with the terms and conditions of its license, as amended, and obligates itself to pay all annual charges accrued under the license to the date of transfer. The transferees accept all the terms and conditions of the license and agree to be bound by them to the same extent as though they were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

4 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10540–000.

c. *Date Filed:* February 4, 1988.

d. *Applicant:* City of Weiser, Idaho.

e. *Name of Project:* Harry Nelson Hydropower Project.

f. *Location:* On the Weiser River near the City of Weiser, in Washington County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael Holladay, Holladay Engineering Company, P.O. Box 211, Payette, ID 83661, (208) 642–3304.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers proposed Galloway Dam, and would consist of: (1) A powerhouse containing a single generating unit with an installed capacity of 4,500 kW operating at hydraulic heads ranging from 150 to 280 feet; (2) a 10-mile-long, 69-kV transmission line; and (3) appurtenant facilities.

The applicant estimates the average annual energy production to be 20,440 MWh. The approximate cost of the studies under the permit would be $50,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10548–000.

c *Date Filed:* February 25, 1988.

d. *Applicant:* A&J Construction, Inc.

e. *Name of Project:* Kanaka Rapid.

f. *Location:* On Snake River in Twin Falls and Gooding Counties, Idaho, near the town of Buhl. T.9S., R.14E., Sections 9 and 10, Boise Meridan, Idaho.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Carl L. Myers, P.E. Myers Engineering Company, P.A. 750 Warm Springs Avenue, Boise, ID 83712 (208) 336–1425.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 376–9821.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would consist of:(1) A 50-foot-long, 15-foot-high reinforced concrete dike with a crest elevation of 2,920 feet, extending from the north banks of the Snake River to an island in the center of the River; (2) a 3,100-foot-long earth canal with a botton width of 45 feet; (3) a powerhouse containing two turbine-generator units with a total installed capacity of 12,375 kW; (4) a 90-foot-wide tailrace; (5) a 2,500-foot-long, 138–kV transmission line tying into an existing system.

The applicant estimates the cost of conducting these studies under the preliminary permit at $60,000.

l. *Purpose of Project:* Power produced from the proposed project will be sold to a utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10556–000.

c. *Date Filed:* March 15, 1988.

d. *Applicant:* Kenneth M. Grover.

e. *Name of Project:* Tuck Tape Project.

f. *Location:* On Fishkill Creek, in Dutchess County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kenneth M. Grover, Box 536, Route 100, Croton Falls, NY 10519, (914) 277–8000.

i. *FERC Contact:* Thomas O. Murphy (202) 376–9773.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing masonry gravity dam, approximately 90-foot-long and 14 feet high, with 2-foot-high flashboards; (2) an existing impoundment of 2.0-acres surface area and 11.4-acre-feet storage capacity at a normal maximum surface elevation of 74 feet mean sea level, which will be incresed to 2.5-acres with 14.0-acre-feet storage capacity at a normal maximum surface elevation of 76 feet m.s.l.; (3) a proposed integral intake-powerhouse 20 feet wide and 26 feet long, to house a proposed turbine-generator of 300 kW capacity; (4) a proposed excavated tailrace; and (5) appurtenant facilities.

The estimated annual energy production is 1.6 GWh. Project power would be sold to Central Hudson Gas and Electric Corporation. The existing facilities are owned by Tuck Industries, Inc.

l. This notice also consists of the following standards paragraphs: A5, A7, A9, A10, B, C and D2.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10557–000.

c. *Date Filed:* March 16, 1988.

d. *Applicant:* Trenton Falls Hydroelectric Company.

e. *Name of Project:* North Elba.

f. *Location:* On the Chubb River in Essex County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Fred T. Samel, P.O. Box 169, Prospect, New York 13435, (315) 733–8478.

i. *FERC Contact:* Thomas O. Murphy, (202) 376–9773.

j. *Comment Date:* August 1, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing concrete dam 24 feet in height and 136 feet in length, with an existing intake structure on the north abutment; (2) an existing reservoir with surface area of nine acres at a normal maximum surface elevation of 1706 feet mean sea level; (3) an existing steel penstock 800 feet in length, 66 inches in diameter, and requiring repair; (4) an existing steel surge tank, 15 feet in diameter and 40 feet in height; (5) an existing concrete powerhouse 40 feet long, 30 feet wide and 12 feet high to house a proposed turbine/generator unit with total proposed capacity of 355–kW; (6) an existing concrete tailrace 20 feet long, 12 feet wide and 2 feet deep; (7) a proposed one-mile long, 115 kV transmission line; (8) a proposed electrical switchyard; and (9) appurtenant facilities.

The estimated annual power production is 2,037 kWh. Project power will be sold to Niagara Mohawk Power Corporation or will be supplied to the Lake Placid Village municipal system. Lake Placid Village, Inc. is the owner of the dam.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10592–000.

c. *Date Filed:* May 3, 1988.

d. *Applicant:* Green Mountain Energy, Inc.

e. *Name of Project:* Chouteau Lock and Dam.

f. *Location:* On Verdigris River near Okay, Wagoner County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. M.S. Swift, Green Mountain Energy, Inc., P.O. Box 52455, Tulsa, Oklahoma 74152, (918) 582–2168.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Chouteau Lock and Dam and reservoir and would consist of: (1) An existing diversion channel; (2) a proposed reinforced concrete powerhouse 11 feet by 45 feet housing a 900–kW hydropower unit; (3) a tailrace utilizing the existing diversion channel; (4) a proposed 12.8–kV transmission line 1,000 feet long; and (5) appurtenant facilities. The estimated annual energy production is 3.15 GWh. Project power would be sold to an electric utility. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000 to $90,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10575–000.

c. *Date Filed:* April 12, 1988.

d. *Applicant:* Barrish and Sorenson Hydroelectric Company.

e. *Name of Project:* Cispus River No. 1 Project.

f. *Location:* In the Gifford Pinchot National Forest, on the Cispus River near the town of Randle, in Lewis and Skamania Counties, Washington. Township (T) 10N, Range (R) 10E; T10N, R9E; T11N R9E; T11N, R8E; and T11N, R7E Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:*

Ted S. Sorenson, 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069

Steve P. Barrish, 1004 SE 97th Avenue, Vancouver, WA 98664, (206) 254–2423.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* Aug. 8, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure at elevation of 3,015 feet msl; (2) a 39,000-foot-long, 84-inch-diameter penstock leading to; (3) a powerhouse containing two generating units with a combined capacity of 24.7 MW; and (4) a 21.5-mile-long, 69–kV transmission line.

The applicant estimates the average annual energy production to be 176,438 MWh. The approximate cost of the studies under the permit would be $50,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10576–000.

c. *Date Filed:* April 13, 1988.

d. *Applicant:* Barrish and Sorenson Hydroelectric Company.

e. *Name of Project:* Cispus River No. 2 Project.

f. *Location:* In the Gifford Pinchot National Forest, on the Cispus River near the town of Randle, in Lewis and Skamania Counties, Washington. Township (T) 10N, Range (R) 9E; T11N, R9E; T11N, R8E; and T11N, R7E Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:*

Ted S. Sorenson, 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069

Steve P. Barrish, 1004 SE 97th Avenue, Vancouver, WA 98664, (206) 254–2423.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* August 8, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure at elevation of 1,960 feet msl; (2) a 44,200-foot-long, 120-inch-diameter penstock leading to; (3) a powerhouse containing two generating units with a combined capacity of 23.3 MW; and (4) a 13-mile-long, 69–kV transmission line.

The applicant estimates the average annual energy production to be 165,540 MWh. The approximate cost of the studies under the permit would be $50,000.

l. *Purpose of Project:* Applicant intends to sell the power generated from the proposed facility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10577–000.

c. *Date Field:* April 15, 1988.

d. *Applicant:* Larry Gene Lewis.

e. *Name of Project:* Wetlands Recovery Project.

f. *Location:* On BLM lands at the City of Las Vegas Sewerage Treatment Plant and the Clark County Advanced Waste Water Treatment Plant near Las Vegas in Clark County, Nevada.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Larry Gene Lewis, 3955 Swenson #33, Las Vegas, NV 89109, (702) 870–4251.

i. *FERC Contact:* Julie Bernt, (202) 376–1936.

j. *Comment Date:* August 8, 1988.

k. *Description of Project:* The proposed project would consist of: (1) Siphon weirs following chlorination weirs at the Clark County Advanced Waste Water Treatment Plant and the Las Vegas Treatment Plant; (2) six miles of sealed canals; (3) siphon pipes leading from the end of the canals to three siphon turbine barges each having two generators, with each generator having a 150 kW rated capacity; and (4) 5 miles of transmission line.

Applicant estimates the average annual energy production to be 17,500,000 kWh and the cost of the work to be performed under the preliminary permit to be $25,000.

l. *Purpose of Project:* The power produced will be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. *Type of Application:* Surrender of License.

b. *Project No.:* 7748–004.

c. *Date Filed:* March 25, 1988.

d. *Applicant:* New York Power Authority.

e. *Name of Project:* Waterford Project.

f. *Location:* On the Hudson River in Saratoga and Rensselaer Counties, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Peter A. Giuntini, New York Power Authority, 10 Columbus Circle, New York, NY 10019, (212) 397–6200.

i. *FERC Contact:* Robert Bell (202) 376–9237.

j. *Comment Date:* July 22, 1988.

k. *Description of Project:* The project consists of: (a) The existing Waterford Dam and Lock C–1, a concrete gravity structure in three sections, an ogee-crested spillway section 19.5 feet high and 60.2 feet long, a section of six tainter gates 17.0 feet high and 356 feet long, and a non-overflow section 36 feet high and 70 feet long; (b) a reservoir with a surface area of 400 acres, a storage capacity of 5,000 acre-feet, and a normal water surface elevation of 28.3 feet NGVD; (c) an intake channel, 60 feet wide and 54 feet long with side slopes of 4.1; (d) trashracks; (e) an ice deflector structure; (f) a powerhouse containing two generating units having a total capacity of 3,000 kW; (g) a tailrace channel 160 feet long; (h) a switch-yard; (i) the 4.16-kV generator leads; (j) the 3-phase, 4.16/34.5-kV, 3/4 MVA OA/FA transformer; (k) a 34.5-kV transmission line, 1.9 miles long; (l) an access road; and (m) appurtenant facilities.

The applicant estimates the average annual energy would have been 21,500,000-kWh. The New York Power Authority would have utilized the energy for sale to its customers.

The licensee is surrendering the license because the proposed project is no longer feasible for it. No construction has taken place at this place.

This notice also consists of the following standard paragraphs: B, C and DS2.

13 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10544–000.

c. *Date Filed:* February 16, 1988.

d. *Applicant:* Loyalhanna Hydro Associates.

e. *Name of Project:* Loyalhanna Dam.

f. *Location:* On Loyalhanna Creek, near New Alexandria, Westmoreland County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, Md 21403, (301) 268–8820.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Loyalhanna Dam and reservoir and would consist of: (1) An existing penstock 10 feet in diameter; (2) a proposed penstock 12 feet in diameter and 170 feet long; (2) a proposed reinforced concrete powerhouse 50 feet by 50 feet housing two 750–kW hydropower units; (3) a proposed concrete lined tailrace 50 feet wide and 70 feet long; (4) a proposed 13.2–kV transmission line 200 feet long; and (5) appurtenant facilities. The estimated annual energy production is 7 GWh. Project power would be sold to Pennsylvania Electric Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10550–000.

c. *Date Filed:* February 29, 1988.

d. *Applicant:* The Bangor Hydro-Electric Company.

e. *Name of Project:* Basin Mills.

f. *Location:* On the Penobscot and Stillwater Rivers in Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Robert S. Briggs, Bangor Hydro-Electic Company, 33 State Street, Bangor, ME 04401, (207) 945–5621.

Mr. William J. Madden, Bishop, Cook, Purcell & Reynolds, 1400 L Street NW., Washington, DC 20005–3502, (202) 371–5715.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would consist of three developments: (1) Veazie Development; (2) Basin Mills Development; and (3) Orono Development. The existing dams are owned by the applicant. The applicant estimates that the cost of the studies under permit would be $437,000. A description of each development is as follows:

(i) *Veazie Development.* The Veazie Development would consist of: (1) An existing 25-foot high, 902-foot-long concrete gravity dam; (2) a reservoir with a surface area of 390 acres, a storage capacity of 4,800 acre-feet, and a normal water surface elevation of 34.8 feet NGVD with; (3) 6.5-foot/high hinged flashboards; (4) an existing concrete forebay; (5) two existing brick and concrete powerhouses: (a) powerhouse A is located along the west bank and contains 15 turbine-generator units for a total installed capacity of 5.4 MW; and (b) powerhouse B is located at the downstream end of the forebay and contains two turbine-generator units with a total installed capacity of 3 MW; (6) a new concrete powerhouse containing one generating unit with an installed capacity of 8 MW; (7) an existing tailrace; (8) a transmission line, 200 feet long; and (9) appurtenant facilities. The average annual generation would be 87 million kWh.

(ii) *Basin Mills Development.* The Basin Mills Development would consist of: (1) A new 18-foot-high, 1,650-foot-long concrete gravity dam; (2) a reservoir with a surface area of 325 acres, a storage capacity of 5,000 acre-feet, and a normal water surface elevation of 64.0 feet NGVD; (3) a new intake gate; (4) a new concrete powerhouse containing three pit-type turbine units with a total installed capacity of 38 MW; (5) a transmission line, 200 feet long; and (6) appurtenant facilities. The average annual generation would be 183 million kWh.

(iii) *Orono Development.* The applicant proposes to decommission the existing facilities at the Orono Development by removing the existing penstocks and powerhouse. The applicant proposes to retain the existing 18-foot-high, 1,174-foot-long concrete dam and flashboards and the 175-acre, 1,300-acre-foot reservoir which is at elevation 72.4 feet NGVD.

l. *Purpose of Project:* Project power would be sold to the applicant's retail customers.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10555–000.

c. *Date Filed:* March 9, 1988.

d. *Applicant:* Richmond Hydroelectric Science Museum Partners.

e. *Name of Project:* Richmond Hydroelectric Science Museum.

f. *Location:* On the James River near Richmond, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Granville J. Smith II, 3901 Northampton Street NW., Washington, DC 20015, (202) 966–1409.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing breached concrete dam 2,366 feet long and ranging from three to 16 feet high; (2) an existing canal 500 feet long with eight intake gates; (3) an existing powerhouse 168 feet by 75 feet; (4) five existing turbine-generators with 1,775-kW combined capacity; (5) an existing tailrace; (6) an existing 12.5-kV transmission line 200 feet long; and (7) appurtenant facilities. The estimated annual energy production is 10–12 GWh. Project power would be sold to the City of Richmond or to Virginia Electric Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $80,000. The dam is owned by the James River Paper Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10591–000.

c. *Date Filed:* May 3, 1988.

d. *Applicant:* Green Mountain Energy, Inc.

e. *Name of Project:* Newt Graham Lock and Dam.

f. *Location:* On Verdigris River near Inola, Wagoner County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. M.S. Swift, Green Mountain Energy, Inc., P.O. Box 52455, Tulsa, Oklahoma 74152, (918) 582–2168.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* August 15, 1988.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Newt Graham Lock and Dam and reservoir and would consist of: (1) An existing diversion channel; (2) a proposed reinforced concrete powerhouse 11 feet by 45 feet housing a 900-kW hydropower unit; (3) a tailrace utilizing the existing diversion channel; (4) a proposed 13.8–kV transmission line three miles long; and (5) appurtenant facilities. The estimated annual energy production is 3.15 GWh. Project power would be sold to an electric utility. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $60,000 to $90,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 day after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10 Proposed Scope of Studies under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accorance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to Federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural of other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions prusuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the Application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 9, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13389 Filed 6–13–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 9, 1988.

Take notice that on June 1, 1988, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Fifth Revised Sheet No. 4

The tariff sheet is proposed to become effective July 1, 1988. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washingon, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13305 Filed 6–13–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-31-000]

Arkla Energy Resources; Filing of Revised Tariff Sheets in Compliance with Order No. 483

June 9, 1988.

Take notice that on June 1, 1988, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective July 1, 1988:

Rate Schedule No. X–26, Original Volume No. 3
3rd Revised 45th Revised Sheet No. 185

Rate Schedule No. 6–2, First Revised Volume No. 1
3rd Revised 46th Revised Sheet No. 4

AER states that these tariff sheets reflect AER's first quarterly PGA filing made under the Commission's transitional rules of Order No. 483.

AER states that the proposed changes would increase AER's system cost by $146,786 and its revenue from jurisdictional sales and service by $2,853 for the PGA period of July, August and September 1988 as adjusted.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–13306 Filed 6–13–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-187-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 9, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 3, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

Twelfth Revised Sheet No. 16B
Second Revised Sheet No. 16B1
Second Revised Sheet No. 16B2
Third Revised Sheet No. 46E
Second Revised Sheet No. 68
Second Revised Sheet No. 68A

Columbia states that the foregoing tariff sheets are being filed pursuant to Order No. 500 to recover take-or-pay and contract reformation cost fixed charges and commodity surcharges which its pipeline suppliers bill to Columbia. As a downstream pipeline, Columbia proposes to recover such costs on an as-billed basis, pursuant to § 2.104(e) of the Commission General Policy and Interpretations. For fixed

costs billed to Columbia by its pipeline suppliers, Columbia will allocate such costs to its customers utilizing the same deficiency-based formula which each pipeline supplier utilizes in allocating its fixed-charge take-or-pay and contract reformation costs to Columbia.

Columbia states that while it strongly opposes such deficiency-based allocation, it is required by the Commission's Regulations and the Commission's recent order in *Mississippi River Transmission Corporation*, issued February 29, 1988, 42 FERC ¶ 61,244 (1988) to allocate such costs on this basis. If deficiency-based allocation is ultimately overturned or modified by the Commission or the courts, Columbia states that it will make appropriate adjustments in its fixed-charge recovery billings to its customers.

With regard to Order No. 500 volumetric charges incurred as a result of Columbia's transportation on other pipelines, Columbia proposes to recover such costs through a volumetric surcharge to be billed to its sales and transportation customers.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions.

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, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13303 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-86-003]

KN Energy, Inc.; Compliance Filing

June 9, 1988.

Take notice that on May 31, 1988, KN Energy, Inc. (KN) tendered Thirty-Third Revised Sheet No. 4, Twelfth Revised Sheet No. 4B, and Third Revised Sheet No. 27D to its FERC Gas Tariff, Third Revised Volume No. 1, to be effective on June 1, 1988.

KN states that these tariff sheets comply with the Commission's Order Granting Motion To Implement Interim Settlement Rates issued May 27, 1988.

KN states that these tariff sheets reflect the current cost of purchased gas and surcharge recovery levels approved by the Commission on May 31, 1988 in Docket No. TQ88-1-53-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13310 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ88-2-37-000]

Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant to Purchase Gas Cost Adjustment

June 9, 1988.

Take notice that on June 1, 1988, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of reflecting changes in Northwest's estimated cost of purchased gas for the three months ending September 30, 1988.

Northwest states that the current PGA adjustment, for which notice is given herein, aggregates to a decrease of 14.92¢ per MMBtu in the commodity rate for all rate scheduels affected by and subject to the PGA. The proposed change in Northwest's commodity rates for the third quarter of 1988 would decrease sales revenues by approximately $1,669,548. The instant filing also provides for a reduction in the demand components of Northwest's gas sales rates to reflect an estimate of the demand portion of Canadian toll credits and requested conversions from firm sales to firm transportation by several of Northwest's sales customers. The proposed rate changes have been reflected on Fifth Amended Thirty-Ninth Revised Sheet No. 10 with a proposed effective date of July 1, 1988.

A copy of this filing is being served on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13302 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-78-033]

Penn-York Energy Corp; Compliance Filing

June 9, 1988.

Take notice that on May 31, 1988, Penn-York Energy Corporation (Penn-York) tendered for filing certain tariff sheets in compliance with the Commission's orders issued April 6, 1988 and May 16, 1988, to its FERC Gas Tariff, Second Revised Volume No. 1.

Penn-York states that pursuant to § 154.51 of the Commission's Regulations, Penn-York requests waiver of the notice and timing requirements of § 154.22. Penn-York states that waiver is appropriate in order to timely implement the terms of the Stipulation and Agreement approved by the Commission on April 6, 1988.

Penn-York states that copies of this filing are being mailed to its jurisdictional customers and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214

and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before June 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13311 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

June 9, 1988.

Take notice that Western Gas Interstate Company ("Western"), on June 2, 1988, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. The proposed effective date for the tariff sheets is August 1, 1988.

Western states that, among other things, its filing proposes changes to it rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff which permits recovery of changes in the cost of gas and of unrecovered purchased gas costs. Western further states that the proposed changes provide for: (1) A decrease in cost under Western's Rate Schedule G-N of 1.39 cents per Mcf.; and (2) an increase in cost under Western's Rate Schedule G-S of 85.40 cents per Mcf.

Western also states that the filing reflects new provisions under the General Terms and Conditions of its FERC Gas Tariff whereby it will charge and collect from its customers annual charges assessed by the Commission under § 382.202 of the Commission's Regulations pursuant to the provisions of the Commission's Order No. 472.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 No. Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 29, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-13304 Filed 6-13-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3397-1]

Designation of Two Ocean Dredged Material Disposal Sites (ODMDSs) Offshore Tampa, FL; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA), Region IV.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the final designation of two ODMDSs offshore Tampa, Florida.

PURPOSE: The U.S. EPA, Region IV, in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) will prepare a Draft EIS on the designation of two ODMDSs offshore Tampa, Florida. An EIS is needed to provide the information necessary to designate the two ODMDSs. This Notice of Intent is issued pursuant to Section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, and 40 CFR, Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FURTHER INFORMATION AND TO BE PLACED ON THE ODMDS PROJECT MAILING LIST CONTACT: Reginald Rogers; U.S. EPA, Region IV; 345 Courtland Street NE.; Atlanta, Georgia 30365; (404) 347-2126 or FTS 257-2126.

SUMMARY: EPA proposes to designate two ODMDSs offshore Tampa, Florida, for the disposal of dredged material that meets the criteria for ocean dumping contained in 40 CFR Part 227. An EIS is required to provide the necessary information to evaluate ocean alternative sites and designate the preferred ODMDSs. Designation of the two ODMDSs does not by itself, authorize any dredged material disposal.

Need For Action: EPA's proposal is made at this time because EPA is aware that application is likely to be made for future ocean dumping in this area. The two ODMDSs would serve to make available an ocean alternative for receiving suitable dredged material from the greater Tampa Bay area.

Alternatives:

1. No action (The No-Action Alternative is defined as no final designation of any ocean disposal site).
2. Two preferred offshore disposal sites (Site 4; Site 5A within Site 5).
3. Alternative offshore disposal sites (Site 5B and Site 5MS-C within Site 5).

Ultimately, the selected site at Site 5 will be referred to simply as "Site 5."

Scoping: A scoping meeting will not be held. However, EPA encourages Federal, State and local agencies as well as interested parties to identify significant issues to be addressed in the EIS at this time. Comments and concerns should be sent to the above address.

Estimated Date of Release: The Draft EIS is scheduled to be available in July or August of 1988.

Responsible Official: Greer C. Tidwell, Regional Administrator; EPA, Region IV.

Dated: June 8, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-13372 Filed 6-13-88; 8:45 am]

BILLING CODE 6560-01-M

[ER-FRL-3397-2]

Design and Construction of Wastewater Treatment Facilities, Plymouth, MA; Intent To Discontinue Preparation of a Draft Environmental Impact Statement

AGENCY: Environmental Protection Agency, Region I.

ACTION: Notice of intent to discontinue preparation of a draft Environmental Impact Statement (EIS).

PURPOSE: On October 2, 1981, the EPA identified a need to prepare an EIS and published a Notice of Intent pursuant to 40 CFR 1501.7. Since that time, circumstances have significantly altered the need for an EIS and EPA therefore has decided the preparation of the EIS should be discontinued.

FOR FURTHER INFORMATION CONTACT: Ms. Gwen, Ruta, Environmental Evaluation Section, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203 (617) 565-4420.

SUMMARY: The EPA, Region I, had published a Notice of Intent to prepare an Environmental Impact Statement on the construction of municipal wastewater treatment facilities serving the Town of Plymouth, Massachusetts.

Under the National Environmental Policy Act (NEPA) preparation of the EIS was required prior to approval of the Town's Facilities Plan for design and construction of the treatment works and prior to issuance of any federal grant monies pursuant to section 201 of the Clean Water Act. The draft EIS was projected to be available in October 1983.

The Town's engineering consultant published a draft Facilities Plan in March 1984. However, the findings of the report met with public, regulatory, and legal controversy and as a result, the Facilities Plan was not finalized. Since that time, the Town has been investigating additional sites and alternatives. However, a satisfactory solution has not been proposed to date. During this same intervening period, modifications of the Massachusetts Ocean Sanctuaries Act have been proposed and the Massachusetts groundwater discharge permit program has become operative. Both of these latter developments significantly impact viable wastewater disposal options for the Town of Plymouth.

As a result of the delay in finalizing the proposed wastewater treatment Facilities Plan, federal grant funding under Title VI (State Water Pollution Control Revolving Funds) may occur. Environmental review procedures for projects funded in accordance with Title VI will require that a "NEPA-like" process, based upon State laws or regulations be implemented. The wastewater treatment facilities project is currently the subject of an Environmental Impact Report (EIR) pursuant to the Massachusetts Environmental Policy Act (MEPA). EPA will be reviewing the EIR and the "NEPA-like" review conducted by the Commonwealth of Massachusetts under delegation of the Title VI program to ensure that they satisfy the Title VI requirements. These actions eliminate the need for an Environmental Impact Statement.

In view of the above circumstances, EPA Region I has concluded that a separate EIS is now not required and that applicable information and analyses previously developed for the EIS should be made available to the Massachusetts Division of Water Pollution Control for inclusion in the Title VI review process.

Responsible Official: Michael R. Deland, Regional Administrator.

Dated: June 8, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-13373 Filed 6-13-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3397-4]

Proposed Settlement Under Section 122(d)(3) and 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; Davidson Interior Trim/Textron, et al.

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: This Consent Order is issued pursuant to sections 122(d)(3) and 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act and it concerns the performance of a Feasibility Study at the Dover Landfill Site in Dover, New Hampshire.

DATE: Comments must be provided on or before July 14, 1988.

ADDRESS: Comments should be addressed to the Regional Administrator, U.S. Environmental Protection Agency, Region I, J.F.K. Federal Building, Boston, Massachusetts, 02203, and should refer to: In Re Dover Landfill Site in Dover, New Hampshire, U.S. EPA Docket No. I-88-1021.

FOR FURTHER INFORMATION CONTACT: Susana Cortina de Cardenas, U.S. Environmental Protection Agency, Office of Regional Counsel, RRC-2003, J.F.K. Federal Building, Room 2003, Boston, Massachusetts, 02203 (617) 565-3351.

SUPPLEMENTARY INFORMATION:

Notice of Settlement

In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1986, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Dover Landfill Site in Dover, New Hampshire. The agreement has been proposed by the Regional Administrator for Region I for publication. Subject to review by the public pursuant to this Notice, the agreement has been approved by the state of New Hampshire, the United States Department of the Interior and the National Oceanic and Atmospheric Administration. Listed below are the parties who have signed the Order, committing to participate in the settlement:

Davidson Interior Trim/Textron; Franklin Electro Plating Co., Inc.; George T. Foster & Co., Inc.; General Electric Co.; Bay Head Products; Clarostat Manufacturing Co., Inc.; GFS Manufacturing Co., Inc.; Public Service Company of New Hampshire; and the City of Dover, New Hampshire.

These nine (9) parties have agreed to reimburse EPA and the State of New Hampshire for the costs of the Remedial Investigation at the Site. These costs totalled $691,823.84. The agreement also obligates the parties to conduct a Feasibility Study at the site.

EPA is entering into the agreement under the authority of sections 122(h)(1) and 122(d)(3) of CERCLA.

The Environmental Protection Agency will receive written comments relating to this agreement for thirty days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region I Office of Regional Counsel, J.F.K. Federal Building, Government Center, Boston, Massachusetts 02203. Additional background information relating to the settlement is available for review at the EPA's Region I Office of Regional Counsel.

Michael R. Deland,

Regional Administrator.

[FR Doc. 88-13345 Filed 6-13-88; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

Summary: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, June 28, 1988 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will inlcude a discussion of the following topics: Financial Report, Summary of Hearings, Competitiveness Report, State/City Update, FCIA Subcommittee, Financial Institution Subcommittee, and other topics.

Public participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P.

Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 655–8871, not later than June 27, 1988. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to June 21, 1988 the Office of the Secretary, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566–8871 or TDD: (202) 535–3913.

Further information: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566–8871.

Hart Fessenden,

General Counsel.

[FR Doc. 13494 Filed 6–13–88; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Grants; Hazardous Materials Training Program; Federally Recognized Indian Tribes; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Notice; correction.

SUMMARY: This notice is to correct an inaccurate date for requesting grant applications which was printed in the Federal Register, Vol. 53, No. 103, dated May 27, 1988, on page 19335. For the convenience of the reader, that notice reflected that FEMA is accepting grant applications to develop a training program in Hazardous Materials under SARA Title III. Applications will be limited to federally recognized Indian Tribes. An additional purpose of this correction is to add *federally recognized Indian Tribes* to the subject heading of the document to ensure notice to the appropriate audiences.

ADDRESS: Requests should be submitted to: Federal Emergency Management Agency, National Emergency Training Center, Attention: Procurement Branch, E–115, 16825 South Seton Avenue, Emmitsburg, MD 21727.

FOR FURTHER INFORMATION CONTACT: Estelle F. Marr at (301) 447–1077 (FTS 652–1077).

In the **DATE** section "June 1, 1988" should read "July 1, 1988."

Date: June 8, 1988.

George W. Watson,

Acting General Counsel.

[FR Doc. 88–13338 Filed 6–13–88; 8:45 am]

BILLING CODE 6718–01–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 in § 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.: 202–008090–032

Title: Mediterranean North Pacific Coast Freight Conference

Parties: Italia di Navigazione, S.p.A./ d'Amico Societa di Navigazione per Azioni, United Yugoslav Lines, Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202–009548–036

Title: United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference

Parties: Farrell Lines, Inc., Lykes Bros. Steampship Co., Inc., Pharos Lines, S.A., Waterman Steamship Corporation

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202–010122–017

Title: Inter-American Freight Conference Area River Plate/Puerto Rico and U.S. Virgin Islands/River Plate

Parties: A. Bottacchi S.A. De Navegacion C.F.I.e.I., A/S Ivarans Rederi, Companhia Maritima Nacional, Companhia De Navegacao Lloyd Brasileiro, Empresa Lineas Maritimas Argentinas, Sociedad Anonima (Elma S/A), Transportacion Maritima Mexicana S.A.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202–010268–011

Title: Australia/Eastern U.S.A. Shipping Conference

Parties: Columbus Line, Pacific America Container Express (PACE Line)

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202–010676–030

Title: South Europe/U.S.A. Freight Conference

Parties: Compania Trasatlantica Espanola, S.A., Costa Line, Evergreen Lines, Inc., Farrell Lines, Inc., Italia di Navigazione, S.p.A.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 202–010886–004

Title: Costa/Italia/Trasatlantica Space Charter and Sailing Agreement

Parties: Italia Di Navigazione, S.p.A., Compania Trasatlantica Espanola, S.A.

Synopsis: The proposed amendment would delete Costa Container Lines, S.p.A. as a party. It would also change the name of the agreement to Italia/ Trasatlantica Space Charter and Sailing Agreement.

Agreement No.: 202–011102–002

Title: U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement

Parties: Costa Line, Farrell Lines, Inc., Nedlloyd Lines, Sea-Land Service, Inc., Trans Freight Lines, Compania Trasatlantica Espanola, Evergreen Marine Corporation (Taiwan) Ltd., Italia di Navigazione, S.p.A., Lykes Bros. Steamship Co., Inc., Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 207–011144–002

Title: Australia-New Zealand Direct Line Service Agreemnt

Parties: Pacific Australia Direct Line ("PAD") Australia-New Zealand Container Line ("ANZCL")

Synopsis: The proposed amendment would permit the parties to eliminate the Pacific Islands from the geographic scope of the Coordinated Service, and would simplify the

distinction between cargoes to be carried by the Coordinated Service and cargoes that may be carried by PAD. It would also reflect changes in the ownership of PAD and ANZCL and make other nonsubstantive changes.

Agreement No.: 203–011148–002

Title: Western Mediterranean Stabilization Agreement
Parties: South Europe/U.S.A. Freight Conference, Ocean Star Container Line A.G.
Synopsis: The proposed amendment would conform the agreement to the Commission's requirements concerning service contract provisions.

Agreement No.: 203–011162–002

Title: PANAM Discussion Agreement
Parties: U.S. Atlantic and Gulf Central American Freight Association, Lykes Brothers Steamship Co. Inc., Ecuadorian Line, Inc.
Synopsis: The proposed amendment would delete Transnave, Inc. and Naviera Consolidada, S.A. as parties to the agreement and add Gran Golfo Express. The parties have requested a shortened review period.

Agreement No.: 203–011172–002

Title: United States Atlantic and Gulf Venezuela Freight Conference
Parties: Marlago, S.A., King Ocean, Maritima Aragua, S.A., Venezuelan Container Line, Seaboard Marine, Ltd.
Synopsis: The proposed amendment would expand the geographic scope to include U.S. Pacific Coast ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.
Dated: June 9, 1988.

Tony P. Kominoth,
Assistant Secretary.

[FR Doc. 88–13391 Filed 6–13–88; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

ANB Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 6, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ANB Corporation*, Muncie, Indiana; to acquire 100 percent of the voting shares of The Saratoga State Bank, Saratoga, Indiana.

2. *Havana Bancshares, Inc.*, Springfield, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Havana, Havana, Illinois.

Board of Governors of the Federal Reserve System, June 8, 1988.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 88–13313 Filed 6–13–88; 8:45 am]
BILLING CODE 6210–01–M

Meridian Bancorp, Inc. et al.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 6, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp, Inc.*, Reading, Pennsylvania; to expand its current activity of reinsuring credit life and accident and health insurance issued in connection with extensions of credit make by Meridian Bank and the recently acquired Delaware Trust Company, Wilmington, Delaware, to a nationwide basis through its subsidiary, Meridian Life Insurance Company, Reading, Pennsylvania, formerly Amerisure Life Insurance Company, pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 8, 1988.

James McAffe,
Associate Secretary of the Board.

[FR Doc. 88–13314 Filed 6–13–88; 8:45 am]
BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Real Estate Development Advisory Committee; Establishment

Establishment of advisory committee. This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the establishment of the General Services Administration (GSA) Real Estate Development Advisory Committee. The Administrator of General Services has

determined that establishment of this committee is in the public interest.

Designation. General Services Administration Real Estate Development Advisory Committee.

Purpose. The purpose of the committee will be to advise the Administrator of General Services on key issues relating to real estate development projects in the areas of real estate apparisal, leasing, construction costs, housing plans, and architecture.

Contact for information. For additional information, contact Peter Ford, Office of the Administrator, GSA, Washington, DC 20405, telephone (202) 566–1086.

Dated: June 9, 1988.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88–13474 Filed 6–10–88; 3:08 pm]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council, AIDS; Establishment

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix II), the Health Resources and Service Adminstration (HRSA) announces the establishment by the Secretary, HHS, with concurrence by the General Services Administration of the following advisory committee.

Designation: HRSA AIDS Advisory Committee.

Purpose: The Committee shall advise the Secretary; the Assistant Secretary for Health; the Administrator, HRSA; and the HRSA AIDS Coordinator on HRSA's long- and short-term plans for HRSA AIDS health care delivery activities, training, research and other activities relating to the transmission, prevention, and treatment of AIDS.

Authority for this Committee will expire on June 3, 1990, unless the Secretary, HHS, with the concurrence of the General Services Administration, formally determines that continuance is in the public interest.

Dated: June 9, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–13385 Filed 6–13–88; 8:45 am]

BILLING CODE 4160–15–M

Availability of Materials Developed Under Contract No. 240–84–0098 Identification of Self-Care Behaviors Practiced by Community Based Elderly

The Health Resources and Services Administration announces the availability of materials developed under Contract No. 240–84–0098, "Identification of Self-Care Behaviors Practiced by Community Based Elderly", with the Health Services Research Center, University of North Carolina at Chapel Hill. A nursing assessment research instrument and an Interviewer Training Manual were developed for use in surveying community-based elderly to identify the self-care behaviors which they practice. The instrument, although in some demand, has not been tested for reliability and validity nor was it approved for information collection from the public under the requirements of the Paperwork Reduction Act (Pub. L. 96–511). Both the instrument and the Manual are available in one document from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; Telephone: (703) 487–4650; for $19.00 plus a $3.00 handling charge. The NTIS accession number is HRP–0907158.

FOR FURTHER INFORMATION CONTACT: The Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 5C–26, Rockville, Maryland 20857.

Dated: June 7, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–13318 Filed 6–13–88; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council, Migrant Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1988:

Name: National Advisory Council on Migrant Health

Date and Time: August 23–26, 1988, 9:00 a.m.

Place: Sheraton Salisbury, 300 S. Salisbury Blvd., Salisbury, MD 21801.

The meeting is open to the public. No transportation to Migrant Health Clinic and Labor Camp will be provided for visitors and observers.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The members of the Council will consider the following:

(1) Migrant Health Program 3 Year Strategic Work Plan; (2) Needs Demand Assessment/State Profile; (3) Environmental Health Strategy and Objectives; (4) Nutrition Strategy in Migrant Health Centers Update; (5) Impact of Immigration Reform and Control Act/Migrant Health Program Activity; (6) Migrant Clinician Network—Status and Update; (7) National Migrant Referral Project Resource Center Status Report; (8) Recruitment and Retention of Physician Providers; (9) Site Visit to Migrant Health Clinic and Labor Camp.

Anyone requiring information regarding the subject Council should contact Mrs. Sonia M. Leon Reig, Executive Secretary, National Advisory Council on Migrant Health, Room 7A–30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Agenda Items are subject to change as priorities dictate.

Dated: June 9, 1988.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 88–13386 Filed 6–13–88; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Privacy Act of 1974; Deletion of System Notice 09–30–0050

AGENCY: Public Health Service, HHS.

ACTION: On Wednesday, April 27, 1988, in 53 FR 15141–15143, the Alcohol, Drug Abuse, and Mental Health Administration published a notification of a new Privacy Act system of records, 09–30–0050, "Clinical Research: Patient Medical Records, HHS/ADAMHA/NIMH." The agency received a comment on the second routine use in that system notification, which permitted social work staff to give pertinent information to community agencies to assist patients or their families. The commentor believed that such disclosures should not be made under a routine use, and that staff should obtain permission from the patient or guardian before releasing information. The agency agrees with that comment; permission will be

obtained. Therefore, routine use 2 is being deleted.

FOR FURTHER INFORMATION CONTACT: Betty J. Cook, ADAMHA Privacy Act Officer, 12–105 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: June 6, 1988.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

[FR Doc. 88–13319 Filed 6–13–88; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Performance Review Board Appointments

June 8, 1988.

AGENCY: Department of the Interior.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95–454, 5 U.S.C. 4313(c)(4)).

DATE: These appointments are effective June 14, 1988.

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street, NW., Washington, DC 20240, Telephone Number: 343–6761.

DEPARTMENT OF THE INTERIOR—PERFORMANCE REVIEW BOARD (PRB) MEMBERSHIP

Name	Organization
Career members	
1. Thomas Allen	LLM
2. Maurice Babby	BIA
3. Clifford Barrett	WBR
4. James Biesecker	WGS
5. Robert Boldt	LSM
6. J. Austin Burke	WBR
7. Galen Buterbaugh	FWS
8. Anthony Conte	SOL
9. Carson Culp	LLM
10. Edward Davis	FNP
11. Joseph Doddridge	FW
12. Hazel Elbert	BIA
13. Timothy S. Elliott	SOL
14. Robert Fagin	WBM
15. Manus Fish	FNP
16. Jay Gerst	FWS
17. Joseph Gorrell	PBA
18. Charles Hughes	SOL
19. G. Curtis Jones	LLM
20. Carolita Kallaur	LMS

DEPARTMENT OF THE INTERIOR—PERFORMANCE REVIEW BOARD (PRB) MEMBERSHIP—Continued

Name	Organization
21. William Kendig	PBA
22. William Klostermeyer	WBR
23. Charles Luscher	LLM
24. Darrell Mach	WBR
25. William Mann	WGS
26. Wayne Marchant	WS
27. Sam Marler	FWS
28. Carmen Maymi	O/S
29. Lorraine Mintzmeyer	FNP
30. Harold O'Connor	FWS
31. A. Thomas Ovenshine	WGS
32. James Parker	LLM
33. Robert Peterson	PBA
34. Steve Robinson	FWS
35. Roland Robison	LLM
36. Don Sant	LMS
37. Thomas Sheehan	IG
38. Charlotte Spann	O/S
39. Stanley Speaks	BIA
40. Robert Stanton	FNP
41. Jack Stassi	WGS
42. John Trezise	PBA
43. Jerry Vance	PBA
44. Lewis Wade	WBM
45. Richard Whitesell	BIA
46. Richard Witmer	WGS
Noncareer members	
47. Paul Baird	OHA
48. David Brown	WBM
49. James Cason	LMM
50. Carol Clancy	SOL
51. Patricia Clarey	O/S
52. David Crow	LMS
53. Patricia Keys	IA
54. Rebecca Mullin	LMM
55. Michael Poling	LMM
56. Susan Recce	FWP
57. Patricia Ryan	PBA
58. Howard Shafferman	SOL
59. Marty Smith	PBA
Presidential appointee	
60. Rick Ventura	PBA

Approved:

Rick Ventura,

Assistant Secretary, Policy, Budget and Administration.

Date: June 8, 1988.

[FR Doc. 88–13351 Filed 6–13–88; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[CA–930–08–4333–02]

Closure Order Pacific Crest National Scenic Trail; California

AGENCY: Bureau of Land Management, California, Interior.

ACTION: Notice of closure of those portions the Pacific Crest National Scenic Trail, administered by the Bureau of Land Management, in California, to using or possessing a bicycle.

SUMMARY: Under the authority of 43 CFR 8364.1(a) "Closure and Restriction Orders" using or possessing a bicycle on the Pacific Crest National Scenic Trail (PCNST), in California, is prohibited. This order is consistent with the PCNST Advisory Board recommendations, agencies' endorsement and Forest Service Order No. 88–2 (Pacific Southwest Region, April 21, 1988). This action is taken since the trail was designated for foot and equestrian use.

SUPPLEMENTARY INFORMATION: Violation of this regulation, by a member of the public, is punishable by a fine not to exceed $1000, and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Paul G. Boos, Recreation Specialist, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825, (916) 978–4730.

Date: June 6, 1988.

Ed Hastey,

State Director, California.

[FR Doc. 88–13331 Filed 6–13–88; 8:45 am]

BILLING CODE 4310–40–M

[NV–030–08–4322–02]

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Carson City District Grazing Advisory Board will meet at 10:00 a.m., on Thursday, July 21, 1988, at the Carson City District Office Conference Room, 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

The primary topics will be the FY 1989 Rangeland Improvement Projects, Allotment Management Plans, and status of the Land Use Plans.

The meeting is open to the public. Interested persons may make oral statements at 1:00 p.m. or file written statements for the Board's consideration.

FOR FURTHER INFORMATION CONTACT: Andy Anderson, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada, 89706, phone: (702) 882–1631.

Norman L. Murray,

Acting District Manager, Carson City District.

Dated this 27th day of May 1988.

[FR Doc. 88–13333 Filed 6–13–88; 8:45 am]

BILLING CODE 4310–HC–M

[OR-010-08-4410-12:GP8-149]

Lakeview District Grazing Advisory Board; Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of two meetings of the Lakeview District Grazing Advisory Board.

SUMMARY: The Lakeview District Grazing Advisory Board will meet Friday, July 8, 1988 and on Thursday, August 4, 1988. Both meetings are open to the public and will begin at 2:00 p.m. in the Lakeview District Conference Room at 1000 South Ninth, Lakeview, Oregon.

The purpose of the meetings is to discuss information and answer questions relating to the Warner Lakes Plan Amendment for Wetlands and Associated Uplands. In addition, the new changes in the grazing regulations will be discussed at the meeting on July 8, 1988.

DATES: July 8, 1988, August 4, 1988.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, Telephone (503)-947-2177.

Judy Nelson,

District Manager.

[FR Doc. 88-13332 Filed 6-13-88; 8:45 am]

BILLING CODE 4310-33-M

[CO-940-88-4111-15; COC 44173]

Proposed Reinstatement of Oil and Gas Lease; Colorado

Notice is hereby given that a petition for reinstatement of oil and gas lease COC 44173 for lands in Mesa County, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from February 1, 1988, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772.

Mary Patricia Nagel,

Acting Chief, Mineral Leasing Section.

[FR Doc. 88-13330 Filed 6-13-88; 8:45 am]

BILLING CODE 4310-JB-M

[ID-060-08-4212-13; I-25151]

Coeur d'Alene District, ID; Exchange of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Exchange of Public Lands in Shoshone, Kootenai and Benewah Counties, Idaho.

SUMMARY: This Notice is to advise the public that the Emerald Empire Resource Area, Coeur d'Alene District of the Bureau of Land Management and Idaho Forest Industries, Inc. are proposing a land exchange. The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 47 N., R. 2 W.,
Sec. 1, NW¼SW¼
Sec. 2, Lot 4, NE¼SW¼
T. 49 N., R. 5 W.,
Sec. 8, SE¼NE¼, N½SE¼
Sec. 10, W½NE¼

The area described above aggregates approximately 317.77(±) acres in Kootenai County, Idaho.

In exchange for these lands, the United States will acquire the following described lands from Idaho Forest Industries, Inc.:

Boise Meridian, Idaho

T. 47 N., R. 1 E.,
Sec. 15, W½SW¼
Sec. 21, NE¼NE¼
Sec. 22, NW¼NW¼
Sec. 26, NW¼, W½SW¼, SE¼SW¼
Sec. 27, E½NE¼, SW¼NE¼, SE¼
Sec. 35, NE¼NW¼
T. 47 N., R. 2 E.,
Sec. 5, Lot 1, SE¼NE¼
Sec. 7, Lot 3, SW¼NE¼, NE¼SW¼, NW¼SE¼
Sec. 18, Lot 4, SE¼SW¼, S½SE¼
T. 48 N., R. 2 E.,
Sec. 32, E½SE¼
Sec. 33, SW¼SW¼

The area described above aggregates approximately 1,275.64(±) acres in Benewah, Kootenai and Shoshone Counties, Idaho.

The purpose of the land exchange is to facilitate more efficient management of the public lands through consolidation of ownership and to benefit the public interest by obtaining important resource values. The public lands to be exchanged are isolated parcels. The private lands being offered have very important values for timber, watershed and wildlife habitat that merit acquisition and public ownership. The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by making this exchange. Final determination on disposal will await completion of an environmental analysis.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted to equalize the value upon completion of the final appraisal of the lands.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange is available for review at the Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

John B. O'Brien III,

Acting District Manager.

Date of issue: June 6, 1988.

[FR Doc. 88-13335 Filed 6-13-88; 8:45 am]

BILLING CODE 4310-GG-M

[ID-050-08-4212-14; IDI-25667]

Realty Action, Direct Sale of Public Land; Minidoka County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; IDI-25667 Direct Sale of Public Land in Minidoka County, Idaho.

SUMMARY: The following described land has been examined, and through development of land use planning decisions based upon public input has been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976. The lands when sold will be sold for not less than the appraised fair market value.

T. 6S., R. 24E., Boise Meridian, Minidoka County, Idaho,
Sec. 32, NE¼NE¼.
Containing 40 acres.

The land is being offered by direct sale to Steven D. Young based on his historic use, ownership of all adjacent land, and value of added improvements. Failure of the designated bidder to submit a sale deposit will result in cancellation of the direct sale and the lands will be withdrawn from sale. It has been determined that the subject parcel contains no mineral value except for oil and gas resources; therefore, mineral interests may be conveyed simultaneously except as noted below.

When patented the land shall be subject to the following reservations:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil & Gas resources shall be reserved to the United States, as required by section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record, at the time of sale.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws, as provided by 43 CFR 2711.1-2(d).

DATE AND ADDRESS: The sale offering will be held on August 26, 1988 at 10:00 a.m. in the Shoshone District Office, 400 West F. Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale can be obtained by contacting Mike Austin at (208) 886-2206 or writing to BLM, P.O. Box 2B, Shoshone, Idaho 83352.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice in the **Federal Register**, interested parties may submit written comments to the Shoshone District Manager at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Date: June 2, 1988.

K. Lynn Bennett,

District Manager.

[FR Doc. 88-13334 Filed 6-13-88; 8:45 am]

BILLING CODE 4310-66-M

Minerals Management Service

Development Operations Coordination Document; ODECO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5695, Block 113, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on May 17, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. W. Williamson, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Telephone (504) 736-2874.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 2, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-13326 Filed 6-13-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Pelto Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pelto Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5717, Block 209, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 1, 1988. Comments must be received by June 29, 1988, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the

Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 2, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-13327 Filed 6-13-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 0353, 0693, and 0694, Blocks 28, 27, 28, respectively, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on June 1, 1988.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Lars T. Herbst; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2533.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 2, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-13328 Filed 6-13-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations; Alabama et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 4, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 29, 1988.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Baldwin County

Fairhope, *Bank of Fairhope (Fairhope MRA)*, 396 Fairhope Ave.
Fairhope, *Beckner House (Fairhope MRA)*, 63 S. Church St.
Fairhope, *Bloxham, Carl L., Building (Fairhope MRA)*, 327 Fairhope Ave.
Fairhope, *Fairhope Bayfront District (Fairhope MRA)*, Roughly bounded by Blakeney, N. and S. Summit Sts., Fels Ave. and Mobile Bay
Fairhope, *Gaston Building (Fairhope MRA)*, 336 Fairhope Ave.
Fairhope, *Golf, Gun & Country Club (Fairhope MRA)*, 651 Johnson Ave.
Fairhope, *School of Organic Education (Fairhope MRA)*, Bounded by Fairhope and Morphy Aves. and Bancroft and School Sts.
Fairhope, *US Post Office (Fairhope MRA)*, 325 Fairhope Ave.
Fairhope, *White Avenue Historic District (Fairhope MRA)*, White Ave.
Fairhope, *Zurhorst House (Fairhope MRA)*, 200 Fels Ave.

Jefferson County

Birmingham, *Woodlawn City Hall*, 5525 First Ave., N

CALIFORNIA

Alameda County

Oakland, *Calfornia Hotel*, 3443—3501 San Pablo Ave.

Los Angeles County

Redondo Beach, *Redondo Beach Original Townsite Historic District*, N. Gertruda Ave., Carnelian St., N. Gudalupe Ave. and Diamond St.

Orange County

Laguna Beach, *St. Francis by-the-Sea American Catholic Church*, 430 Park Ave.

FLORIDA

Volusia County

Daytona Beach, *US Post Office*, 220 N. Beach St.

GEORGIA

Glynn County

St. Simons Island, *Hamilton Plantation Slave Cabins*, Arthur J. Moore Dr.

GUAM

Guam County

Naval Station, *Tokai Maru*, Apra Harbor

LOUISIANA

DeSoto Parish

Keachi, *Keachi Presbyterian Church*, LA 5

East Feliciana Parish

Jackson, *Wildwood Plantation House*, LA 68, near US 61

MARYLAND

Prince George's County

Brandywine, *Early, William W., House*, 13907 Cherry Tree Crossing Rd.

MASSACHUSETTS

Essex County

Haverhill, *Intervale Factory*, 402 River St.

Middlessex County

Lincoln, *Woods End Road Historic District*, 68 Baker Bridge Rd., 1, 5, 9, and 10 Woods End Rd.
Lowell, *Merrimack—Middle Streets Historic District (Boundary Increase)*, Merrimack, Middle, Prescott, Central and Market Sts.

Norfolk County

Quincy, *Massachusetts Fields School*, Rawson Rd. and Beach St.

Suffolk County

Boston, *Eliot Hall*, 7A Eliot St.
Boston, *First Church of Jamaica Plain*, 6 Eliot St.
Boston, *Greek Orthodox Cathedral of New England*, 520 Parker St.

MINNESOTA

St. Louis County

Archeological Site 21SL55

MISSISSIPPI

Copiah County, Hazlehurst vicinity, *Welch, Jenkins H., House*, ½ mile N of MS 28 on Dentville Rd.

Hinds County

Jackson, *Mississippi Federation of Women's Clubs*, 2407 N. State St.

Lauderdale County

Meridian, *Merrehope Historic District (Meridian MRA)*, Roughly bounded by Thirty-third Ave., Thirtieth Ave., Fourteenth St., Twenty-fifth Ave. and Eighth St.

NEW JERSEY

Gloucester County

Woodbury, *Bethel AME Church and School (Woodbury MRA)*, 53 Carpenter St.
Woodbury, *Broad Street Historic District (Woodbury MRA)*, Along Broad St. between Woodbury Creek and Courtland St.
Woodbury, *Chew House (Woodbury MRA)*, 436 E. Barber Ave.
Woodbury, *Delaware Street Historic District (Woodbury MRA)*, Along Delaware St. between N. American and Wood Sts.
Woodbury, *Glover Historic District (Woodbury MRA)*, Glover and High Sts.
Woodbury, *Green Era District (Woodbury MRA)*, Cooper St., Woodland, Evergreen and Bayard Aves., Spruce St. and Rugby Pl.
Woodbury, *Newton Historic District (Woodbury MRA)*, Hunter, Euclid, Laurel, Maple, Cooper, Curtis, and Centre Sts., Aberdeen and Holroyd Pl.
Woodbury, *Thompson House (Woodbury MRA)*, 103 Penn St.
Woodbury, *West End School (Woodbury MRA)*, Logan St.

NORTH DAKOTA

Bottineau County

Antler, *State Bank of Antler*, Antler Sq.

Cass County

Fargo, *Barrington Apartments*, 219 Twelfth St., S

Grand Forks County

Grand Forks, *St. Michael's Church*, 520 N. Sixth St.

Ramsey County

Devils Lake, *Newport Apartments*, 601 Seventh St.

Stutsman County

Jamestown, *Jamestown Historic District (Jamestown MPS)*, Roughly bounded by First St., Fourth Ave., SE, Fifth St., and Second Ave.

OHIO

Tuscarawas County

Dover, *Deis, John, House*, 203 W. Sixth St.

PUERTO RICO

Arecibo County

Arecibo, *Casa de la Diosa Mita*, 251 Fernandez Juncos St.
Arecibo, *Palacio del Marques de las Claras*, Calle Gonzalo Marin #58

Coamo County

Coamo, *Pomar, Pico, Residence*, Corner of Mario Braschi and Jose Quinton St.

Mayaguez County

Mayaguez, *Fuentes, Ramirez, Residencia*, Calle Mendez Vigo #117
Mayaguez, *Residencia Heygler*, Calle Liceo #51

Quebradillas County

Quebradillas, *Teatro Liberty*, Calle Rafols #157

SOUTH CAROLINA

Beaufort County

Fish Haul Archaeological Site (38BU805)

TEXAS

Denton County

Copper Canyon vicinity, *Old Alton Bridge*, Copper Canyon Rd.

[FR Doc. 88-13382 Filed 6-13-88; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-289 (Final)]

Certain Granite From Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-289 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether 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 Spain or certain granite,[1] provided for in item 513.74 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in preliminary determination, to be subsidized by the Government of Spain. Commerce will make its final subsidy determination within forty-five days after notification of Commerce's final determination (see section 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1809.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Spain of certain granite. The investigation was requested in a petition filed on July 28, 1987 by the Ad Hoc Granite Committee. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 35771, September 23, 1987).

Participation in the Investigation

Persons wishing to participate in this investigation 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 twenty-one (21) days after the 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 address of all persons, or their representatives, who

[1] For purposes of this investigation, "certain granite" is ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness and includes the following: Rough sawed granite slabs, face-finished granite slabs, and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. "Certain granite" does not include monumental stones, crushed granite, or curbing. The articles covered by this investigation are provided for in subheadings 2516.11.00, 2516.12.00, 6801.00.00, 6802.23.00, and 6802.93.00 in the proposed Harmonized Tariff Schedule of the United States (USITC Pub. 2030).

are parties to this investigation 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 investigation must be served on all other parties to the investigation (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.

Hearing, Staff Report, and Written Submissions

The Commission will hold a hearing in connection with this investigation at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC; the time and date of the hearing will be announced at a later date. A public version of the prehearing staff report in this investigation will be placed in the record prior to the hearing, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21) The dates for filing prehearing and posthearing briefs and the date for filing other written submissions will also be announced at a later date.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: June 9, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-13383 Filed 6-13-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-409-410 (Preliminary)]

Certain Light-Walled Rectangular Pipes and Tubes From Argentina and Taiwan

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-409-410 (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 Argentina and Taiwan of light-walled rectangulare pipes and tubes,[1] provided for in item 610.49 of the Tariff Schedules of the United States, 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 21, 1988.

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: June 6, 1988.

FOR FURTHER INFORMATION CONTACT: Dan Leahy (202-252-1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-imparied 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 June 6, 1988, by the mechanical tubing subcommittee of the Committee on Pipe and Tube Imports and by the individual manufacturers of the product that are members of the subcommittee.

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 (7) days after the 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.

[1] For purposes of these investigations, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch. Light-walled rectangular pipes and tubes are currently reported for statistical purposes under item 610.4928 of the *Tariff Schedules of the United States Annotated* and are classifiable under subheading 7306.60.50 of the proposed Harmonized Tariff Schedule of the United States.

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 29, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Dan Leahy (202-252-1182) not later than June 27, 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 July 1, 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 excepts 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 to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The evelope 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 section 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.

Issued: June 9, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-13384 Filed 6-13-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-78 (Sub-No. 1X)]

Fonda, Johnstown and Gloversville Railroad Co.—Abandonment Exemption; Fulton and Montgomery Counties, NY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between Fonda and Broadalbin, NY, in Montgomery and Fulton Counties, NY. The line extends from a point beginning at the mainline of Consolidated Rail Corporation in the Village of Fonda at Station 0+00 to a point known as Broadalbin Junction (Patch Road), and then to the Village of Broadalbin at Station 323+95.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has indicated it recognizes that this abandonment exemption will be made subject to the conditions for the protection of employees set forth at *Oregon Short Line R. Co.—Abandonment—Goshen (OSL)*, 360 I.C.C. 91 (1979). The *OSL* conditions will be imposed here in view of applicant's stated position.[1]

Provided no formal expression of intent to file an offer of financial assistance has been received, the exemption will be effective July 14, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [2] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [3] must be filed by June 24, 1988 and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 4, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives: William P. Quinn, Esq., Rubin, Quinn & Moss, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by June 20, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316).

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 10, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-13439 Filed 6-13-88; 8:45 am]

BILLING CODE 7035-01-M

[1] It is noted that applicant has stated that the proposed abandonment is for its entire line. Where a carrier's entire system is to be abandoned, the Commission generally does not impose employee protective conditions. *See Modern Handcraft, Inc.—Abandonment* 363 I.C.C. 969, 973 (1981); and *Wellsville, Addison & Galeton R. Corp.—Abandonment*, 354 I.C.C. 744, 745-746 (1978). The Commission has, however, recognized certain exceptions to this policy of not imposing employee protective conditions on entire system abandonments. *See Northhampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784 (1978).

Applicant's statement regarding the imposition of labor protection may have been made without an understanding of this Commission policy. Accordingly, it may file a petition seeking removal of the *OSL* conditions imposed here. The petition should demonstrate the applicability of the general policy to the subject abandonment.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[3] *See Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164, served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Sheffield Steel Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States v. Sheffield Steel Corp.*, Civil Action No. 88-C 508E, was lodged with the United States District Court for the Northern District of Oklahoma on June 2, 1988.

The proposed consent decree concerns alleged violations of the Oklahoma State Implementation Plan ("SIP") approved pursuant to the Clean Air Act, 42 U.S.C. 7401, *et seq.*, in connection with Sheffield's secondary steel production facility in Sand Springs, Oklahoma. The proposed decree requires Sheffield to comply with Regulation 3.1 of the SIP by October 15, 1988. The proposed decree also requires payment of a $65,000 civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Sheffield Steel Corp.*, D.J. Ref. No. 90-5-2-1-1134.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Oklahoma, 3600 U.S. Courthouse, 333 W. Fourth St., Tulsa, Okla. 74103; at the Region VI office of the Environmental Protection Agency, First Interstate Bank Tower at Fountain Place, 1445 Rosess Ave., Dallas, Texas 75202; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth St. and Pennsylvania Ave., NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-13316 Filed 6-13-88; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Federal Water Pollution Control Act; City of Wixom, and County of Oakland, MI

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 2, 1988 a proposed Consent Decree in *United States and State of Michigan v. City of Wixom, Michigan and County of Oakland, Michigan*, Civil Action NO. 85–CV–72085–DT, was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns discharge of pollutants from defendants' wastewater treatment works to Norton Creek. The proposed Consent Decree requires that defendants undertake extensive construction at their treatment works, which will allow that facility to meet the final water quality limits contained in defendants' National Pollution Discharge Elimination System ("NPDES") Permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Michigan v. City of Wixom, Michigan and County of Oakland, Michigan*, D.J. Ref. 90–5–1–1–2799.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, 231 West Lafayette, 8th Floor, Detroit, Michigan 48226, at the Region V Office of the United States Environmental Protection Agency, 111 West Jackson Street, 3rd Floor, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–13317 Filed 6–13–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–20,449]

JPI Transportation Products, Inc., Engine Products Group, Cleveland, Ohio; Negative Determination Regarding Application for Reconsideration

By an application dated May 11, 1988 a company official requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The initial petition was filed by Local #5 of the Mechanics Educational Society of America on behalf of workers at JPI Transportation Products, Inc., Cleveland, Ohio. The denial notice was signed on April 8, 1988 and published in the **Federal Register** on April 19, 1988 (53 FR 12832).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that production at the Cleveland plant was integrated into the production of two other JPI plants in Ohio whose workers are currently certified for trade adjustment assistance, TA–W–19,889 and TA–W–19,890.

The integration of production issue was addressed earlier by the Department in its notice of negative determination. Although workers at the Bridgeport (TA–W–19,889) and Bellaire (TA–W–19,890) were certified for adjustment assistance, both plants closed in April, 1987. Production at the Cleveland plant was only insignificantly integrated with Bridgeport and Bellaire in the period applicable to the petition. Virtually all of Cleveland's production in 1987 was integrated with JPI's plants in Atlantic, Iowa and McConnelsville, Ohio. Further, the Cleveland plant had increased production in 1987 compared to 1986 and the Engine Products Group of JPI Transportation had increased sales in 1987 compared to 1986.

Layoffs occurring in 1988 and the plant closure scheduled for 1989 are due to a company-wide overcapacity problem. JPI purchased some competing firms in 1986 and 1987 and is currently consolidating its operations to reduce the overcapacity and duplication problems.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of June, 1988.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 88–13407 Filed 6–13–88; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Skan-A-Matic Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 30, 1988–June 3, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be made.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–20,579; Skan-A-Matic Corp., Elbridge, NY

TA–W–20,581; Theurer, Inc. Newark, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20,601; Trumph-Adler Royal, Inc., Manchester, CT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,647; Mattel, Inc., Mattel Toys East Coast Distribution Center, Edison, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,591; Deminex U.S. Oil Co. (Dusoco), Dallas, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,612; Horizon Transportation Service, Battle Creek, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,599; Lee-Man Mining Co., Mine #1, Big Stone Gap, VA

U.S. imports of coal are negligible.

TA–W–20,600; Lee-Man Mining Co., Mine #2, Big Stone Gap, VA

U.S. imports of coal are negligible.

TA–W–20,603; W.R. Grace & Co., Davison Chemical Div., Cincinnati, OH

The investigation revealed that criterion (1) and (2) have not been met. Employment did not decline during the relevant period as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–20,597; ITW Cortion, Elmhurst, IL

A certification was issued covering all workers separated on or after March 29, 1987.

TA–W–20,580; Tektronix, Inc., Wilsonville, OR

A certification was issued covering all workers of the Information Display Group of Tektronix, Inc., Wilsonville, OR, the Graphic Terminans Div., Human Resources & Administration Information Systems Leasing and Reconditioned Products and Group Marketing on or after March 16, 1987.

TA–W–20,585; Bourns, Inc., Ames, IA

A certification was issued covering all workers separated on or after March 22, 1987.

I hereby certify that the aforementioned determinations were issued during the period May 30, 1988–June 3, 1988. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated June 7, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–13408 Filed 6–13–88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M–88–96–C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O Box 100, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Orient No. 6 Mine (I.D. No. 11–00599) located in Jefferson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that at least one entry of each intake and return aircourse be examined in its entirety on a weekly basis.

2. As an alternate method, petitioner proposes to establish evaluation stations in the Numbers 1, 2, 3, and 4 return entries of the main north.

3. In support of this request, petitioner states that—

(a) A weekly examination including quantity of air and tests for methane would be conducted in the main north return entries as the air approaches the fall area at the 7,900 foot station and as the air passes from the area at the 7,000 foot station;

(b) The person making the examinations and tests would place their initials and the date and time at the places examined. Any reduction in the amount of air flow or increase in methane content would be reported to the operator promptly for correction;

(c) At least one entry in the rest of the return aircourse would be examined in its entirety;

(d) The first main north entries at this location contain four return entries on the west side followed by five intake entries, two isolated entries and three return entries on the east side of the mains;

(e) The intake entries Numbers 5, 6, 7, 8, and 9 and east return entries Numbers 12, 13, and 14 contain escapeways leading to the Number 1 portal escape shafts on the west side of the mine;

(f) Petitioner also has an intake and return air shaft on the east side of the mine. Intake and return escapeways are also routed as an alternate escapeway to this side of the mine; and

(g) Ventilation capacity in this area is adequate at this time. If a deterioration is detected, corrections would be made to ensure adequate capacity.

4. Petitioner further states that cleaning up roof falls and resupporting deteriorated roof in this area would pose a hazardous task.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 14, 1988. Copies of the petition are available for inspection at that address.

Date: June 7, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88–13410 Filed 6–13–88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–88–94–C]

Utah Power & Light Co., Mining Division; Petition for Modification of Application of Mandatory Safety Standard

Utah Power & Light Company, Mining Division, P.O. Box 310, Hungtington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Deer Creek Mine (I.D. No. 42–00121) located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses and seals be examined in their entirety on a weekly basis.

2. Petitioner states that due to a large bounce the seal, connecting the 7th Right entries at crosscut 38 to the 8th Right entries at crosscut 36, is impossible. To attempt to rehabilitate the area would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to sample air quality and direction at No. 7 crosscut of 8th Right on a weekly basis. In support of this request, petitioner states that—

(a) Any air coming off the seal would be monitored at this location;

(b) The air passing the seal would be coursed over the monitoring station and then to the main return where it would be directed from the mine;

(c) The mine liberates little or no methane and the ventilation is still following its normal and intended course;

(d) The number of persons required to be in the proposed monitoring area would be minimal; and

(e) This area would also be continuously monitored for methane by an approved mine monitoring system that would provide early warning of any hazardous conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 14, 1988. Copies of the petition are available for inspection at that address.

Date: June 6, 1988.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 88-13411 Filed 6-13-88; 8:45 am]

BILLING CODE 4510-43-M

Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veteran's Employment was established under § 308, Title III, Pub. L. 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Thursday, July 7, 1988, at 2:00 p.m., in the Secretary's Conference Room, S-2508, FPB.

The items on the agenda are:

—Presentation of work group findings of the public forum entitled "Workforce 2000 and America's Veterans" held April 19-21, 1988, and

—Implementation of Pub. L. 100-323, "Veterans' Employment, Training, and Counseling Amendments of 1987".

The public is invited.

Signed at Washington, DC, this 8th day of June, 1988.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 88-13409 Filed 6-13-88; 8:45 am]

BILLING CODE 4510-79-M

Wage and Hour Division

Child Labor Advisory Committee, Subcommittee Meeting on Hazardous, Occupations Order No. 2

The Child Labor Advisory Subcommittee members, who will consider topics concerning Hazardous Occupations Order No. 2, will convene at the Department of Labor, Frances Perkins Building, Room N3437A, 200 Constitution Avenue NW., Washington, DC, from 9:00 a.m.-5:00 p.m., on July 6, 1988. The discussion will focus on whether a recommendation is necessary with respect to the scope of this Order, whether definitions under this Order and the exemption from the Order for incidental and occasional driving need to be refined, and whether a change should be made in the gross vehicle weight of types of vehicles permitted under the exemption for incidental and occassional driving.

Members of the public are invited to attend the meeting. Individuals wishing to submit written data, reviews, or arguments pertaining to the business before the Subcommittee should submit them to the Child Labor Advisory Coordinator prior to the meeting date. Twenty-six copies are needed for distribution to the members and for inclusion in the Subcommittee report.

Telephone inquiries and communications concerning this meeting should be directed to Ms. Nila J. Stovall, Coordinator for the Child Labor Advisory Committee, (202) 523-7640.

Signed at Washington, DC, this 8th day of June 1988.

Paula V. Smith,

Administrator.

[FR Doc. 88-13406 Filed 6-13-88; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration; Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Admininstration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before July 29, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and

cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. American Institute in Taiwan (N1–84–88–3). Office Administrative Files relating to housekeeping matters (policy files are permanent).

2. Department of Justice, Foreign Claims Settlement Commission (N1–299–88–1). Case files relating to the East German Claims Program and reference files relating to War Claims Commission programs.

3. Department of Labor, Bureau of Labor Statistics, Office of Productivity and Technology and Office of Economic Growth and Employment Projections (N1–257–86–3). Comprehensive records schedule.

4. Selective Service System (N1–147–86–1). Applications for determination of residence submitted by alien residents in the U.S. during World War II.

Dated: June 8, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–13404 Filed 6–13–88; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL ECONOMIC COMMISSION

Federal Budget Deficit Reduction

AGENCY: National Economic Commission.

ACTION: Request for written comment.

SUMMARY: The National Economic Commission ("the commission") requests the submission of written comments from interested persons or organizations with respect to its mandate of making specific recommendations to reduce the Federal budget deficit and to promote economic growth. These comments, prepared in conformity with the guidelines set out below, should be submitted to the commission by August 3, 1988.

Background Information

The commission was established by Pub. L. 100–203, December 22, 1987, and has been directed to make specific recommendations regarding:

(1) Methods to reduce the Federal budget deficit while promoting economic growth and encouraging saving and capital formation, and

(2) A means of ensuring that the burden of achieving the Federal Budget deficit reduction goals of the United States does not undermine economic growth and is equitably distributed and not borne disproportionately by any one economic group, social group, region or State.

The Commission shall submit to the President and Congress on March 1, 1989, a final report which shall contain a detailed statement of the findings and conclusions of the Commission, including its recommendations for administrative and legislative action that the Commission considers advisable. On February 1, 1989, the President may issue an order extending the date for submission of the final report to September 1, 1989. The Commission plans to make public a summary of its final recommendations on December 21, 1988.

Written Submissions

Interested persons are invited to provide comments in writing to the Commission. Written comments should conform with the Commission's mandate, i.e. equitable budget deficit reduction in the context of economic growth. Discussion of current or future government expenditures or programs should be cast in that context.

Comments should be sent to the National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503, by August 3, 1988.

The following guidelines should be followed for written comments that will be considered by the Commission:

—All written comments and any accompanying exhibits must be typed in double-space and may not exceed a total of ten (10) letter-size pages.

—Two copies of all written comments should be provided.

—Comments must contain the name and capacity of the person submitting the comments, as well as any clients or persons, or any organization for whom the comments are submitted.

—A supplemental sheet must accompany each submission listing the name, full address and telephone number of the person making the submission as well as a summary of the written comments that may not exceed one (1) typewritten, letter-size page.

FOR FURTHER INFORMATION CONTACT: Alexander Platt, 734 Jackson Place, NW., Washington, DC 20503, 789–1093.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 88–13364 Filed 6–13–88; 8:45 am]

BILLING CODE 6820-45-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment For The Arts; Expansion Arts 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 Expansion Arts Advisory Panel (Dance Organizational Development Pilot Section) to the National Council on the Arts will be held on June 28, 1988, from 9:00 a.m.–4:00 p.m., in room 714 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 28, 1988, from 3:00 p.m.–4:00 p.m., for a guidelines and policy issues discussion.

The remaining sessions of this meeting on June 28, 1988, from 9:00 a.m.–3:00 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including 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 sections (c) (4), (6) and (9)(b) of section 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. 88–13321 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

National Endowment on the Arts; 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 (Radio/Programming in the Arts Section) to the National Council on the Arts will be held on June 28, 1988, from 9:00 a.m.–6:30 p.m., in room 716 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 sections (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.

Martha J. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts

[FR Doc. 88–13323 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Music 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 Music Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 29–30, 1988, from 9:00 a.m.–5:30 p.m., in room 730 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 29, 1988, from 9:00 a.m.–4:30 p.m., and on June 30, 1988, from 9:00 a.m.–5:30 p.m., for a guidelines and policy issues discussion.

The remaining session of this meeting on June 29, 1988, from 4:30 p.m.–5:30 p.m., 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 information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of Febfuary 13, 1980, these sessions will be closed to the public pursuant to sections (c) (4), (6) and (9) (b) of section 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.

June 7, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–13324 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

National Endowment on the Arts; President's Committee on the Arts and the Humanities; Meeting

The President's Committee on the Arts and the Humanities, Plenary Meeting XVIII, will take place on Tuesday, June 28, 1988, from 9:00 a.m. to 12:00 p.m. This meeting has been scheduled in the Trustees Room, The Museum of Modern Art, 11 West 53rd Street, New York City, New York.

This is a regularly scheduled meeting at which committee activities will be reviewed. Roger Stevens will report on the *Fund for New American Plays*, and Bill Blass and Alexander Julian will report on *500 Years of American Clothing*. In addition, panelists and participants have been invited to examine the potential for modern technologies to benefit the arts. Videocassettes and videodiscs have many applications, among them are enlarging arts audiences, improving the quality of cultural programming, bringing cultural activities to rural audiences, promoting international understanding, providing a teaching tool, and preserving art forms.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds to augment its operational costs and support projects and programs which have been initiated by the President's Committee.

Further information about this meeting can be obtained from Sean Orcutt, Staff Assistant, President's Committee on the Arts and the Humanities, Washington, DC 20506; telephone (202) 682–5409.

Martha Y. Jones,

Council Coordinator, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–13322 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

National Endowment on the Arts; State of the Arts Review Committee; Meeting

Notice is hereby given that an ad hoc State of the Arts Review Committee will meet on June 30, 1988, from 9:00 a.m.–5:30 p.m., in Room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic of discussion will be a Draft Report on the State of the Arts in the United States to be submitted to Congress by October 1, 1988 by the National Endowment for the Arts.

If you need special accommodations due to a disability, please contact the Office of 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.

June 7, 1988.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–13325 Filed 6–13–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

1989 Presidential Young Investigator Awards

The National Science Foundation (NSF) announces the competition for Presidential Young Investigator (PYI) Awards to be made in March, 1989.

The awards are established to achieve the following objectives:

- To attract and retain the Nation's most outstanding and promising young scientists and engineers to an academic career of research and teaching.
- To provide cooperative research support for the most outstanding and promising young science and engineering faculty.
- To improve the capability of U.S. universities to respond to the demand for highly qualified scientific and engineering personnel for academic and industrial research.
- To develop improved links and cooperation between industry and universities.

A maximum of 200 new Presidential Young Investigator Awards will be made in this competition. Awards will be made for up to five years based on the annual determination of satisfactory performance and subject to the availability of funds.

Eligibility

Any U.S. institution that awards a baccalaureate, master's or doctoral degree in a field supported by the Foundation is eligible to participate in this program. The eligible institution, through its departmental chairperson or analogous administrative official, may nominate both current and prospective members of its faculty who, in the judgement of the nominator, are the most outstanding faculty members in research and teaching at the institution.

Nominees must be U.S. citizens or permanent residents as of October 1, 1988. To be eligible, nominees must have begun their first post-Ph.D. tenure-track or tenured faculty position after April 30, 1985. Those who have been offered such positions must hold a Ph.D. degree and begin their appointment on or before October 1, 1989 to receive the award.

Since PYI awards must be used to fund research activities, which normally will involve undergraduate and graduate students from the nominating institution, PYI nominees must have a clearly demonstrated ability to conduct a research program. Awardees may conduct research in any branch of science or engineering normally supported by the NSF. Particular emphasis in the selection of awardees will be given to those fields where there are substantial needs for faculty development.

NSF normally will not support clinical research such as biomedical research with disease-related goals, including work on the etiology, diagnosis, or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals. Animal models of such conditions, or the development or testing of drugs or other procedures for their treatment also generally are not eligible for support. NSF does not normally support pilot plant efforts, research requiring security classification, the development of products for commercial marketing, or market research for a particular product or invention.

The PYI awards are intended to encourage the development of our future academic leaders, both in teaching and research. Presidential Young Investigators are expected to carry a normal teaching load relative to non-PYI faculty at the nominating institution.

The PYI awards are tenable only in tenure-track or tenured positions at eligible institutions. Presidential Young Investigators who transfer to an ineligible institution at any time prior to or during the period of their grants must resign their awards.

Support and Commitments

Minimum Presidential Young Investigator Awards will consist of a base grant of $25,000 of Federal funds per year, to be used to support the research activities of the awardees. Furthermore, in accordance with the program goals of leveraging Federal funds and fostering industry-university cooperation, the Foundation will provide up to $37,500 of additional funds per year on a dollar-for-dollar matching basis to contributions from industrial sources, resulting in total annual support of up to $100,000. Guidelines for PYI matching funds can be obtained from the NSF by sending a mailing label to the Presidential Young Investigator Awards program.

Institutions are also expected to make a significant commitment to the support of their awardees, including arranging for the industrial support and guaranteeing full academic-year salary for the awardee. None of the Presidential Young Investigator funds, whether provided by the Foundation or by industry, may be used to underwrite academic-year salaries of the awardees. However, up to ten percent of the Foundation funds may be used to defray administrative expenses in lieu of indirect costs.

Application Procedures

Nominations must originate from the departmental chairperson or analogous administrative officer of the sponsoring institution.

Each nomination submission must include:

1. The Nomination Form
2. A complete, up-to-date curriculum vitae
3. Recommendations from three referees *not* from the nominating institution
4. Supplementary Nominee Information.

Evaluation and Selection

Selection will be based on an evaluation of the nominee's ability and potential as a researcher and teacher for contributing to the future vitality of the Nation's scientific and engineering effort as evidenced by accomplishments in original research and in the training of future scientists and engineers. Consideration will be given to the following factors:

- Recommendations for referees;
- Quality of the nominee's research plan;
- Probable impact of the award on the future career development of the nominee;
- Probable impact of the award on the capability of the institution in its research and education mission;
- Suitability of the sponsoring institution for the implementation of the nominee's plans for his or her academic career;
- Significance of the research likely to emerge; and
- Potential impact of the award on the research field in question.

The selection of individuals to receive Presidential Young Investigator Awards will be made by the National Science Foundation with the advice of panels of outstanding scientists and engineers.

After an awardee has been selected, the employing institution will be asked to prepare a first-year budget request in support of the awardee's research activities. The budget should show both the amont requested from the Foundation and the sources and amounts of industrial support. This information will be used in determining the amount of the award and other terms and conditions. Except as otherwise provided in this announcement, the terms and conditions, as well as the expected institution commitment, will be analogous to those stated in the publication, NSF 83-57 (Rev. 1/87)—Grants for Research and Education in

Science and Engineering. Similar submissions will be required annually for each successive year of support under this program.

The FY 1989 PYI awardees will be expected to begin their research activities under this program by October 1, 1989.

Inquiries

Inquiries regarding the awards may be addressed to the Presidential Young Investigator Awards, National Science Foundation, Washington, DC 20550, or telephone inquiries to (202) 357–9466.

Chor Weng Tan,

Program Director, Presidential Young Investigator Awards.

June 13, 1988.

[FR Doc. 88–13377 Filed 6–13–88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-267]

Public Service Company of Colorado; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–34 issued to Public Service Company of Colorado, (the licensee), for operation of the Fort St. Vrain Nuclear Generating Station, located at Weld County, Colorado.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise certain setpoints for the Plant Protective System to allow for instrumentation errors.

The proposed action is in accordance with the licensee's application for amendment dated February 8, 1988.

The Need for Proposed Action

The proposed Technical Specification (TS) change is required in order to allow the licensee to revise certain setpoints in the Plant Protective System to allow for instrumentation errors.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revision to Technical Specifications. The proposed revisions would allow the licensee to revise certain setpoints in the Plant Protective System. These changes would be in accordance with standards of the Instrument Society of America. The staff has reviewed the appropriate licensee safety evaluations. The staff concluded that the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 5, 1988 (53 FR 16481). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Fort St. Vrain Nuclear Generating Station, dated August 7, 1972.

Agencies and Persons Consulted

The NRC staff and it's contractor, the Idaho National Engineering Laboratory, reviewed the licensee's proposed amendment request. The staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 8, 1988, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Greely Public Library, City Complex Building, Greely Colorado.

Dated at Rockville, Maryland this 3rd day of June, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 88–13368 Filed 6–13–88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting Agenda; Revision 1

The Advisory Committee on Nuclear Waste will hold a meeting on June 27–29, 1988. The sessions on June 27–28, 1988 will be held in Room 1046, 1717 H Street NW., Washington, DC. The sessions on June 29, 1988 will be held in Room 2F–17, One White Flint North Building, 11555 Rockville Pike, Rockville, MD.

Monday, June 27, 1988

Room 1046, 1717 H Street NW., Washington, DC.

10:00 a.m.–10:15 a.m.: Comments by ACNW Chairman (Open)—The ACNW Chairman will report briefly regarding items of current interest.

10:15 a.m.–12:00 noon: Design Basis Accident Limits for the HLW Repository (Open)—The DOE Staff will discuss their proposed request for a rulemaking defining the design basis accident limit for the HLW repository.

1:00 p.m.–5:00 p.m.: Licensing of LLW Treatment Processes and the Dry Storage and Consolidation of Spent Fuel (Open)—The NRR Staff will report on the licensing of waste management activities at reactor sites with emphasis on the consolidation of spent fuel, LLW Treatment processes, and dry storage.

Tuesday, June 28, 1988

Room 1046, 1717 H Street, NW., Washington, DC.

8:00 a.m.–10:00 a.m.: LLW Form and Polyethylene High-Integrity Containers (HICs) (Open)—The Division of Low-Level Waste and Decommissioning will report on recent staff and contractor actions concerning LLW solidified by

cement, and studies regarding the serviceability of polyethylene HICs. The Division of Regulatory Research will report on the proposed final Rule for the revision to 10 CFR Part 72, 'Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste".

10:15 a.m.–12:00 noon: Consultation Draft Site Characterization Plan (Open)—The DOE Staff will review the content of the CDSCP and describe their plans to address the NRC Staff's comments on it.

1:00 p.m.–5:00 p.m.: Alternative Site Models of the Yucca Mountain Site (Open)—The DOE Staff and contractors will report on alternative models of the hydrologic structure of the Yucca Mountain site.

Wednesday, June 29, 1988

Room 2F–17, 11555 Rockville Pike, Rockville, MD.

8:30 a.m.–10:00 a.m.: ACNW Future Activities and Preparation of ACNW Reports (Open)—The ACNW will meet and continue to discuss anticipated ACNW activities, future meeting agendas, program plans, and organizational matters.

10:00 a.m.–11:30 a.m.: Meeting with the NRC Commissioners (Open)—The ACNW will meet with the NRC Commissioners to discuss ACNW future activities.

1:00 p.m.–2:00 p.m.: NRC's Review of DOE's Consultation Draft Site Characterization Plan (Open)—The NRC Staff will discuss their response to the May 11, 1988 memo from R. Fraley to V. Stello on the NRC Staff's review of DOE's Consultation Draft Site Characterization Plan (CDSCP).

2:00 p.m.–2:30 p.m.: New Members (Closed)—The ACNW will discuss appointments of proposed members and the qualifications of individuals to be considered for nomination.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)) or involve internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)).

Procedures for the conduct of and participation in ACNW meetings are similar to those used by ACRS and published in the **Federal Register** on October 2, 1987 (51 FR 32241). The procedures which will be used are as follows:

Background

Procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's Advisory Committee on Nuclear Waste (ACNW) are published in this notice. These procedures are set forth and may be incorporated by reference in future individual meeting notices. The Advisory Committee on Nuclear Waste has been established pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 94–463, 86 Stat. 770–776). The Commission has determined that the establishment of this Committee is necessary and in the public interest in order to obtain input, advice and recommendations on all aspects of the management of radioactive wastes within the purview of NRC regulatory responsibilities. The purpose of the Committee is to provide advice and recommendations on topics, issues, and activities related to the regulation of nuclear wastes. Such activities encompass:

- Regulation of high-level waste, including the licensing of high-level waste repositories;
- Licensing and regulation of low-level waste disposal repositories; and
- Handling, processing, transporting, storing and safeguarding wastes, including but not limited to spent fuel, nuclear wastes mixed with other hazardous substances, and uranium mill tailings.

The Committee's reports will become part of the public record.

Although ACNW meetings are ordinarily open to the public and provide for oral or written statements from members of the public to be considered as a part of the Committee's information gathering procedure, they are not adjudicatory hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. Practical considerations may dictate some alterations in the agenda. The Chairman of the Committee or Subcommittee, which is meeting is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incomplete session from one day to the next.

With respect to public participation in ACNW meetings, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy at the beginning of the meeting. When meetings are held at locations other than Washington, DC, reproduction facilities are usually not available. Accordingly, 15 additional copies should be provided for use at such meetings. Comments should be limited to safety-related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy addressed to the Office of the Executive Director, in care of the ACNW, NRC, Washington, DC 20555. Comments postmarked no later than one calendar week prior to a meeting will normally be received in time for reproduction, distribution, and consideration at the meeting.

(b) Persons desiring to make an oral statement at the meeting should make a request to do so prior to the beginning of the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether a 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, on the working day prior to the meeting, to the Office of the Executive Director (telephone: 202–634–3265) between 7:30 a.m. and 4:15 p.m., Washington, DC time.

(d) Questions may be asked only by ACNW Members, Consultants, and Staff.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will be allowed while the meeting is in session at the discretion of the Chairman to a degree that is not disruptive to the meeting. When use of such equipment is permitted, appropriate measures will be taken to protect proprietary or privileged information which may be in documents, folders, etc., being used during the meeting. Recordings will be permitted

only during those sessions of the meeting when a transcript is being kept.

(f) A copy of the transcript of the open portions of the meeting where factual information is presented will be available at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555, for inspection within one week following the meeting. A copy of the minutes of the meeting will be available at the same location on or before three months following the meeting. Copies may be obtained upon payment of appropriate charges.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director should be informed of such an agreement at least three working days prior to the meting so that it can be confirmed and a determination made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Designated Federal Official prior to the beginning of the meeting.

Dated: June 8, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88-13392 Filed 6-13-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published May 18, 1988 (53 FR 17774). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1988 ACNW and the July 1988 ACRS full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634-3265, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Reliability Assurance, June 14, 1988, Washington, DC. The Subcommittee will be briefed on the final outcome of the Equipment Qualification-Risk Scoping Study. An update on the implementation of the resolution of USI A-46, "Seismic Qualification of Equipment in Operating Nuclear Power Plants," is also planned.

Maintenance Practices and Procedures, June 15, 1988, Washington, DC. The Subcommittee will be briefed by RES on the current status of the Maintenance Rule and MAPPS simulator if time permits.

Thermal Hydraulic Phenomena, June 21, 1988, Washington, DC. The Subcommittee will continue its review of the *W* proposed Best Estimate ECCS Evaluation Model for 2-loop UPI plants.

Advanced Reactor Designs, June 22, 1988, Washington, DC. The Subcommittee will review the draft SER of the Modular HTGR conceptual design.

Severe Accidents, July 12, 1988, Washington, DC. The Subcommittee will discuss SECY 88-147, "Integration Plan for Closure of Severe Accident Issues."

TVA Organizational Issues, July 13, 1988, Washington, DC. The Subcommittee will review the lessons learned from the NRC Staff's review of the shutdown of TVA's nuclear power plants.

Decay Heat Removal Systems, July 20, 1988, Washington, DC. The Subcommittee will continue its review of the NRC Staff's resolution position for USI A-45.

Thermal Hydraulic Phenomena, July 21, 1988, Washington, DC. The Subcommittee will review the status of the MIST Phase III and IV Programs and the proposed OTSG Follow-on Program.

General Electric Reactor Plants, July 29, 1988, (Site Visit July 28th, p.m.), Plymouth, MA. The Subcommittee will review the proposed restart of the Pilgrim plant.

Safety Philosophy, Technology and Criteria, August 4, 1988, Bethesda, MD. The Subcommittee will review the status of NUREG-1251 (Implications of Chernobyl) and the NRC Staff's program (at BNL) to address the implications of Chernobyl in regard to severe reactivity transients.

Improved Light Water Reactors, August 9, 1988, Bethesda, MD. The Subcommittee will review Chapters 3, 4, and 5 of the EPRI LWR Requirements Document.

Auxiliary Systems, August 10, 1988, Bethesda, MD. The Subcommittee will review the proposed resolution for USI A-17, "Systems Interactions in Nuclear Power Plants."

Maintenance Practices and Procedures, September 13, 1988, Bethesda, MD. The Subcommittee will discuss and review the maintenance rule and associated NUREG.

Advanced Boiling Water Reactors, November 15-16, 1988, Bethesda, MD. The Subcommittee will continue its FDA review of this standard plant. Detail ACRS questions will be covered on review module 1. An overview of the second review module is planned.

Advanced Pressurized Water Reactors, Date to be determined (July), Washington, DC. The Subcommittee will review the draft SER in regard to the reactor, reactor coolant system, and regulatory conformance for the WAPWR RESAR SP/90 design.

Advanced Pressurized Water Reactors, Date to be determined (July), Washington, DC. The Subcommittee will review the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR-DC).

Severe Accidents/Probabilistic Risk Assessment, Date and location to be determined (July/August). The Subcommittee will review the methodology for the treatment of uncertainties in the final version of NUREG-1150. Also, the Subcommittee will review the results for the front-end reanalysis of the five plants studied.

Advanced Reactor Designs, Date to be determined (July/August), Washington, DC. The Subcommittee will review the draft SERs for the liquid metal reactors (LMRs).

Occupational and Environmental Protection Systems, Date to be determined (July/August), Washington, DC. The Subcommittee will review: (1) The "hot particle" problem, (2) monitoring the quality and quantity of airborne radionuclides in/out of containment following an accident, (3) the emergency planning rule, (4) the control room habitability report by ANL, and (5) other related matters.

Advanced Pressurized Water Reactors, Date to be determined (August), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Containment Requirements, Date to be determined (September/October), Bethesda, MD. The Subcommittee will review the NRC Staff's document on interim recommendations for containment performance and improvements (BWR Mark I only).

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Systematic Assessment of Experience, Date and location to be determined. The Subcommittee will review the Diagnostic Evaluation Program and other related licensee performance review efforts by the NRC Staff.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry Best-Estimate ECCS Model submittals for use with the revised ECCS Rule.

Auxiliary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC Staff to review the Chilled Water Systems design.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed resolutions of Generic Issue 23, "RCP Seal Failures," and Generic Issue 99, "Loss of RHR Capability in PWRs."

Auxiliary Systems, Date to be determined, Bethesda, MD. The Subcommittee will review the adequacy of the Staff's plans to implement the recommendations resulting from the Fire Risk Scoping Study.

ACRS Full Committee Meetings

July 14–16, 1988—Items are tentatively scheduled.

*A. *Safety Related Issues* (Open)—Discuss proposed hierarchical structure for important safety related issues.

*B. *USI A–48, Hydrogen Control* (Tentative) (Open)—Briefing regarding proposed resolution of hydrogen control requirements for Mark III and ice condenser containment types.

*C. *Evaluation of Operating Experience* (Open)—Briefing by AEOD regarding systematic evaluation of systems operating performance in nuclear power plants and availability of operating information to nuclear power plant operators.

*D. *Equipment Qualification* (Open)—Review and comment regarding Equipment Qualification Scoping Study performed by the Sandia National Laboratories.

*E. *NRC Policy on Severe Accidents* (Open)—Review and comment regarding proposed integrated plan for closure of severe accident issues.

*F. *Modular High Temperature Gas Cooled Reactor* (Open)—ACRS review and comment regarding proposed standardized gas-cooled reactor concept proposed by DOE.

*G. *Diagnostic Evaluation Program* (Open)—Briefing regarding NRC diagnostic evaluations of the McGuire and Dresden nuclear power stations.

*H. *NRC Policy on Working Hours for Nuclear Power Plant Operators* (Open)—Review and comment regarding proposed NRC requirements for working hours for nuclear power plant operators.

*I. *Operating Events and Incidents* (Open)—Discuss procedures for selection/review/evaluation of nuclear power plant incidents, transients, and accidents.

*J. *Operating Procedures and Practices* (Open)—Discuss proposed change in ACRS practice regarding participation in meetings not sponsored by the ACRS.

*K. *ACRS Subcommittee Activities* (Open/Closed)—Briefings and discussion regarding status of designated subcommittee activities including regulatory considerations pertaining to nuclear power plant license renewal.

*L. *ECCS Evaluation Models* (Open/Closed)—Review and comment regarding proposed changes in ECCS evaluation models for Westinghouse nuclear plants with upper-plenum injection.

*M. *Future Activities* (Open)—Discuss anticipated ACRS subcommittee activity and items proposed for consideration by the full Committee.

N. *New ACRS Members* (Closed)—Discuss qualifications of candidates proposed for appointment to the ACRS.

*O. *Meeting with Director of NMSS* (Tentative) (Open)—Discuss items of current interest.

August 11–13, 1988—Agenda to be announced.

September 8–10, 1988—Agenda to be announced.

ACNW Full Committee Meetings

Advisory Committee on Nuclear Waste, June 27 and 28, 1988, Washington, DC and June 29, 1988, Rockville, MD. The Committee will review the following pertinent nuclear waste management topics:

*A. DOE's proposal to petition for rulemaking on the Design Basis Accident Dose Limit for a geologic repository.

*B. A DOE presentation on Alternative Conceptual Models of the Yucca Mountain site.

*C. An NRC Staff briefing on concrete LLW forms and polyethylene high integrity containers (HICs).

*D. A DOE presentation on the Consultation Draft Site Characterization Plan.

*E. A briefing on the licensing procedures used to authorize at reactor, LLW processing and spent fuel compaction and dry storage operations.

*F. On June 29 the full ACNW will meet with the NRC Commissioners to discuss future Committee plans.

July 21–22, 1988—Agenda to be announced.

September 15–16, 1988—Agenda to be announced.

Date: June 8, 1988.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 88–13393 Filed 6–13–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Zion Nuclear Power Station, Units 1 and 2; Exemption

I

The Commonwealth Edison Company (CECo, the Licensee) is the holder of Operating License No. DPR–39 which authorizes operation Zion Nuclear Power Station, Unit 1 and Operating License No. DPR–48 which authorizes operation of Unit 2. The licenses provide, among other things, that Zion Nuclear Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The Station is comprised of two pressurized water reactors at the Licensee's site located in Lake County, Illinois.

II

On November 19, 1980, the Commission published a revised § 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specified requirements for a particular aspect of the fire protection features at a nuclear power plant. Two of these subsections, III.G and III.O, are the subject of the Licensee's exemption requests.

Subsection III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated nonsafety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire areas.

c. Enclosure of cable and equipment and associated nonsafety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

Subsection III.G.3 of Appendix R requires that for areas where alternative or dedicated shutdown is provided, fire detection and a fixed fire suppression system shall also be installed in the area, room, or zone under consideration.

III

By letter dated July 27, 1984, the Licensee requested exemptions from specific requirements of Appendix R. The Licensee provided additional information in support of the staff's review of these requests in the a letter dated February 18, 1986. By letters dated February 9, 1987, January 21 and February 23, 1988, the Licensee provided additional information and modified its request of July 27, 1984 by withdrawing three of the exemption requests. The remaining exemption requests are the subject of this evalaution.

The following list reflects the latest status of exemptions requested:

1. Main Control Room (Fire Zone 2.0–0). An exemption was requested from the specific requirement of section III.G.3 to the extent that an automatic fire suppression system is not provided throughout the zone.

2. Auxiliary Electric Equipment Rooms (Fire Areas 5.6–1 and 5.6–2). An exemption was requested from the specific requirement of section III.G.3 to the extent that an automatic fire suppression system is not provided throughout each area.

3. Auxiliary Building, Component Cooling Water (CCW) Pump Area, Elevation 560 Feet. An exemption was requested from the specific requirement of section III.G.2.b to the extent that 20 feet of separation between redunant safe shutdown components and automatic suppression and detection systems are not provided.

4. Auxiliary Building, Elevations 592, 617, and 642 Feet. An exemption was requested from the specific requirements of section III.G.2.b to the extent that area-wide automatic suppression and detection systems and 20 feet of separation between redundant safe shutdown components do not exist.

5. Main Steam Tunnels (Fire Zones 18.5–1 and 18.5–2). Exemptions was requested from the specific requirement of section III.G.2.b to the extent that it requires automatic suppression and detection systems throughout the main steam pipe tunnels.

6. Auxiliary Building, Auxiliary Feedwater Pump Area, Elevation 579 Feet. An exemption was requested from the requirements of section III.G.2 to the extent that it requires area-wide automatic suppression and detection systems and 20 feet of separation between redundant safe shutdown components (the motor driven and turbine driven auxiliary feedwater pumps) for Fire Zone 11.3–0 at the 579 foot elevation of the auxiliary building fire area.

In summary, the exemptions were requested from providing 20 feet of spatial separation, area-wide fire detection, and an automatic fire suppression system as required by Section III.G of Appendix R.

The Licensee has provided alternative shutdown capability for Fire Zone 2.0–0 (main control room). The zone has a fire detection system installed on an area-wide basis and is continuously manned. Also, there are fire extinguishers and a hose station available for manual fire fighting purposes. The expected fire in this zone would not threaten adjacent safe shutdown areas.

Alternative shutdown capability is provided for the auxiliary electric equipment rooms (Fire Areas 5.6–1 and 5.6–2). These fire areas have an area-wide fire detection system, fire extinguishers, and hose stations for manual fire fighting. The combustibles consist primarily of cable insulation. If a fire were to occur, it is expected that it would develop slowly with initial low heat release and slow rise in room temperature.

Redundant safe shutdown cables on auxiliary building elevations 592, 617, and 642 feet are provided with a minimum of 20 feet without intervening combustibles. Ionization smoke detectors are provided in the areas of and between these cables on each elevation.

The Licensee has provided alternate steam generator pressure indication for Fire Zones 18.5–1 and 18.5–2. The fuel load in these zones is low with significant spatial separation between redundant pressure transmitters. The expected fire in these zones would not threaten other safe shutdown areas adjacent to them.

The Licensee has provided alternative and/or acceptable levels of fire protection for these areas which contain redundant safe shutdown systems not separated from each other in accordance with section III.G of Appendix R. Fire protection in these areas which contain more than a negligible combustible load and contain safe shutdown equipment or cables, consist of fire detectors and/or automatic fire suppression systems, and portable extinguishers and hose stations. The staff finds that there is reasonable assurance that a fire in these areas would be of low magnitude, promptly detected, and extinguished.

Based on the staff's review of the Licensees's analysis, the staff concludes that the installation of automatic fire suppression and/or detection systems throughout the Main Control Room (Fire Zone 2.0–0), Main Steam Pipe Tunnels (Fire ZOnes 18.5–1 and 18.5–2, Auxiliary Electric Rooms) (Fire Areas 5.6–1 and 5.6–2), and Elevations 560 feet, 579 feet, 592 feet, 617 feet and 642 feet of the Auxiliary Building would not significantly increase the level of fire protection of these zones. Additional details concerning the exemptions are provided in the Safety Evaluation issued concurrently.

By the letter dated October 30, 1987, the Licensee provided information relevant to the "special circumstances" finding required by revised 10 CFR

50.12(a) (see 50 FR 50764). The Licensee stated that existing and proposed fire protection features at Zion Units 1 and 2 provided an equivalent level of fire protection required by Appendix R and therefore accomplished the underlying purpose of the rule. Implementing additional modifications to provide additional suppression systems, detection systems, and fire barriers would require the expenditure of engineering and construction resources as well as the associated capital costs which would represent an unwarranted burden on the Licensee's resources. The Licensee had estimated that the costs to be incurred would be in excess of several million dollars. The Licensee stated that these costs are significantly in excess of those required to meet the underlying purpose of the rule.

The staff concludes that "special circumstances" exist for the Licensee's requested exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. See 10 CFR 50.12(a)(2)(ii).

Accordingly, The Commission has determined, pursuant to 10 CFR 50.12(a), that (1) these exemptions as described in Section III are authorized by law and will not present an undue risk to the public health and safety and are consistent with common defense and security, and (2) special circumstances are present for the exemptions in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the following exemptions from the requirements of section III.G of Appendix R to 10 CFR Part 50:

1. Main Control Room (Fire Zone 2.0–0) to the extent that there is no fixed fire suppression system installed pursuant to section III.G.3.

2. Auxiliary Electric Equipment Rooms (Fire Areas 5.6–1 and 5.6–2) to the extent that there is no fixed fire suppression system installed pursuant to section III.G.3.

3. Auxiliary Building, Component Cooling Water (CCW) Pump Area, Elevation 560 Feet to the extent that automatic fire suppression and detection systems are not installed and 20 feet of separation is not provided pursuant to section III.G.2.b.

4. Auxiliary Building, elevations 592, 617, and 642 Feet to the extent that automatic fire suppression and detection systems are not installed throughout the area pursuant to section III.G.2.b.

5. Main Steam Pipe Tunnels (Fire Zones 18.5–1 and 18.5–2) to the extent that automatic fire suppression and fire detection systems are not installed throughout the area pursuant to section III.G.2.b.

6. Auxiliary Building, Auxiliary Feedwater Pump Area, Elevation 579 Feet to the extent that automatic fire suppression and detection systems are not installed throughout the area and 20 feet of separation is not provided between redundant safe shutdown components pursuant to section III.G.2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (52 FR 42046).

A copy of the Safety Evaluation, related to this action, is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the local public document room located at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 7th day of June 1988.

FOR THE Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88-13369 Filed 6-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-11155 License No. 52-16033-01 EA 88-63]

Hospital Metropolitano, San Juan, PR; Order Modifying License, Effective Immediately

I

Hospital Metropolitano (the licensee) is the holder of Byproduct Material License No. 52-16033-01 issued by the Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR Part 35. The license authorizes possession and use of certain radiopharmaceuticals for the diagnosis and treatment of disease. The license, originally issued on July 15, 1975, was renewed on February 6, 1986, with an expiration date of February 28, 1991.

II

The licensee's hospital and Nuclear Medicine Laboratory are located at Carr. 21, No. 1785 Las Lomas, Rio Piedras, Puerto Rico 00928. The Nuclear Medicine Laboratory performs diagnostic and therapeutic procedures using radiopharmaceuticals. The morphology and physiology of certain target organs are determined qualitatively and quantitatively using an Anger camera imaging system.

A routine and unannounced inspection of the licensee's activities was performed on January 13, 1988. Subsequent to the inspection, the NRC reviewed and evaluated records sent to the Region II Office on January 25, 1988. The findings relative to this review and evaluation were discussed between the Region II staff and Hospital Metropolitano on February 4, 1988. A special unannounced inspection of the licensee's facility was performed on March 3, 1988. An enforcement conference was held with the licensee at Hospital Metropolitano on March 4, 1988. At the enforcement conference, the licensee committed to providing increased involvement by supervisory personnel in radiation safety activities on a daily basis within the Nuclear Medicine Laboratory. The commitment included the individual participation by a Nuclear Medicine Physician in all laboratory operations involving regulatory issues and compliance.

As a result of the initial inspection, subsequent records review, and special inspection, seventeen violations and one deviation were identified in the Nuclear Medicine Program, which are described in NRC Inspection Report No. 52-16033-01/88-01 and Enforcement Conference Summary dated April 5, 1988. In particular, as emphasized at the enforcement conference, the majority of the violations of the greatest safety significance encompassed: (1) The use of therapeutic quantities of iodine-131, and (2) the proper checking and testing of the dose calibrator. In reference to the use of therapeutic quantities of iodine-131, the licensee: (1) Failed to either perform technician bioassays, or if performed, to properly calculate thyroid uptakes (bioassays), and (2) failed to check for contamination upon receiving packages of iodine-131. In reference to the proper checking and testing of the dose calibrator, the licensee: (1) Failed to properly check and determine the annual accuracy (calibration), (2) failed to perform daily molybdenum-99 breakthrough determinations prior to injecting radiopharmaceuticals, (3) failed to test and properly record daily constancy tests, (4) failed to properly determine geometrical variation upon installation, (5) used unauthorized brachytherapy sources for annual accuracy testing, and (6) failed to properly perform the quarterly linearity tests. The deviation concerned a failure by the licensee to fulfill a commitment in its letter of May 13, 1987, to perform linearity tests of its dose calibrator using a "Lineator" and dilution or decay

or other conventional means, as a corrective action to a Notice of Violation issued April 7, 1987.

The licensee's inspection history contains violations similar to several of the violations identified during the NRC inspections conducted on January 13 and March 3, 1988, and documented in the Notice of Violation. The failure to perform technician bioassays was previously identified as one of the eleven violations identified during an inspection on February 2 and 3, 1983, and documented in a confirmatory Action Letter dated February 11, 1983. The failure to perform biweekly surveys of the Nuclear Medicine Laboratory was also identified during the inspection on February 2 and 3, 1983 (Inspection Report No. 83-01). As a result of that inspection, a civil penalty was proposed on March 23, 1983. The failure to perform bimonthly wipe tests of the Nuclear Medicine Laboratory was identified during the inspection on March 18, 1987 (Inspection Report No 87-01).

Additionally, the one violation identified during the February 24, 1984, inspection and two of the five violations identified during the March 18, 1987, inspection involved records or procedures related to the dose calibrator. The NRC is concerned that current similar violations have occurred, which should hve been precluded by the hospital's corrective action and management oversight programs as delineated in the Confirmation of Action Letter dated February 11, 1983, and the required annual ALARA review as outlined in licensee's ALARA program dated January 27, 1986.

Based on the current violation of NRC requirements, inspection information regarding the disjointed responsibilities and chain of command of the various individuals involved in the hospital's Radiation Safety Program, and the recurrence of similar violations, it appears that control of the Radiation Safety Program is fragmented and lacks positive direction. This is evidenced by the fact that (1) since the March 18, 1987, inspection (which identified 5 violations in the Nuclear Medicine Program) the management representative to the Radiation Safety Committee failed to attend a meeting of the Committee on April 22, 1987, (2) the licensee employs an in-house Radiation Safety Officer (RSO) who has full-time responsibility as the radiation therapy physicist and acts only as a consultant in nuclear medicine and thus does not provide day to day oversite of the program, and (3) the licensee employs an outside Radiation Safety Consultant who serves on the radiation safety committee and consults primarily in diagnostic radiology with some overlap to nuclear medicine and therapy. The delineation of responsibilities of this consultant versus the in-house RSO is not clearly defined. Further evidence of the disjointed responsibilities in the license's program is shown by its utilization of its Nuclear Medicine Laboratory by an outside Nuclear Medicine Physician users' group.

III

On the basis of the above information, and after NRC review of licensee activities onsite, it appears that Hospital Metropolitano has deviated from a corrective action committed to in its letter dated May 13, 1987, has been operating in violation of 17 NRC requirements, and has failed to exercise adequate oversight over its Nuclear Medicine Laboratory program. Consequently, without the further action ordered here, I lack the reasonable assurance that the licensee's Nuclear Medicine Program will be conducted in a manner such as will assure that the health and safety of the public and its employees will be protected. Accordingly, the public health, safety and interest require that the actions specified in Section IV of this Order be made effective immediately.

IV

In view of the foregoing, and pursuant to Sections 81, 161b, 161i, 160o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30 and 35, *it is hereby ordered, effective immediately, that license No. 52-16033-01 is modified as follows:*

A. Within 30 days of this Order, the licensee shall submit to the Regional Administrator, NRC, Region II, for approval the credentials of a Health Physics Consultant (Consultant), with expertise in planning and implementation of a nuclear medicine radiation protection program, independent of its staff, to perform an assessment of the licensee's nuclear medicine radiation safety program covering the adequacy of the current organizational structure, staffing levels, audits, training and assignment of responsibilities within the Nuclear Medicine Department. Following NRC approval, the licensee shall employ this consultant to perform this assessment and assist in the licensee's implementation of corrective actions for all violations specified in the Notice of Violation. Within 30 days of NRC approval, the Consultant shall provide the Hospital Administrator a written report of the assessment which describes the weaknesses identified during the assessment and recommendations for improvement. A copy of this report shall be provided to the Regional Administrator, NRC Region II, at the same time it is transmitted to the licensee.

B. 1. The Consultant shall spend a minimum of 10 hours on-site per week in audit activities, for a period of 90 days after the hiring of the Consultant by the licensee.

2. After the initial 90 day period, the Consultant shall perform an audit at least once per month on-site until the Performance Improvement Plan required by section IV.C. of this Order is completed.

3. The licensee's Consultant shall provide within the 90 day period, 40 hours of training in radiation safety and procedures as defined in 10 CFR Parts 19, 20, and 35, to the responsible Nuclear Medicine Technologist. The training shall include a complete review and familiarization of the byproduct materials license including the procedures incorporated into the licensee's application by reference. The 40 hours of training shall be provided by the Consultant in addition to the minimum of 10 hours, on-site. The training hours and curriculum shall be documented and maintained on file in the Nuclear Medicine Department.

4. The licensee shall document the number of hours per week spent by the Consultant in the Nuclear Medicine Department and the types and kinds of corrective measures implemented. All documentation shall be maintained on file in the Nuclear Medicine Department until inspected by the NRC.

C. Within 30 days of the completion of the Consultant's assessment required by section IV.A., the licensee shall develop a written Performance Improvement Plan with the assistance of the consultant which will assure an upgrading of the performance of the Nuclear Medicine Program and a consistent high level of compliance with NRC requirements. This plan shall be submitted to the Regional Administrator, NRC, Region II, for review and be implemented upon the NRC's approval. As a minimum the plan shall address:

1. Provisions for ensuring that professional staffing levels within the Nuclear Medicine Department are adequate to meet the radiological safety requirements and will remain so in view of the department's workload.

2. Provisions for increased involvement by the hospital administrator in the oversight and

management of the Nuclear Medicine Department.

3. Provisions for annual safety audits of the Nuclear Medicine Department by a qualified auditor who is independent from the Hospital Metropolitano organization.

4. The hospital management's program for review and followup action on problems identified during independent audits.

5. Training program descriptions and plans which will ensure that the members of the Radiation Safety Committee are familiar with all pertinent NRC regulations, terms of the license and information submitted in support for the license and its amendments and that the RSO, Nuclear Medicine Technologist, and other Nuclear Medicine Specialists are knowledgeable of regulatory requirements, equipment operations, and analytical techniques.

6. Schedules for correcting the organizational problems noted in the January 13 and March 3, 1988, inspections which were discussed in the March 4, 1988, enforcement conference, and further described in the Enforcement Conference Summary dated April 5, 1988.

7. Methods for implementing recommendations of the Consultant's assessment report into its Performance Improvement Plan or providing justification for alternative corrective action if any specific recommendations are not adopted.

8. Milestones for completing the Performance Improvement Plan.

D. The licensee shall submit a report monthly to the Regional Administrator, NRC, Region II, beginning on the 15th day of the month following the first 30 day period after the NRC's approval of the Performance Improvement Plan and thereafter on the 15th day of each month, until the plan is completed, addressing:

1. The progress that has been made toward carrying out the provisions of this Order and the Performance Improvement Plan during the past calendar month.

2. In the event that a milestone date set forth in this Order or Plan is not met during the period covered by the report, the report shall indicate: (1) The date by which the licensee expects to accomplish the activity, (2) the reason for the licensee's failure to meet the milestone date, and (3) the impact that the failure to meet the milestone date will have on the Order and Plan schedules.

3. The actions under the Order and Plan that the licensee expects to accomplish within the next 30 days.

E. The licensee shall immediately correct all deficiencies associated with the use of the dose calibrator and the use of radioiodine solutions (iodine-131) for therapeutic applications and document these corrections as indicated in section IV.A. These deficiencies were identified in the NRC Inspection Report (No. 52-16033-01/88-01) issued February 26, 1988, and are specified in the Notice of Violation enclosed wtih this Order, specifically violations: E.2.a, b, and c, and E.3.a, and b. In addition to correcting the above deficiencies, the licensee shall immediately implement the following actions regarding the use of diagnostic and therapeutic quantities of iodine-131:

1. The licensee shall store volatile radiopharmaceuticals in the shipper's radiation shield and container. Also the licensee shall store each multi-dose container in a fume hood after drawing in the first dosage from it. This requirement is defined in 10 CFR 35.90 (effective April 1, 1987).

2. The licensee shall check each dose calibrator for linearity at least quarterly over the range of its use between the highest dosage that will be administered to a patient and 10 microcuries. This requirement is defined in 10 CFR 35.50(b)(3) (effective April 1, 1987).

The Regional Administrator, Region II, may in writing relax or rescind any of the above conditions upon written request and demonstration of good cause by the licensee.

V

The licensee or any other person adversely affected by this Order may request a hearing within twenty days of the date of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and the Regional Administrator, NRC Region II, 101 Marietta Street, Atlanta, GA 30323. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). Upon the failure of the licensee to answer or request a hearing within the specified time, this Order shall be final without further proceedings. *An answer to this order or a request for hearing shall not stay the immediate effectiveness of this order.*

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland this 7th day of June 1988.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 88-13370 Filed 6-13-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461]

Illinois Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-62 issued to Illinois Power Company (the licensee), for operation of Clinton Power Station, Unit 1 located in DeWitt County, Illinois.

This amendment consists of a proposed change to the Clinton Power Station (CPS) Technical Specifications in order to remove the isolation requirements for isolating the Containment Monitoring (CM) and Process Sampling (PS) systems upon receiving a Containment Building Exhaust High Radiation signal. This would require changes to Technical Specificatioins 3/4.3.2 (Table 3.3.2-1 item 1.h, Table 3.3.2-2 item 1.h, Table 3.3.2-3 item 1.h, and Table 4.3.2.1-1 item 1.h) and 3/4.6.4 (Table 3.6.4-1). The current Technical Specifications require the CM and PS systems to automatically isolate from a Containment Building Exhaust High Radiation Signal. This trip function is required to be operable in OPERATIONAL CONDITIONS 1, 2 and 3, when handling irradiated fuel in the primary or secondary containment, during CORE ALTERATIONS, and during operations with a potential for draining the reactor vessel.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 14, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to

intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, desginated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Leif J. Norrholm: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Sheldon Zable, Esquire, Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 5, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 8th day of June 1988.

For the Nuclear Regulatory Commission.

Leif J. Norrholm,

Acting Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–13371 Filed 6–13–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of June 1, 1988 of 22 deferrals contained in the three special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987 and February 19, 1988.

Rescissions (Table A and Attachment A)

As of June 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of June 1, 1988, $6,180.1 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 52, FR P. 37739, Thursday, October 8, 1987
Vol. 52, FR p. 42400, Wednesday, November 4, 1987
Vol. 53, FR p. 6734, Wednesday, March 2, 1988

James C. Miller III,

Director.

BILLING CODE 3110–01–M

TABLE A

STATUS OF 1988 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President.....	0
Accepted by the Congress.....	0
Rejected by the Congress.....	0
Pending before the Congress.....	0

****

TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	9,310.0
Routine Executive releases through April 1, 1988.. (OMB/Agency releases of $3,154.2 million and cumulative adjustments of $24.3 million)	-3,129.9
Overturned by the Congress.....	0
Currently before the Congress.....	6,180.1

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1988

As of June 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of June 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D88-20	2,949,000		2-19-88	865,000			17,500	2,101,500
Economic support fund	D88-1	40,000		10-1-87					
	D88-1A		1,960,727	2-19-88	308,588				1,692,139
Military assistance	D88-21	608,186		2-19-88	310,001				298,185
International disaster assistance	D88-22	13,479		2-19-88	6,200				7,279
Special Assistance for Central America									
Promotion of stability and security in Central America	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D88-3	120,425		10-1-87					
	D88-3A		10,529	2-19-88					130,954
Timber salvage sales	D88-4	34,841		10-1-87	10,456				24,385
Cooperative work	D88-5	628,025		10-1-87	157,084				170,941
Gifts, donations, and bequests for forest and rangeland research	D88-6	104		10-1-87	60				44
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D88-7	900		10-1-87					
	D88-7A		1,297,848	2-19-88	1,297,848				900
Family Housing									
Family housing, Defense	D88-8	51,015		10-1-87					
	D88-8A		135,940	2-19-88	186,955				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D88-9	636		10-1-87					
	D88-9A		149	2-19-88					785

As of June 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-88
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D88-14	120		10-29-87					120
Southeastern Power Administration, Operation and maintenance	D88-15	2,000		10-29-87	2,000				0
Southwestern Power Administration, Operation and maintenance	D88-16	6,000		10-29-87					
	D88-16A		7,200	2-19-88					13,200
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D88-17	774		10-29-87					
	D88-17A		2,426	2-19-88	3,200				0
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program)	D88-18	2,391		10-29-87					
	D88-18A		569	2-19-88					2,960
Social Security Administration Limitation on administrative expenses (construction)	D88-10	6,171		10-1-87					
	D88-10A		36	2-19-88					6,207
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund	D88-19	85,000		10-29-87	6,800			6,800	85,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive	D88-11	11,638		10-1-87					11,638

Attachment B - Status of Deferrals - Fiscal Year 1988

As of June 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-88
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D88-12	879,049		10-1-87					
	D88-12A		450,858	2-19-88					1,329,907
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS		5,443,688	3,866,281		3,154,192	0		24,300	6,180,077

[FR Doc. 88-13420 Filed 6-13-88; 8:45 am]
BILLING CODE 3110-01-C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 16427; (812-6922)]

Allied Capital Corp., et al.; Application

June 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Application for an order pursuant to sections 6(c) and 17(d) of the Investment Company Act of 1940 ("1940 Act") and Rule 17d-1 to supplement a previous order and to conditionally authorize certain joint transactions with affiliates.

Applicant(s): Allied Capital Corporation ("Allied Capital"), Allied Advisory, Inc., Allied Management Partners ("Management"), Allied Venture Partnership ("Venture"), Allied Technology Partnership ("Technology"), Pacific Mutual Life Insurance Company ("Pacific"), Outlook, Incorporated ("Outlook"), St. Paul Fire and Marine Insurance Company ("St. Paul"), CUNA Mutual Investment Corporation ("CUNA"), Abbott Capital Management, L.P. ("Abbott"), Mitchell Hutchins Institutional Investors-Venture Capital Group ("MH"), Steuart Investment Company ("Steuart"), and Wallace F. Holladay ("Holladay"), (Pacific, Outlook, St. Paul, CUNA, Abbott, MH, Steuart and Holladay collectively, "Affiliates").

Relevant 1940 Act Sections: Order requested pursuant to sections 6(c) and 17(d) of the 1940 Act and Rule 17d-1 thereunder permitting certain joint transactions.

Summary of Application: Applicants request an order, supplementing a previous order dated March 25, 1986 (IC Rel. No. 15013] ("Previous Order"), pursuant to sections 6(c) and 17(d) of the 1940 Act and Rule 17d-1 thereunder, to permit the Affiliates, or affiliates of such Affiliates, individually, to co-invest, subject to the conditions detailed below, with Allied Capital, Allied Investment Corporation and Allied Financial Corporation (the "SBIC Subsidiaries"), Venture or Technology.

Filing Date: The application was filed on November 19, 1987, and amended on April 29, 1988.

Hearing and Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1666 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Special Counsel Richard Pfordte at (202) 272-2811 or Karen L. Skidmore, Branch Chief (202) 272-3023, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's public Reference Branch in person or the SEC's commercial copier, (800) 231-3782 (in Maryland (301) 258-4300).

Applicants' Representations

1. Allied Capital, originally organzied in 1958 as a SBIC, is now a holding company over 95% of the assets of which consist of all of the outstanding capital stock of four subsidiaries, two of which are the SBIC Subsidiaries.

2. The SBIC Subsidiaries are principally engaged in the business of making venture capital-type investments in small business concerns, and normally seek out other venture capital investment entities to participate in the transactions.

3. Allied Advisory, Inc., is a wholly-owned subsidiary of Allied Capital and the General Partner of "Management," a limited partnership which is the general partner of Venture and Technology, both also limited partnerships. Venture's co-investment with Allied was authorized by a Commission order dated September 17, 1985 (Release No. IC-14325), and Technology's co-investment with Allied and Venture was authorized by Commission order dated June 30, 1987 (Release No. 15833) ("Technology Order"), in each case subject to certain conditions.

4. The Previous Order of the Commission granted an exemption and authorization to permit certain affiliates individually to co-invest with Allied Capital and the SBIC Subsidiaries (collectively "Allied") or Venture (Allied and Venture, together with Technology, are sometimes referred to collectively as the "Allied Group"). The Previous Order authorized the Allied Group to co-invest with the following affiliates, or affiliates of such affiliates: Acacia Mutual Life Insurance Company, Security Pacific Capital Corporation, Capital for Business, Inc., The First National Bank of Chicago and Enterprises Quilmes S.A. The order applied for would supplement the Previous Order which, except to the extent modified by the Technology Order, would remain in full force and effect.

5. The Affiliates, or affiliates of such affiliates, with which the Allied Group may wish to co-invest, as described by Applicants, are as follows: (1) MH is a wholly-owned subsidiary of Mitchell Hutchins Asset Management Inc., a registered investment adviser and a wholly-owned subsidiary of Paine Webber Group, Inc., a full service investment firm. MH, on behalf of institutional and other accredited investors over which it has investment discretion, may wish to invest with the Allied Groups. MH may be deemed an affiliate of Allied because an account it controls is a limited partner in Venture. (2) Pacific Mutual, a life insurance company, which is a limited partner in Venture and therefore a co-partner in Venture of Management, a company controlled by Allied Capital. (3) Outlook, a wholly-owned investment subsidiary of The Kiplinger Washington Editors, Inc. ("Kiplinger"), one or more of the directors and officers of which are also trustees of a pension and a profit sharing plan of Kiplinger, both of which are limited partners of Venture and therefore co-partners in Venture of Management, a company controlled by Allied Capital. (4) St. Paul, a life insurance company and a wholly-owned subsidiary of the St. Paul Companies, Inc., the retirement trust of which is a limited partner in Venture and therefore a co-partner with Venture of Management. (5) CUNA, a wholly-owned subsidiary of CUNA Mutual Insurance Society, which is a limited partner in Venture and therefore a co-partner in Venture of Management. (6) Abbott, a registered investment adviser and the investment manager for the Squibb Corporation Master Pension Trust, which is a limited partner in Venture and therefore a co-partner in Venture of Mangement. (7) Steuart, a private investment company specializing in investments in the oil and gas, real estate, transportation and fisheries industries, which is controlled by Mr. Curtis S. Steuart and Mr. Guy T. Steuart, the latter of whom is a director of Allied Capital and of each of its subsidiaries and who together with trusts and a corporation controlled by them are holders of over 5 percent of Allied Capital's outstanding shares. (8) Holladay is an individual professional investor specializing in various phases of the real estate development and construction industries, who is a

director of Allied Capital and of each of its subsidiaries and, through a partnership composed of certain directors and officers, or their affiliates, of Allied Capital, a limited partner of Venture.

6. The boards of directors of Allied Capital, the SBIC Subsidiaries and Advisory are identical. All of the members of the Board of Directors have a personal financial stake, which in many cases is substantial, in either Allied or Venture or both. In any dealings with third persons, including the Affiliates as such, their interests are therefore wholly congruent with those of Allied and Venture and adverse to those of the third person. A possible conflict could arise where there is under consideration a participation in an investment transaction with an Affiliate who, or a director or officer of, or owner of securities issued by, which or an affiliate of which, is a director of Allied; in any such case, Applicants propose that such director may not take part in any determination with respect to such participation. Subject to that exception, it is proposed herein that any determination of the Board of Directors contemplated herein be made by a majority of its members, regardless of whether or not they are interested persons of Allied Capital or have a personal financial interest in Venture.

7. Under the Previous Order, the Allied Group has invested $33,090,581 in 42 transactions, including 24 transactions as members of investment syndicates. Among the syndicated transactions, the affiliates subject to the Previous Order participated in 8 transactions, representing a total investment of $62,447,639. Allied seeks the participation of other venture capital entities because as a matter of prudence, Allied's Board has pursued a policy of limiting investment risk to any one transaction; investments beyond the prudential limit, depending upon its characteristics, may be offered to others, including the Affiliates. In addition, the SBIC Subsidiaries are restricted by Small Business Administration regulations limiting the exposure of an SBIC in a single risk to 20% of its net worth.

Applicants' Conditions

Applicants undertake that they will be subject to the following rules as express conditions to the requested order:

(1) The Board of Directors will determine in the first instance the extent to which Allied and Venture combined will participate in any investment opportunity originated by Allied and the extent to which participations therein will be offered to others, or the extent to which Allied and Venture combined will participate in investment opportunities originated by others in which Allied is invited to participate.

(2) If the Board of Directors determines that any participations in investment opportunities originated by Allied are to be offered to others, the persons to whom such participations are to be offered may include (beside Technology) one or more of the Affiliates. Before, however, an offer of a participation may be made to any of the Affiliates, the Board of Directors must specifically approve such offer, and such approval must be based on findings by the Board of Directors that the participation in the transaction of that Affiliate would be advantageous because of the specific contribution that such Affiliate is expected to make to the quality of the transaction.

(3) If Allied is invited to participate in an investment opportunity originated by others and the Board of Directors determines that the participation therein by Allied or Venture (and, possibly, Technology) is in the best interests of Allied and Venture (and, if applicable, Technology), then, if the other participants in the proposed transaction include one or more of the Affiliates, the Board of Directors must specifically approve the amount of Allied's and Venture's (and, if applicable, Technology's) participation and the amount of the proposed participation by each participant which is one of the Affiliates.

(4) If the combined participation to be retained by Allied and Venture, in the case of opportunities originated by Allied, or to be accepted by Allied and Venture, in the case of opportunities originated by others in which Allied's participation is invited, is in an amount less than the then applicable combined prudential limit for Allied and Venture for exposure in a single risk, then, if the other participants in the proposed transaction include one or more of the Affiliates, the Board of Directors must make a specific determination that such lesser participation is in the best interests of Allied and Venture.

(5) The Board of Directors's approval of the participation by Allied or Venture in any transaction in which any of the Affiliates is also to be a participant must be based on findings by the Board of Directors that:

(a) The terms of the proposed transaction, including the consideration to be paid and received and including specifically any fees to be paid to any other participant, or affiliate of such participant, in the transaction, are reasonable and fair to the shareholders of Allied Capital and do not involve overreaching of Allied, Venture or Allied Capital's sharholders on the part of any person concerned; and

(b) The proposed transaction is consistent with the interests of the shareholders of Allied Capital and is consistent with the policy of Allied and Venture as recited in filings made by Allied with the Commission under the Securities Act of 1933 or the 1940 Act, the registration statements and reports filed by Allied Capital under the Securities Exchange Act of 1934, Allied Capital's reports to shareholders and the limited partnership agreement of Venture.

(6) The Board of Directors will record in its minutes and preserve in its records, for such periods as records are required to be maintained under section 31(a) of the 1940 Act, a description of each transaction in which Allied or Venture participates and in which any of the Affiliates is also a participant, the findings on which any determination pursuant to paragraphs (2), (3), (4) or (5) is based, the information and materials on which such findings are based, and the basis therefor.

(7) No member of the Board of Directors shall be a party to or have a financial interest in such transaction other than

(a) As the owner of securities of which Allied Capital is the issuer, or

(b) As the owner, directly or indirectly, of a limited partnership interest in Venture, or

(c) As the owner of securities of which the respective Affiliate or any of its affiliates is the issuer; provided, however, that any member of the Board of Directors who is, or who is a director or officer of, or owner of securities issued by, the respective Affiliate or an affiliate thereof shall not take part in any determination pursuant to paragraphs (2), (3), (4) or (5) with respect to the participation by such Affiliate. For the purpose of this paragraph, a director, officer, or employee of Allied or Advisory or an Affiliate or an affiliate thereof who receives his usual and ordinary compensation for usual and customary services as a director, officer, employee or professional consultant of any such entity shall not be deemed to have a financial interest or to participate in the transaction solely by reason of his receipt of such compensation.

(8) Neither Allied nor Venture will make any investment in an entity in which an Affiliate or an affiliate of an Affiliate, but not Allied or Venture, has previously invested.

(9) The basis as to time of investment and unit prices on which an Affiliate, or an affiliate thereof, participates in the proposed transaction shall be identical to the basis on which Allied or Venture participates therein. For this purpose, the payment to Allied or Advisory or the Affiliate or an affiliate thereof, by any participant in the transaction other than Allied Capital, any subsidiary of Allied Capital, Venture, Technology, any of the Affiliates or any affiliate thereof, of any reasonable fee shall not be considered as differentiating the basis of the Affiliate's participation from that of Allied or Venture.

(10) Allied and Venture, on the one hand, and an Affiliate or any affiliate thereof, on the other, will exercise any warrants, conversion privilege, or other rights to acquire equity securities of an issuer, or affiliate of an issuer, which were acquired by both Allied or Venture, on the one hand, and such Affiliate or affiliate thereof, on the other, in a transaction in which they both participated, only at the same time and in amounts proportionate to their respective holdings of such rights.

(11) Allied and Venture, on the one hand, and any of the Affiliates or any affiliate thereof, on the other, will sell, exchange, or otherwise dispose of an interest in any security of a class held by both Allied or Venture, on the one hand, and such Affiliate

or affiliate thereof, on the other, as a result of a transaction in which they both participated only at the same times and for the same unit consideration and in amounts proportionate to their respective holdings of such securities, unless at the time of sale there exists a public trading market in securities of such class and the sale by the respective holder is made in such market.

(12) The expenses, if any, of the distribution of any securities registered under the Securities Act of 1933 and sold by Allied, Venture and any of the Affiliates or any affiliate thereof at the same time will be shared by the sellers in proportion to the respective amounts they are selling.

Applicants' Conclusion of Law

1. The proposed transactions are consistent with the applicable standards under section 6(c) and 17(d) of the 1940 Act and Rule 17d–1 thereunder. Approval of the application is consistent with the general purposes of the 1940 Act. Approval of the application is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because, among other things, the requested relief facilitates the flow of venture capital under the direction of qualified professionals, reduces transaction costs and saves scarce administrative resources.

2. Allied and Venture (and, where applicable, Technology) will participate in these transactions on a basis identical to that of the participation, if any, of the Affiliates. The payment to Advisory or a participating Affiliate of a financing fee as a function of services rendered by them, respectively, in structuring and negotiating any specific transaction does not make the basis of its participation more or less advantageous than that of any other participant. None of the parties to any such transaction has the economic power or other influence to overreach the other party.

For the Commission, by the Division of Investment, Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–13402 Filed 6–13–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16426; 812–5004]

E. F. Hutton & Co., Inc. and Hutton Investment Series Inc., Application

June 8, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order amending prior orders of exemption under section 6(c) of the Investment Company Act of 1940 ("1940 Act").

Applicants: E. F. Hutton & Company Inc. ("E.R. Hutton")— and Hutton Investment Series Inc. (the "Fund").

Relevant 1940 Act Sections: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 2(a)(32), 2(a)(35), 2(a)(41), 22(c), and 22(d) and the 1940 Act and Rules 2a–4 and 22c–1 under the 1940 Act.

Summary of Application: Applicants seek an order amending prior orders to permit the imposition of a contingent deferred sales charge on modified terms and to modify certain representations regarding the Fund's distribution fee adopted pursuant to Rule 12b–1 under the 1940 Act which were contained in applications for prior exemptive orders. The exemptive relief sought would also apply to all future Series of the Fund and any subsequent distributor of the Fund's shares.

Filing Date: The application was filed on November 10, 1987 and amended on May 13 and June 7, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 30, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, alsong with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Paul F. Roye, Esq., 1500 K Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: H. R. Hallock, Jr., Special Counsel, at (202) 272–3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Fund is registered under the 1940 Act as an open-end management investment company with twelve diversified series. E.F. Hutton is the Fund's distributor, E.F. Hutton receives the contingent deferred sales charge imposed on certain Fund redemptions as described in detail in the application and in prior applications in this matter filed on October 29, 1981 and thereafter which resulted in orders of exemption from the provisions of sections 2(a)(32), 2(a)(35), 2(a)(41), 22(c) and 22(d) of the 1940 Act and Rules 2a–4 and 22c–1 under the 1940 Act. See, e.g., *Investment Company Act Rel. No. 14426* (March 19, 1985). E.F. Hutton also receives a distribution for pursuant to the Fund's Rule 12b–1 plan (the "Plan").

2. Applicants request an amendment of the prior exemptive orders to permit the imposition of a contingent deferred sales charge on terms consistent with those employed by funds which are distributed and advised by Shearson Lehman Hutton Inc. ("Shearson Lehman") and its affilitates. Applicants not that relief similar to that requested by the application has been granted by the SEC. See *Investment Company Act Rel. No. 15005* (March 19, 1986).

3. E.F. Hutton is a wholly-owned subsidiary of Shearson Lehman. It is expected that the business operations of E.F. Hutton will be consolidated with the business operations of Shearson Lehman and E.F. Hutton will then be merged into Shearson Lehman. In this connection, the Fund has recently decided to change its custodian and transfer agent to Boston Safe Deposit and Trust Company. Boston Safe Deposit and Trust Company handles the contingent deferred sales charge processing for all the funds within the Shearson Lehman complex of investment companies. Boston Safe is therefore familiar with the Shearson Lehman contingent deferred sales charge system and administratively it would be easier and more efficient to employ the Shearson Lehman deferred sales charge system rather than the E.F. Hutton system.

4. Applicants assert that in several additional respects the Shearson Lehman contingent deferred sales charge is more favorable to Fund shareholders than the contingent deferred sales charge program employed by the Fund. Even though the range of the contingent deferred sales charges in the same under both programs, declining from 5% to 0% over a specified number of years, under the Shearson Lehman system the charge is assessed over a five year period rather than a six year period. Also, the Shearson Lehman system does not impose a charge on shares purchased in connection with the reinvestment of dividends and capital gains distributions. Moreover, while the E.F. Hutton contingent deferred sales

charge program is imposed on a Fundwide basis (except that if a lower charge would apply on a series-by-series basis, such charge would be imposed), and Shearson Lehman imposes the charge on a series-by-series basis, a shareholder using the Shearson Lehman methodology can obtain any benefit of a fund-wide contingent deferred sales charge by consolidating his investment in one series before redeeming out of the fund. Furthermore, there is a $5.00 service charge imposed on exchanges between Series of the Fund. This charge will be eliminated in connection with the adoption of the Shearson Lehman contingent deferred sales charge methodology.

5. Under the Shearson Lehman system, the contingent deferred sales charge would be waived in the case of certain redemptions as described in the application.

6. The Fund finances its own distribution expenses pursuant to the Plan adopted pursuant to Rule 12b–1. The Plan provides for an annual fee to be paid by each Series of the Fund to E.F. Hutton for its services in connection with sales of the Fund's shares. This fee was disclosed in previous applications for exemptive orders pursuant to section 6(c) of the 1940 Act which resulted in orders of exemption from the provisions of sections 2(a)(32), 2(a)(35), 1(a)(41), 22(c) and 22(d) of the 1940 Act and Rules 2a–4 and 22c–1 thereunder.

7. Applicants seek to modify the representations regarding the Fund's distribution fee so that the Series of the Fund may pay distribution fees at varying levels, but in no event to exceed 1.25% of the average daily net asset of the Series.

8. Applicants also request that the exemption requested extend to all future Series of the Fund which are offered on substantially the same basis as shares are offered by E.F. Hutton of the Fund and to any future distributor of the Fund's shares.

Applicants' Conditions

As conditions to obtaining the requested exemptive relief the Applicants agree:

(1) To comply with the provisions of Rule 22d–1 (or any successor rule under the 1940 Act);

(2) To comply with the provisions of Rule 12b–1 under the 1040 Act in its current form and as it may be revised in the future;

(3) That each Series of the Fund will vote separately with regard to the adoption of a distribution plan pursuant to Rule 12b–1 under the Act in accordance with the requirements of Rule 18f–2; and

(4) To notify all Fund shareholders of changes in the Fund's contingent deferred sales charge program, including the implications of the series-by-series method of calculating the contingent deferred sales charge.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–13403 Filed 6–13–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 9.80 percent per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by Section 1 of Pub. L. 99–226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: June 8, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88–13398 Filed 6–13–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Notice No. CM–8/1198]

Secretary of State's Advisory Committee on Private International Law; Study Group on International Electronic Transactions; Meeting

The Study Group on International Electronic Funds Transfers, which held its first meeting on February 26, 1988, has been reconstituted as the Study Group on International Electronic Transactions in order to reflect the broader range of issues expected to be reviewed in the course of its work.

The second meeting of this Study Group will be held on Thursday, June 23, 1988 at 10 a.m. at the United States Mission to the United Nations, 12th floor conference room, located at 799 United Nations Plaza, New York, NY. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chair.

The purpose of the meeting is to review the first draft of Model Rules on Electronic Funds Transfers prepared by the Secretariat of the United Nations Commission on International Trade Law (UNCITRAL). The draft Model Rules will be considered by member states of UNCITRAL at the meeting of its Working Group on International Payments scheduled for July 5 to 15, 1988 in New York. The Study Group's recommendations will be considered by the Advisory Committee on Private International Law and will be used by the Department to formulate guidance for United States representatives to UNCITRAL.

The agenda of the Study Group will include the following issues: Whether any proposed UNCITRAL rules should apply only to international transactions or should include domestic transactions as well; whether they should apply to electronic transactions only or also to paper-based transactions; whether they should cover all financial institutions; whether they should cover both debit and credit transfers; whether they should avoid particular technologies or national financial systems; whether consumer electronic transfers should be excluded; whether the rules should cover conflicts of laws; what definitions should be applied; whether particular forms and authentication should be required; what would be the obligations, rights and liabilities of the various parties involved; and how should finality of a transaction be determined? The Study Group will also consider whether model rules, if adopted by UNCITRAL, would be appropriate for

subsequent adoption in an international treaty.

Additional information on the meeting, including copies of the draft Model Rules, may be obtained by contacting Harold S. Burman, Office of the Assistant Legal Adviser for Private International Law, (L/PIL), Room 6417, Department of State, Washington, DC 20520, or by calling (202) 653–9852. Further information on the UNCITRAL project may be obtained by contacting the United Nations Sales Section, New York, NY at (212) 963–8302 and ordering the "UNCITRAL Legal guide on Electronic funds Transfers" (refer to Sales document No. E.87.V.9), and subsequent reports of the UNCITRAL Secretariat and Working Group on International Payments.

Access to the United States Mission is controlled. Members of the general public planning to attend should notify the above office not later than June 21 of their name, affiliation, address and telephone number. Persons interested but unable to attend the meeting may submit comments or proposals to the address indicated above.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 88–13301 Filed 6–9–88; 9:34 am]

BILLING CODE 4710–10–M

[CM–8/1196]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting at 0930 on Thursday, 30 June 1988 in Room 2415 of U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593. The purpose of the meeting is: (1) To review the recent Intergovernmental Talks on Liability and Compensation related to Maritime Carriage of Hazardous and Noxious Substances (HNS) held in London from 20–22 April 1988 and the related discussions at the 59th Session of the International Maritime Organization (IMO) Legal Committee held from 25–29 April 1988; and (2) to begin HNS policy development in preparation for the 60th Session of the IMO Legal Committee scheduled for October 1988.

By way of background concerning HNS, in 1982 the Legal Committee completed a draft Convention which provided a two-tier regime of strict liability for the carriers and shippers of certain HNS transported in bulk on tank vessels. The proposed scheme, which entailed compulsory insurance coverage for owners and shippers, would have applied to those HNS which presented severe fire and explosion, toxicity, and/or marine pollution hazards.

In May 1984, IMO sponsored a Diplomatic Conference which took up the draft HSN Convention, as well as draft Protocols updating both the 1969 and 1971 Oil Spill Conventions, An HSN Convention was not adopted because no clear consensus could be achieved on the fundamental liability issues.

The starting point for resumption of HNS negotiations was an options paper submitted to the 58th Session of the IMO Legal Committee by ten nations in September 1987. Highlights of the Legal Committee's discussion of the HNS options paper were as follows:

1. Most delegations expressing views favored further work toward an international system of liability and compensation so that such a system could be in place before any major HNS catastrophe; this majority supported moving to HNS work on a priority basis early in 1988 and thus the subject was placed on the 59th Session agenda after the Athens Convention.

2. Many delegations expressed a preliminary preference for placing liability on the shipowner alone, without involving cargo or shipper interests; a number of these delegations expressed strong interest in using a revision of the 1976 Convention as the framework for an HNS regime.

3. The Committee was divided on the issue of packaged HNS, with the apparent majority in favor of their inclusion.

Results of the Legal Committee's further consideration of HNS at its 59th Session in Apirl 1988 are as follows:

1. The decision as to which basic option will be chosen for development of an international HNS liability and compensation regime was deferred to the 60th Session in October 1988. The basic options under consideration include: Several different approaches to exclusive shipowner liability; a shared liability system with HNS cargo interests providing supplemental compensation through compulsory insurance; and an international fund for supplemental compensation (possibly similar to the International Oil Pollution Compensation Fund). All of the basic options discussed involve a first tier of shipowner-only liability under the 1976 International Convention on the Limitation of Liability for Maritime Claims.

2. While shipowner-only liability approaches continued to command the broadest support, theere were expressions of significant interest in a possible international fund system and the Committee indicated its willingness to consider any specific proposals prepared for the 60th Session.

3. In-depth discussion of many of the important issues (e.g., the identification of HNS cargoes, the scope of covered risks and types of harm and the technical issues related to the inclusion of packaged HNS) was effectively postponed until after the fundamental decision with respect to the type of liability and compensation scheme to be developed.

Development and implementation of an international HNS scheme would have significant impacts on a wide range of U.S. interests related to industry, government and the environment. These interests include, but are not limited to, owners/operators of vessels transporting bulk or packaged hazardous substances, chemical manufacturers, chemical shippers, marine terminal operators, port authorities, marine insurers, state and local governments, and environmental advocates.

In view of the significant potential impacts on U.S. maritime and other interests, the Shipping Coordinating Committee is conducting this special meeting on 30 June 1988 to review important developments to date and to consider the future course of our HNS policy development.

Members of the public are invited to attend the meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed to the Shipping Coordinating Committee meeting, contact either Captain Jonathan Collom or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G–LMI), Washington, DC, 20593, telephone (202) 267–1527.

Date: June 2, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88–13366 Filed 6–13–88; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/1197]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) National Committee; Meeting

The Department of State announces

that the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on July 12, 1988 and August 4, 1988 in the Dean Atchison Auditorium, Department of State, 2201 C Street NW., Washington, DC. Both meetings will begin at 9:30 a.m. and are scheduled for the entire day.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities; provides advice on matters of policy and positions in the preparation for CCITT Plenary Assemblies and meetings of the International Study Groups; provides advice and recommendations in regard to the work of the U.S. CCITT Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCITT which are submitted to the Committee for consideration.

The purpose of the meetings is to:

1. Provide a briefing of the results of final meetings of CCITT Study Groups III, XI and XVIII.

2. Continue preparatory activities for CCITT Plenary Assembly, and in particular receive reports of the Ad-Hoc groups assigned to review positions in the proposed texts of questions for the next Plenary Period, and candidates for leadership positions.

3. Continue preparatory activities for World Administrative Telegraph and Telephone Conference, Melbourne, Australia, November 28–December 9, 1988.

4. Continuing preparatory activities for the ITU Plenipotentiary Conference, 23 May–29 June, 1989, Nice, France.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC.; telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

Date: May 30, 1988.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 88–13365 Filed 6–13–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending June 3, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 38034

Date Filed: June 1, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1988.

Description: Amendment to the Application of Kuwait Airways Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations, amends its application for a foreign air carrier permit, filed April 11, 1980, to update the information submitted with respect to the operation and management of Kuwait Airways Corporation.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–13298 Filed 6–13–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Organization, Functions, and Authority Delegations: Montague, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Flight Service Station at Montague, California; Notice of Closing.

SUMMARY: Notice is hereby given that on or about June 10, 1988, the Flight Service Station at Montague, California, will be closed. Services to the general aviation public of Montague, formerly provided by this office, will be provided by the Flight Service Station in Red Bluff, California. This information will be reflected in the next reissuance of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California, on June 1, 1988.

Arlene B. Feldman,

Deputy Director, Western-Pacific Region.

[FR Doc. 88–13300 Filed 6–13–88; 8:45 am]

BILLING CODE 4910–13–M

Organization, Functions, and Authority Delegations: Tonopah, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Flight Service Station At Tonopah, Nevada; notice of closing.

SUMMARY: Notice is hereby given that on or about June 17, 1988, the Flight Service Station at Tonopah, Nevada, will be closed. Services to the general aviation public of Tonopah, formerly provided by this office, will be provided by the Flight Service Station in Reno, Nevada. This information will be reflected in the next reissuance of the FAA Organization Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California, on June 1, 1988.

Arlene B. Feldman,

Deputy Director, Western-Pacific Region.

[FR Doc. 88–13299 Filed 6–13–88; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Waiver Petition Docket No. RST–87–1]

Petition for Exemption or Waiver of Compliance; National Railroad Passenger Corp.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the National Railroad Passenger Corporation (Amtrak) has submitted a petition dated November 25, 1987, requesting a waiver of compliance with the provisions of 49 CFR 213.57(b) for certain types of passenger train rolling stock currently in revenue service operation over the Shore Line route between Boston, Massachusetts and New Haven, Connecticut.

Amtrak desires to include the following car types in F–40PH/Amfleet coach consists, which were authorized on December 17, 1982, to operate over the subject trackage at curving speeds producing four inches of cant deficiency:

- Heritage type coaches, sleepers and baggage cars;
- Material Handling Cars.

Present Amtrak train operating procedures limit curving speeds for F–40PH locomotive drawn, Amfleet coach-equipped trains to velocities developing not more than three inches of cant

deficiency when any of the above listed units are part of a consist. Three inches of cant deficiency is a limiting factor in the mathematical formulation which is the basis for the curving speeds as specified in 49 CFR 213.57(b).

In support of its petition, Amtrak presented to FRA the results of simulation analysis of vehicle steady state dynamic response as characterized by the behavior of five vehicle performance parameters:

- Carbody lateral acceleration;
- Distance of the resultant force vector intercept from the track centerline;
- High and low rail vertical forces;
- Truck lateral force; and
- Carbody roll angle.

FRA staff are currently studying these data and the methods through which they were derived. It is believed that the conduct of an instrumented field test of typical vehicles will not be necessary and that complete reliance may be placed on the application of a well-verified computational model to estimate the effects on each of the vehicle performance parameters as curving speeds are increased to develop 4 inches of cant deficiency. It should be understood that to augment curving speeds to achieve a change in cant deficiency from 3 inches to 4 inches would require, for the majority of curves involved, increases of 5 mph; for a few curves up to 10 mph and, rarely, an increase of 15 mph.

FRA is seeking information and comments from all interested parties. FRA will take these comments into account in arriving at a final disposition of the petition. Such comments may also have value in supporting FRA's response to future requests for approval to operate trains through curves at speed producing more than the current standard of three inches of underbalance. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if, by July 29, 1988, the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA Waiver Petition Docket No. RST-87-1" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street SW., Washington, DC 20590.

Comments received by July 29, 1988, will be considered in this proceeding and in evaluating any future proposals by Amtrak or other railroad entity for similar relief from complying with 49 CFR 213.57(b). All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 7th Street SW., Washington, DC 20590.

Issued in Washington, DC on June 7, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-13417 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-06-M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Office of Hazardous Materials Transportation Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes June 29, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2582-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	2582
2709-X	Atlas Powder Co., Dallas, TX (See Footnote 1).	2709
3330-X	Teledyne Wah Chang Albany Corp., Albany, OR.	3330
3330-X	General Electric Co., Schenectady, NY.	3330
4734-X	General Electric Company — Silicone Products Div., Waterford, NY.	4734
5038-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	5038
5649-X	Great Lakes Chemical Corp. Adrian, MI.	5649
6071-X	Walter Kidde, Wilson, NC	6071
6296-X	UNIROYAL Chemical Company, Inc., Bethany, CT.	6296
6538-X	Optimus, Inc., Bridgeport, CT	6538
6543-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	6543
6543-X	Corningf Glass Works, Corning, NY.	6543
6610-X	ARCO Chemical Co., Pasadena, TX.	6610
6691-X	Union Carbide Corporation, Linde Division, Danbury, CT (See Footnote 2).	6691
6695-X	Arbel-Fauvet-Rail, Douai, Cedex, France.	6695
6762-X	Taylor Technologies, Inc., Sparks MD.	6762
6902-X	Solkatronic Chemicals, Inc., Fairfield, NJ.	6902
6971-X	Accu-Standard, Inc., New Haven, CT.	6971
7026-X	Walter Kidde, Wilson, NC	7026
7041-X	Ethyl Corp., Baton Rouge, LA.	7041
7052-X	Gould, Inc., North Andover, MA.	7052
7096-X	Fike Corp., Blue Springs, MO.	7096
7285-X	Parlefer S.A.R.L., Paris, France.	7285
7616-X	Southern Pacific Transportation Co., San Francisco, CA.	7616
7767-X	Walter Kidde, Wilson, NC	7767
7823-X	Allied Corp., Morristown, NJ	7823
7840-X	Douglas Aircraft Co., Long Beach, CA.	7840
7991-X	Burlington Northern Railroad Co., Ft. Worth, TX.	7991
8035-X	Western Atlas International, Houston, TX.	8035
8051-X	Mauser Packaging, Limited, Litchfield, CT.	8051
8060-X	Parlefer S.A.R.L., Paris, France.	8060
8060-X	SLEMI, Paris, France	8060
8060-X	Arbel-Fauvet-Rail, Douai, Cedex, France.	8060
8141-X	Altus Corp., San Jose, CA	8141
8156-X	Solkatronic Chemicals, Inc., Fairfield NJ.	8156

Application No.	Applicant	Renewal of exemption
8207-X	Rexnord Chemical Product, Commerce City, CO (See Footnote 3).	8207
8236-X	Talley Automotive Products, Inc., Mesa, AZ.	8236
8362-X	Altus Corp., San Jose, CA	8362
8439-X	Walter Kidde, Wilson, NC	8439
8451-X	LTV Missiles and Electronics Group, Dallas, TX.	8451
8451-X	Hercules Inc., Wilmington, DE.	8451
8451-X	GOEX, Inc., Cleburne, TX	8451
8451-X	Unidynamics/Phoenix, Inc., Phoenix, AZ.	8451
8451-X	Monongahela Power Co., Fairmont, WV.	8451
8451-X	Ethyl Corp., Baton Rouge, LA.	8451
8451-X	Morton Thiokol, Inc. Aerospace Group, Brigham City, UT.	8451
8451-X	Atlantic Research Corp., Gainesville, VA.	8451
8451-X	Atlas Powder Co., Dallas, TX	8451
8451-X	Olin Chemicals Group Research Center, Stamford, CT.	8451
8451-X	Quantic Industries, Inc., San Carlos, CA.	8451
8489-X	Degussa Corp., Ridgefield, NJ.	8489
8489-X	FMC Corp., Philadelphia, PA	8439
8538-X	Hercules, Inc., Wilmington, DE.	8538
8538-X	Atlas Powder Co., Dallas, TX	8538
8545-X	Hercules, Inc., Wilmington, DE.	8545
8570-X	Snyder Industries, Inc., Lincoln, NE.	8570
8582-X	Atchison, Topeka and Santa Fe Railway Co., Chicago, IL.	8582
8627-X	Champion Chemicals, Inc., Houston TX (See Footnote 4).	8627
8723-X	IRECO Inc., Salt Lake City, UT.	8723
8741-X	Alpha Aviation, Inc., Dallas TX.	8741
8817-X	General Chemical Corp., Parsippany, NJ.	8817
8820-X	SLEMI, Paris, France	8820
8839-X	Poly Processing Company, Inc., Monroe, LA.	8839
8839-X	Poly Cal Plastics, Inc., Monroe, LA.	8839
8839-X	Poly Processing Company, Inc., Monroe, LA (See Footnote 5).	8839
8865-X	Carleton Technologies, Inc., East Aurora, NY.	8865
8878-X	Corning Glass Works, Corning, NY.	8878
8878-X	Amalgamet Canada — Division of Premetalco, Inc., Toronto, Ontario, CN.	8878
8911-X	Olin Corp., East Alton, IL	8911
8942-X	Poly Processing Company, Inc., Monroe, LA (See Footnote 6).	8942
8963-X	Atlantic Research Corp., Gainesville, VA.	8963
8970-X	WR Metals Industries, Inc., Wheat Ridge, CO.	8970
8978-X	Battery Engineering, Inc., Hyde Park, MA (See Footnote 7).	8978
9061-X	Leonard Joseph Co., & Safesport Manufacturing Co., Denver, CO.	9061
9182-X	Stoneco, Inc., Dacono, CO	9182
9197-X	Greif Brothers Corp., Springfield, NJ (See Footnote 8).	9197
9263-X	Liquid Air Corp., Walnut Creek, CA.	9263
9270-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	9270
9277-X	American Cyanamid Company Agricultural Group, Wayne, NJ.	9277
9282-X	Halocarbon Products Corp., North Augusta, SC.	9282
9331-X	Hoechst Celanese Corp., Somerville, NJ.	9331
9374-X	Poly Processing Company, Inc., Monroe, LA (See Footnote 9).	9374
9400-X	Poly Processing Company, Inc., Monroe, LA (See Footnote 10).	9400
9416-X	CIBA-GEIGY Corp., Ardsley, NY (See Footnote 11).	9416
9497-X	Amtrol Inc., West Warwick, RI.	9497
9502-X	Callery Chemical Co., Pittsburgh, PA.	9502
9505-X	Witco Corp., Richmond, CA	9505
9517-X	Conroe Aviation Service, Inc., Conroe, TX.	9517
9609-X	Copps Industries, Inc., Menomonee Falls, WI.	9609
9609-X	Applied Co., San Fernando, CA.	9609
9618-X	ENPAC Corp., Jacksonville, FL (See Footnote 12).	9618
9628-X	Degussa Corp., Ridgefield Park, NJ.	9628
9628-X	Degussa Corp., Ridgefield Park, NJ (See Footnote 13).	9628
9632-X	Arbel-Fauvet-Rail, Doual, Cedex, France.	9632
9658-X	Fluoroware, Inc., Chaska, MN (See Footnote 14).	9658
9686-X	Fluoroware, Inc., Chaska, MN (See Footnote 15).	9686
9696-X	Fluoroware, Inc., Chaska, MN (See Footnote 16).	9896
9851-X	Trans World Airlines, Inc., Kansas City, MO (See Footnote 17).	9851
9878-X	Tennessee Eastman Co., Kingsport, TN.	9878
9912-X	Poly Processing Co., Monroe, LA (See Footnote 18).	9912
9914-X	Morton Thiokol, Inc., Huntsville Division, Huntsville, AL (See Footnote 19).	9914
9956-X	Dixie Petro-Chem, Inc., Houston, TX.	9956

(1) To authorize shipment by cargo vessel.
(2) To correct the address referenced for the holder.
(3) To authorize an alternative shipping name.
(4) To authorize an additional spring loaded vent on the non-DOT Specification portable tank.
(5) To authorize an additional closure system for the non-DOT Specification portable tank.
(6) To authorize an additional closure system for the non-DOT Specification portable tank.
(7) To authorize shipment of depleted or defective Lithium batteries, classed as Flammable solid, under certain conditions.
(8) To authorize an additional material for shipment and an additional resin for the polyethylene container.
(9) To authorize an additional closure system for the non-DOT Specification portable tank.
(10) To authorize an additional closure system for the non-DOT Specification portable tank.
(11) To authorize shipment via cargo vessel.
(12) To authorize an additional, smaller packaging identified as a salvage drum.
(13) To authorize an additional lining of polyethylene/aluminum foil lamination.
(14) To authorize shipment of Nitric acid (71% concentration or less), classed as an Oxidizer, in the non-DOT Specification composite polyethylene and plastic, portable tank.
(15) To authorize shipment of Nitric acid (71% concentration or less), classed as an Oxidizer in the non-DOT Specification composite polyethylene and plastic, portable tank.
(16) To authorize shipment of Nitric acid (71% concentration or less), classed as an Oxidizer in the non-DOT Specification composite polyethylene and plastic, portable tank.
(17) To modify packaging configuration.
(18) To authorize an additional closure system for the non-DOT Specification portable tank.
(19) To authorize additional packaging for shipment of Rocket motors, Class B explosive.

Application No.	Applicant	Parties to exemption
4453-P	Laurel Explosives, East Bernstradt, KY.	4453
5604-P	Airco Industrial Gases Division of the BOC Group, Murray Hill, NJ (See Footnote 1).	5604
5704-P	Olin Corp., East Alton, IL	5704
6126-P	Monsanto Agricultural Co., St. Louis, MO.	6126
6530-P	SOS Gases, Inc., Kearny, NJ	6530
6801-P	Hach Co., Ames, IA	6801
7052-P	Singer Daimo Victor Division, Belmont, CA.	7052
7052-P	DigiCourse, Inc., Harahan, LA.	7052
7526-P	Soltex Polymer Corporation, Deer Park, TX.	7526
7607-P	Response Rentals, Rochester, NY.	7607
7607-P	Hydrometrics, Inc., Helena, MT.	7607
7616-P	CSX Transportation, Inc., Jacksonville, FL.	7616
8084-P	Austin Powder Co., Beachwood, OH.	8064
8214-P	Volkswagen of America, Inc., Troy, MI.	8214
8273-P	Ford Motor Company World Headquarters, Dearborn, MI (See Footnote 2).	8273
8426-P	Containerized Chemical Disposal, Inc., Montclair, CA.	8426
8518-P	Barnett Trucking, Inc., Fillmore, CA.	8518
9101-P	GE Astro Space Div., formerly RCA Astro Electronic, Princeton, NJ (See Footnote 3).	9101
9355-P	Panasonic Industrial Co., Secaucus, NJ.	9355
9723-P	Safety Specialists, Inc., Santa Clara, CA.	9723
9723-P	Chemical Waste Management, Inc. Technical Service, Alsip, IL (See Footnote 4).	9723
9785-P	Nedlloyd Lines, Atlanta GA	9785
9851-P	Delta Air Lines, Inc., Atlanta, GA.	9851

(1) To authorize party status to the reinstated exemption which authorizes shipment of liquid helium in non-DOT Specification cargo tanks.

(2) To authorize party status and an alternative shipping method for shipment of modules and/or inflators, classed as Flammable solid.

(3) To authorize party status, an additional Rocket motor, Class B explosive, and an additional shipping container.

(4) To authorize party status and an additional outer packaging constructed of polyethylene in lieu of a DOT Specification 17H or 17E drum.

Note: Footnote 3 pertaining to DOT-E 7052 published in the **Federal Register** dated May 17, 1988, is corrected to read (To authorize passenger carrying aircraft as an additional mode of transportation for shipment of Lithium molybdenum sulphide batteries and cells.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 8, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-13343 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor Vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes July 14, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Reguation(s) affected	Nature of exemption thereof
9980-N	Aero Enterprises International, Corpus Christi, TX.	49 CFR 173.260	To authorize shipment of Battery, wet, filled with acid, in a non-DOT Specification packaging identified as Start Cart, which is used for starting helicopters or for supplying power to helicopters. (modes 1, 4)
9981-N	Garrison Industries, El Dorado, AR.	49 CFR 173.268	To authorize shipment of Nitric acid, fuming, classed as oxidizer, in a DOT Specification 42D aluminum drum. (mode 1)
9982-N	SST Industries, Inc., Dekalit Plastics Division, Cincinnati, OH.	49 CFR 178.19, Part 173, Subparts D, E, F, and H.	To authorize manufacture, marking and sale of non-DOT Specification polyethylene packaging, similar to DOT Specification 34, for shipment of materials authorized in DOT Specification 34 polyethylene drums. (modes 1, 2, 3)
9983-N	Explosive Technology, Fairfield, CA.	49 CFR 173.65(a)(4).	To authorize shipment of a High explosive, Class A explosive in a package that exceeds the weight limitation. (mode 1)
9984-N	Detroit Gas Proudcts Co., Ferndale, MI.	49 CFR 173.302(c).	To authorize charging of DOT Specification 3A or 3AA Cylinder, used to ship Hydrogen, classed as Flammable gas, to 10% over the marked service pressure. (mode 1)
9985-N	Taylor-Wharton Division of Harsco Corp., Indianapolis, IN.	49 CFR 177.834(h).	To authorize the loading and discharge of Carbon dioxide, refrigerated liquid, from cylinders without removing them from the transport motor vehicle. (mode 1)
9986-N	PSC Environmental Management, Pecationica, IL.	49 CFR 173.154, 173.245b, 173.365, and 173.510.	To authorize transport of various solid or semi-solid waste hazardous materials, clased as Flammable solid, Organic peroxide, Oxidizer, Corrosive material, Poison B and ORM, in non-DOT Specification fiber drums. (mode 1)
9987-N	Korean Air Lines Co., Ltd., Los Angeles, CA.	49 CFR 172.101 table, column(6)(b), 173.30.	To authorize shipment of certain Class A, B, and C explosives that are forbidden for transportation or are in quantities greater than prescribed for air transportation. (mode 4)
9988-N	McDonnell Douglas Corp., Saint Louis, MO.	49 CFR 172.202, 172.203, and 172.301, 49 CFR, Part 107, Appendix B, Subpart B.	To authorize shipment of limited quantities of Toluene and Methyl ethyl ketone, classed as Flammable liquid, without shipping papers and without marking the packaging. (mode 1)
9989-N	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.245	To authorize shipment of certain corrosive liquids inside a DOT Specification 12P fiberboard box containing one DOT Specification 2U polyethylene container and two non-DOT Specification polyethylene containers. (modes 1, 2, 3)
9990-N	Honeywell Inc., Brooklyn Park, NY.	49 CFR 173.113, 178.209-11(b).	To authorize shipment of certain Detonating Fuzes, Class C explosive in a non-DOT Specification packaging with the amount of material exceeding the gross weight limitation. (mode 1)
9991-N	Emergency Technical Services Corp., Schaumburg, IL.	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, and 173.346.	To authorize manufacture, marking, and sale of non-DOT Specification, salvage cylinders for overpacking damaged or leaking packages of hazardous material. (mode 1)
9992-N	Pennwalt Corp., King of Prussia, PA.	49 CFR 173.52(a) 3, 173.100(a).	To authorize shipment of Dithiocarbamate pesticides, solid, n.o.s., classed as Poison B, in a non-DOT Specification polypropylene bag with polyethylene liner. (modes 1, 3)
9993-N	Goex, Inc., Cleburne, TX	49 CFR 173.365.	To authorize shipment of a material classed as Class C explosive in lieu of the its assigned class of Class A explosive. (modes 1, 2, 3, 4, 5)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Reguation(s) affected	Nature of exemption thereof
9994-N	Hoover Group, Inc. Beatrica, NE.	49 CFR 178.83	To authorize manufacture, marking and sale of non-DOT Specification steel drums, similar to DOT 5C, for the shipment of materials authorized in DOT Specification 5C drums. (mode 1)
9995-N	Copps Industries, Inc. Menomonee Falls, WI.	49 CFR 173.245, 173.249.	To authorize shipment of mixtures described as Alkaline corrosive liquid, n.o.s., classed as Corrosive material, in non-DOT packaging consisting of a unlined tin can in an molded polyethylene insert within a removable head, polyethlene pail.
9996-N	Transac, Inc., Macon, GA	49 CFR 173.183, 173.245b, 173.365, and 173.154.	To authorize manufacture, marking and sale of non-DOT Specification packaging described as flexible intermediate bulk containers for shipment of solid materials classed as Corrosive material, Flammable solid, Oxidizer or Poison B. (modes 1, 2)
9997-N	Hodgdon Powder Company, Inc., Shawnee Mission, KS.	49 CFR 173.87	To authorize shipment of a package containing propellant explosive, percussion caps and other non-hazardous materials. (modes 1, 3)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 8, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-13342 Filed 6-13-88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 9, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0003.

Form Number: SS-4 and SS-4PR.

Type of Review: Revision.

Title: Application for Employer Identification Number.

Description: Taxpayers required to have an employer identification number for use on any return, statement, or other document must prepare and file Form SS-4, or Form SS-4PR (Puerto Rico only) to obtain a number. The information is used by IRS AND SSA in tax administration and by the Bureau of the Census for business statistics.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 2,798,500.

Estimated Burden Hours Per Response: 1 hour 38 minutes.

Frequency of Response: On Occasion.

Estimated Average Reporting Burden: 1,929,253 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhaulf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-13400 Filed 6-13-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 9, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0081.

Form Number: CF 213.

Type of Review: Reinstatement.

Title: Importers' Premises Visit Significant Importation Report.

Description: The document constitutes a summary report of an interview conducted at the importer's premise by a Customs office. The CF-213 provides for uniformity for the various importers. Customs conducts the interview based upon its responsibilities involving appraisement classification and admissibility with regard to imported merchandise.

Estimated Number of Respondents: 7,385.

Estimated Burden Hours Per Response: 2 hours 24 minutes.

Frequency of Response: On Occasion.

Estimated Average Reporting Burden: 17,724 hours.

OMB Number: 1515-0132.

Form Number: None.

Type of Review: Reinstatement.

Title: Application for Salvage Operation and Report of Salvage Operation.

Description: An individual or company wanting to engage in any salvage operation in territorial waters of the U.S., using a foreign vessel, must file an application with the Customs Service and receive approval.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On Occasion.

Estimated Average Reporting Burden: 1 hour.

Clearance Officer: John L. Poore, (202) 566-9181, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management

and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 88-13401 Filed 6-13-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; From the Land of Dragons

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "From the Land of Dragons" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the American Museum of Natural History in New York City, New York, beginning on or about July 22, 1988, to on or about January 2, 1989, at the Museum of Science in Boston, Massachusetts, beginning on or about January 26, 1989, to on or about May 14, 1989, and at the Natural History Museum of Los Angeles County in Los Angeles, California, beginning on or about July 15, 1989, to on or about November 15, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Date: June 10, 1988.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 88-13461 Filed 6-10-88; 2:02 pm]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202-485-7988, and the address is Room 700, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 114
Tuesday, June 14, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE 10:00 a.m., Wednesday, June 15, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Methylene Chloride Petition

The Commission will consider petition HP 85-1 from the Consumer Federation of America requesting that the Commission commence a proceeding under section 2(q)(1)(B) of the Federal Hazardous Substances Act to ban products containing methylene chloride.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

June 9, 1988.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 88-13468 Filed 6-10-88; 2:22 pm]

BILLING CODE 6355-01-M

FARM CREDIT ADMINISTRATION

Correction of Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on June 6, 1988 (53 FR 20717) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for June 7, 1988. This noticed is to revise the agenda for the meeting to move an item and add an item to the closed session.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22101-5090.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for Tuesday, June 7, is revised as follows:

Open Session

1. Final Rule on Simultaneous Service, 12 CFR 612.2150.
2. Proposed Changes to Farm Credit System Retirement Plans:
   - Springfield District.
   - Texas District.
   - Farm Credit Corporation of America.
3. Proposed Farm Credit System District Special Early Retirement Programs:
   - Baltimore District.
   - Texas District.
   - Springfield District.
4. Proposed Changes to Farm Credit System District Severance Plans:
   - St. Paul District.
   - Louisville District.
   - Central Bank for Cooperatives.
5. FCA Policy on Prior Approvals Concerning Farm Credit System Human Resources Management.

Closed Session [1]

6. Mergers of the Farm Credit System Federal Land Banks and Federal Intermediate Credit Banks;
7. Examination and Enforcement Matters; and
8. CEO Compensation of Jackson FICB and BC.

Dated: June 10, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-13460 FIled 6-10-88; 1:10 pm]

BILLING CODE 6705-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, June 7, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the application of Athol-Clinton Co-operative Bank, an operating non-FDIC-insured co-operative bank located at 90 Exhange Street, Athol, Massachusetts, for Federal deposit insurance.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: June 8, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-13412 Filed 6-9-88; 4:42 pm]

BILLING CODE 6714-01-M

[1] Session closed to the public-exempt pursuant to 5 U.S.C 552b(c)(4), (6), (8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, June 7, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum regarding proposed revisions to the Division of Liquidation's delegations of authority.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum regarding the Corporation's corporate activities.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration on the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunsine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 8, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 88-13413 Filed 6-9-88; 4:42 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 20, 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.

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.

Date: June 10, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-13490 Filed 6-10-88; 3:40 pm]

BILLING CODE 6210-01-M

NATIONAL LABOR RELATIONS BOARD

Open Meeting

TIME AND DATE: 10:00 a.m., Friday July 1, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, DC 20570.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: Rulemaking—29 CFR Part 103 (Collective-Bargaining Units in the Health Care Industry).

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington, D.C., June 10, 1988.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88-13472 Filed 6-10-88; 3:14 pm]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 13, 20, 27, and July 4, 1988.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 13

Thursday, June 16

2:00 p.m.
Briefing on Advanced Light Water Reactors by EPRI (Public Meeting).

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of June 20—Tentative

Monday, June 20

1:00 p.m.
Discussion of Management-Orgnanization and Internal Personnel Matters (Closed—Ex. 4).

2:30 p.m.
Briefing on Technical Specifications Revisions (Public Meeting).

Tuesday, June 21

10:00 a.m.
Briefing by TVA on TVA Reorganization and Plant Status (Public Meeting).

2:00 p.m.
Briefing on Proposed Rule on Fitness for Duty (Public Meeting).

Friday, June 24

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of June 27—Tentative

Monday, June 27

10:00 a.m.
Briefing on Proposed Rule on Early Site Permits; Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting).

Wednesday, June 29

10:00 a.m.
Initial Briefing by the Advisory Committee on Nuclear Waste (Public Meeting).

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of July 4—Tentative

Tuesday, July 5

2:00 p.m.
Briefing on Accountability of Radioactive Material Used by Material Licensees (Public Meeting).

Wednesday, July 6

10:00 a.m.
Briefing on EEO Program (Public Meeting).

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Thursday, July 7

2:00 p.m.
Briefing on Continuity of Government Handbook (Closed—Ex. 1).

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

June 9, 1988.

[FR Doc. 88-13473 Filed 6-10-88; 3:15 pm]

BILLING CODE 7590-01-M

Federal Register

Tuesday
June 14, 1988

Part II

Department of Transportation

Federal Highway Administration

49 CFR Part 382

Motor Carrier Safety Standards; Controlled Substances; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 382

[FHWA Docket No. MC-116]

Motor Carrier Safety Standards; Controlled Substances

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comment on a proposed rule which would mandate chemical testing of interstate or foreign commerce drivers for the use of drugs. The impetus for this action is the safety and health concern associated with the use of drugs by these personnel. The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in motor carrier operations. In addition, these proposed rules seek comments on regulatory alternatives for rehabilitation to be offered by motor carriers to drivers. This notice of proposed rulemaking (NPRM) was preceded by two drug rulemaking actions which were published in the Federal Register on May 13, 1986 (BMCS Docket No. MC-116, Amendment No. 83-17, 51 FR 17568; BMCS Docket No. MC-120, Notice No. 86-3, 51 FR 17572). The latter of those actions proposed a drug test plan (much less comprehensive than proposed here) for drivers of hazardous materials. The former requested comment on specific questions regarding the various aspects of a drug control program applicable to interstate or foreign commerce drivers. The intent of the NPRM is to consolidate the subject matter of the previous actions and propose a comprehensive drug control program applicable to all drivers in interstate or foreign commerce.

DATE: Comments must be received on or before September 12, 1988. The FHWA is also considering holding a public hearing on this proposal and, if so, will announce the time and place of the hearing in the Federal Register.

ADDRESS: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 4205, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Holian, Office of the Chief Counsel (202) 366-1350, or Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards (202) 366-2981, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On May 13, 1986, the FHWA published a final rule which amended the prohibitive language of the medical drug standard for all drivers in interstate or foreign commerce (BMCS Docket No. MC-116, Amendment No. 83-17; 51 FR 17568). Drivers in interstate of foreign commerce were prohibited from using any Schedule I drug, an amphetamine, a narcotic, or any other habit-forming drug.

In the same rulemaking action, the FHWA incorporated an advance notice of proposed rulemaking (ANPRM) (see 51 FR 17572) and asked several questions relative to drug testing. These questions were:

1. Should the FHWA mandate urine drug screening (pre-employment and biennial) for all interstate or foreign commerce drivers?

2. Should the FHWA only state it permits urine drug screening in the regulation, leaving the decision to the motor carrier and the examining physician whether to perform the test?

3. Whether urine drug screening is mandated or optional, should the urine drug screening, where positive, be automatically subjected to more specific and sensitive tests for further confirmation?

4. Should the list of prohibited drugs, as now named, be changed to prohibit use of all drugs in the Schedules of Controlled Substances (SCS), Schedules I through V, 21 CFR Part 1308? If the SCS is adopted in its entirety, should a provision be added that specifically addresses instances of drivers using SCS drugs under doctor's orders?

The comment period for the ANPRM closed on August 11, 1986. Thirty-six comments were received, some with extensive documentation. In general, there was strong support for a comprehensive drug testing program.

The FHWA also published an NPRM (BMCS Docket No. MC-120, Notice No. 86-3; 51 FR 17572) in the Federal Register on the same date as the ANPRM (May 13, 1986). The NPRM sought comments on the qualification and disqualification of drivers, background investigation and inquires into the drivers' driving records, written examinations, and road tests. With regard to the qualification of drivers, the NPRM sought comments on a proposal to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to include a drug testing standard for drivers of certain hazardous materials-laden vehicles. Comments were also sought on whether the proposed drug testing plan should be mandated or be a recommended industry practice. There were 52 comments to the docket. Drug testing and the penalties proposed for their use were the subjects receiving the most comment. The majority of the commenters gave strong support for a mandated standard of drug testing.

It is the intent of the FHWA to address the issues of both of these proposals through this NPRM which proposes a comprehensive drug control program for all drivers in interstate or foreign commerce. The reason for proceeding with a comprehensive drug control standard is discussed below.

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments should include the name and address of the person making them, refer to the docket number that appears at the top of this document, give the specific section of the proposal to which the comment applies (question number, if applicable), and give the reasons for the comment. Persons desiring receipt acknowledgment should enclose a stamped, self-addressed postcard or envelope. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Background

Drug Abuse in American Society

Drug abuse constitutes a major societal problem. Statistics have been compiled and reported by the National Institute of Drug Abuse (NIDA) and by media polls. The results indicate that the use of drugs, such as marijuana, is widespread. While the problem appears to be "youth centered" in that the majority of users are in the younger age categories, the problem also exists in older groups. For instance, preliminary data from the 1985 NIDA, "National Survey on Drug Abuse," indicate the following:

- In the 18 to 25 age group, 22 percent of the youths surveyed reported using marijuana within the last 30 days.
- In the 26 and over age group, there is a total population of 136,600,000. The results of the survey show the following:

—27 percent of this age group reported using marijuana sometime during their life.
—6.2 percent of this age group reported using marijuana within the past month.
—9.5 percent of the age group reported using cocaine sometime during their life.
—2 percent of this age group reported using cocaine within the last month.

Because of statistics like the above, the public is concerned that an individual who uses drugs may jeopardize the personal safety of others. There is widespread public belief that persons in safety-affecting occupations should not be abusers of drugs.

Public Perception on Chemical Testing

POPULUS, Inc., and Decision/Making/Information conducted a national survey in 1986 on madatory drug testing in the workplace. When the respondents were asked whether certain occupational or demographic groups should be subjected to mandatory drug testing, there was general agreement that the following occupational groups should be tested:

• Airline pilots and air traffic controllers (88 percent)
• Police and other law enforcement agents (85 percent)
• Bus drivers (81 percent)

The researchers concluded that the respondents believed "people who are responsible for the physical safety of others should be tested." Transportation workers affect public safety and the public supports testing these workers for the use of drugs. POPULUS, Inc., and Decision/Making/Information, "Mandatory Drug Testing: a Nation Divided * * * Or Is It?" Final Report, Greenwich, CT (July 1986).

Another 1986 survey examined the public's attitude toward drug testing of certain occupational groups. American Viewpoint, Inc., conducted a national telephone survey of 1,000 respondents. The results indicate, "by a margin of 76 percent to 22 percent, Americans agree that the drug crisis today is serious enough for mandatory drug testing." American Viewpoint, Inc., used a "forced choice" list that did not include the transportation modes when doing the survey. The persons surveyed placed the following safety-affecting occupations at the top of the list for mandatory drug testing:

• Police and firefighters (84 percent)
• Members of the armed forces (83 percent)
• Doctors and nurses (81 percent)

Eighty percent of the respondents indicated they would participate in voluntary testing if asked to do so by their employers. American Viewpoint, Inc., "U.S. National Survey," Alexandria, VA (August 1986).

Based on the above information, the FHWA concludes that the public is concerned about drug abuse and supports drug testing of workers affecting public safety. Although drug abuse is more prevalent among the 25 and under age group, the problem persists in all age groups. The Department of Transportation in its regulatory role of protecting public safety, assumes that the problem of drug abuse among transportation workers does not differ significantly from that in the overall population.

Epidemiological Studies

An approach to evaluating the effects of drugs on transportation safety would include a program to determine the presence of drug use in an adequate sample of accidents and the collection of data on the incidence of drug use among all drivers. It would be possible to determine whether the user was overrepresented in the accident population. Over a period of years, analysis of this kind has permitted the Department of Transportation, through its National Highway Traffic Safety Administration, to determine the role of alcohol in highway accidents. Attempts to obtain post-accident toxicology results are only now beginning to provide data that may, in combination with careful field investigations, provide sufficient evidence to estimate accurately the involvement of drugs in transportation accidents.

A study of 440 fatally injured young California drivers detected alcohol in 70 percent of the drivers, marijuana in 37 percent, and cocaine in 11 percent. Each of 24 other drugs was detected in fewer than 5 percent of the fatally injured group. The authors concluded that only alcohol could be clearly "associated with crash responsibility" within the limitations of the available data, and that the role of marijuana in automobile crashes warrants further investigation. Williams, Peat, Crouch, Wells, and Finkle, "Drugs in Fatally Injured Young Male Drivers," *Public Health Reports* 100:19–25 (1985).

Another study examined the presence of alcohol and drugs among 497 drivers injured in motor vehicle accidents and treated in a Rochester, New York, hospital. Thirty-eight percent of the drivers had alcohol and/or another drug in their systems. Alcohol was found in 25 percent, marijuana in 9.5 percent, and tranquilizers in 7.5 percent. These results were considered conservative, because the drivers were not required to provide blood samples and many refused. Terhune and Fell, "The Role of Alcohol, Marijuana, and Other Drugs in the Accidents of Injured Drivers," NHTSA Technical Report DOT–HS–806–181 (Revised—March 1982).

As the foregoing studies indicate, in a number of instances people may have used both drugs and alcohol. The multiple drug phenomenon suggests the hazard of relying on countermeasures directed exclusively to alcohol and complicates the evaluation of drug involvement. This dilemma is particularly critical when it is considered that workers may use drugs other than alcohol on the job to avoid detection by their employer.

The Problem of Drugs in the Motor Carrier Industry

The motor carrier industry is a heterogeneous group of business entities. The various entities that make up the motor carrier industry vary tremendously in size. They range from single owner-operators to vast multinational corporations. The lengths of trips range from short intracity to transcontinental. Motor carriers may transport between fixed terminals or, on demand, to any destination. Drivers rarely are subject to direct observation by supervisors. Thus, the motor carrier industry's varying operational patterns, mixed and scope of operations, and lack of direct supervision make characterization of the industry and the application of drug testing standards very complex issues.

A few generalizations, however, can be made. Because truckers and, to some extent, bus drivers work for the most part unsupervised, employer surveillance and detection of drug use can be difficult. Within the motor carrier industry, driving may require irregular hours and long periods on the road, which may prompt some drivers to turn to stimulants to maintain alertness.

In addition, in some instances shippers may put pressure on drivers to deliver goods by a specific time that the drivers are unable to complete without violating, for example, the hours-of-service regulations. This pressure may cause drivers to seek to stay awake longer and lead to the use of stimulants like amphetamines to meet the timetable. This use thus becomes one of economic need, rather than merely recreational. The FHWA recognizes this potential problem and is seeking to increase enforcement of its applicable regulations to dissuade drivers from violating, for example, the hours-of-service regulations. The FHWA has taken action in conjunction with the States under the Motor Carrier Safety

Assistance Program to increase enforcement of all of the motor carrier safety regulations, including the hours-of-serivce requirements. For the years 1986 and 1987 there were approximately 99,000 and 156,000 identified violations of the hours-of-service requirements discovered, respectively, and of these there were approximately 36,000 and 51,000 violations which resulted in placing the driver out-of-service. In addition, the recent trend towards computerization of the drivers log books will aid in cutting down the number of violations of the hours-of-service regulations. Increased enforcement is but one aspect of the problem, but it leaves unresolved a means to prevent shippers from placing impossible burdens on drivers. The FHWA has identified driver fatigue and compliance with the hour-of-service requirements as a high priority national problem area and is proposing a series of research projects to analyze the problem and possible remedies.

The FHWA requests comments on ways to design the program to address specifically the types of problems caused by drug use in the trucking industry, especially problems associated with the use of stimulants. Comment is also requested on how the rule will affect the potential question of shipper pressure on drivers.

Finally, the FWHA is very interested in receiving any additional data on the use of controlled substances by drivers of commercial motor vehicles.

Data concerning drug-involved highway accidents and drug use among truck and bus drivers are scarce. However, the Insurance Institute for Highway Safety conducted a study at weigh stations in Tennessee in late 1986 in which truck drivers were interviewed and tested for drugs. Three hundred and fifty-nine tractor-trailer drivers were randomly stopped and requested to participate anonymously in the test; 12 percent declined. The study of body fluid analysis indicated that 29 percent of the drivers tested positive for drugs with the potential for abuse. Fifteen percent tested positive for marijuana metabolites, 2 percent tested positive for cocaine, less than 1 percent tested positive for alcohol, five percent tested positive for prescription stimulants (i.e., amphetamine, methamphetamine, or phentermine) and 12 percent tested positive for nonprescription stimulants (i.e., phenylpropanolamine, ephedrine, or pseudoephedrine) which are generally used in over-the-counter diet and cold pills. These figures do not establish information on impairment. Usually, a blood measurement is required to consider whether impairment exists. Blood measurements showed marijuana (tested for THC, the primary psychoactive constituent of marijuana) at 3 percent, cocaine at less than 1 percent, and stimulants (prescription) at 5 percent. Whether these blood measurements establish impairment is not commented on the study. A.K. Lund et al., "Drug Use by Tractor-Trailer Drivers," Insurance Institute for Highway Safety, Washington, DC, June 1987.

The FHWA does not dispute the professionalism of most drivers in the motor carrier industry. Nevertheless, given the growing public concern about drug use and the public support for testing workers affecting public safety, the FHWA is proposing rules to require chemical testing for commercial motor vehicle drivers in order to reduce risks associated with drug-related accidents.

Jurisdiction

Authority pertaining to motor carrier safety has been delegated to the Federal Highway Administration (FHWA). 49 U.S.C. 104 (1982 and Supp. III 1985) and 49 CFR 1.48 (1986). Under 49 U.S.C. 3102 (1982 & Supp. III 1985), the FHWA may prescribe requirements for the qualifications and maximum hours of service of employees and the safety of operation and equipment of motor carriers. For purposes of this section, motor carriers include for-hire motor carriers of passengers or property and private motor carriers of property operating in interstate on foreign commerce. Motor vehicles subject to this regulatory authority are not limited by size or weight. Under this authority, the FHWA has established the FMCSRs, 49 CFR Parts 390–399.

Section 206 of the Motor Carrier Safety Act of 1984 (Act), 49 App. U.S.C. 2505 (Supp. III, 1985), directs that Federal safety standards be established for motor vehicles that, at a minimum, ensure that—

(a) Commercial motor vehicles are safely maintained, equipped, loaded, and operated;

(b) The responsibilities imposed upon operators of commercial motor vehicles do not impair their ability to operate such vehicles safely;

(c) The physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely; and

(d) The operation of commercial motor vehicles does not have deleterious effects on the physical condition of such operators.

This regulatory authority is applicable to for-hire and private motor carriers operating commercial motor vehicles in interstate or foreign commerce. A commercial motor vehicle is defined in the 1984 Act as a vehicle used in interstate or foreign commerce if the vehicle—

(a) Has a gross vehicle weight rating of 10,001 or more pounds;

(b) Is designed to transport more than 15 passengers, including the driver; or

(c) Is used to transport hazardous materials in a quantity requiring the vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Parts 171–179 (1986).

The FHWA has established regulations pertaining to the use of drugs by drivers of motor vehicles in interstate or foreign commerce. These regulations are discussed below.

Under the Commercial Motor Vehicle Safety Act of 1986, section 12008 (a) and (b) of Pub. L. 99–570, title XII, 100 Stat. 3207–177 (1986), Congress recently addressed alcohol and drug use by commercial motor vehicle drivers and authorized the Secretary to disqualify drivers who operate motor vehicles while under the influence of alcohol or drugs. These Federal disqualifications apply to intrastate drivers as well as those operating vehicles in interstate or foreign commerce.

Also, under subtitle T of title I of the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570, section 1971, 100 Stat. 3207–3259), it is a Federal crime for the operator of a common carrier (i.e., rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, an air common carrier) to operate under the influence of alcohol or a controlled substance. The maximum penalties upon conviction are 5 years' imprisonment and a $10,000 fine. This Federal law is codified at 18 U.S.C.A. section 342 (West Supp. 1987).

The FHWA has adopted regulations which prohibit the use by a driver of a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug. 49 CFR 391.41(b)(12) (1987). A driver who uses such a drug is not qualified to operate a motor vehicle in interstate or foreign commerce. 49 CFR 391.11(b)(6) (1987). Unqualified persons who operate motor vehicles in interstate or foreign commerce are subject to civil and criminal penalties. 49 U.S.C. 521(b) (1982 & Supp. III, 1985).

The FHWA has issued specific regulations prohibiting the operation of a motor vehicle when drugs are involved. This rule provides that no driver shall be on duty and possess, be under the influence of, or use a Schedule I drug or other substance, an amphetamine, a narcotic, or any other substance, to a degree which renders the

driver incapable of safely operating a commercial motor vehicle. 49 CFR 392.4(a) (1987). This provision does not apply to the possession or use of a drug administered by or under the instructions of a physician who has advised the driver that the drug will not affect the driver's ability to safely operate the vehicle. 49 CFR 392.4(c). Also, this section does not prohibit the "possession" of a drug which is manifested and transported as part of the shipment. 49 CFR 392.4(d).

Under 49 CFR 391.15, upon a conviction for driving under the influence of a prohibited drug, the driver is disqualified for at least 1 year and up to 3 years depending on previous convictions.

Also, section 12008 of the Commercial Motor Vehicle Safety Act of 1986, Pub. L. 99-570, title XII, 100 Stat. 3207-178 (1986), disqualifies a driver for 1 year from driving a commercial motor vehicle in intrastate, interstate or foreign commerce if found to have committed a first violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance. If such a driver was transporting hazardous materials cargo, the disqualification period is 3 years. A second offense will result in a lifetime ban from driving commercially unless the Secretary, by regulation, reduces the penalty to no less than 10 years.

The FHWA has prohibited unlawful drug use by a driver of a commercial motor vehicle in interstate or foreign commerce. It has not specifically required that a driver be subject to chemical testing to confirm that he or she complies with this requirement. The FHWA currently relies on the motor carrier and the examining physician to determine whether a driver uses drugs. However, the FHWA believes that driver examinations may not be sufficient to reliably detect the use of drugs. The FHWA proposes to minimize this possibility by requiring a driver to be chemically tested for drug use. The FHWA also believes that drug testing will deter drug use.

Policy Statement

It is the policy of the FHWA that drivers on the highways of our Nation should be free of drugs. To detect and deter the use of drugs by bus and truck drivers, this proposed rule would require motor carriers to establish a program of five types of driver testing for the use of controlled substances; Pre-employment, periodic (biennial), post-accident, reasonable cause, and random drug testing. The testing procedures would protect individual privacy, ensure accountability and integrity of specimens, require confirmation of all positive screening tests, mandate the use of laboratories operating within the guidelines established by the U.S. Department of Health and Human Services, provide confidentiality for test results and medical histories, and ensure nondiscriminatory testing methods. The FHWA proposes to require all motor carriers covered by this rule to establish effective drug abuse prevention programs for drivers.

Proposals

Goals of Testing

The overall goal of testing is to ensure a drug-free transportation environment which, in turn, would reduce accidents and casualties in motor carrier operations.

Under this proposal, a driver may not use controlled substances on or off duty. In this proposal, the terms controlled substances and drugs are synonymous. If controlled substance use is detected, an individual is unqualified to drive a commercial motor vehicle involved in interstate commerce. A driver could not be hired or used (unless the driver completed a rehabilitation program) if he or she has a confirmed positive drug test as a result of a pre-employment, periodic, reasonable cause, or random test. In these instances, a motor carrier may consider retesting at a later date, depending on its company policies, those who test positive for controlled substances.

For post-accident testing, driver's refusal to give a sample if he or she is so able or a confirmed positive test for controlled substance use would result in a letter of disqualification issued by the FHWA. The letter would disqualify a driver from driving for at least a 1-year period. In all cases of a positive test, the driver is medically unqualified until such time as the driver no longer uses controlled substances, tests negative for controlled substances, and is medically recertified.

Drug testing and sanctions for use will help discourage substance abuse and reduce absenteeism, accidents, health care costs, and other drug-related problems. It will act as a deterrent to those individuals who might be tempted to try drugs for the first time or who currently use drugs. Finally, drug testing will protect the health and safety of the employees of motor carriers and other users of the highway system through the early identification and referral for treatment of workers with drug abuse problems.

This NPRM proposes specific requirements for testing procedures and rehabilitation programs. As noted below, the FHWA realizes that some of these requirements may be difficult to implement as proposed. This may be especially true for small motor carriers and owner-operators. The policy statement included in the NPRM is the basis on which this proposal was developed. The FHWA is interested in comments on ways in which this policy can be carried out through procedures or programs without the need for detailed regulatory requirements. For example, should FHWA permit programs developed by consortiums of motor carriers or motor carrier or driver associations to be used in lieu of the following FHWA proposed specific program? As noted elsewhere in this preamble, the FHWA is also interested in the feasibility and effectiveness of having FHWA approve company-specific programs. If this approach is adopted, an industry-wide program, developed by associations, may be a viable and expedient mechanism to implement drug abatement programs. In addition, this type of approval may provide more flexibility to the industry. If so, the FHWA requests detailed comments on how such an approval program would be implemented. The FHWA believes that any divergence from the proposed specific program would have to comply with the policy statement. Therefore, comments on this issue should address the specific elements of the policy statement.

Test Administration

Pre-employment

The FHWA proposes to require motor carriers to ensure that driver-applicants are chemically tested for evidence of the use of controlled substances. A urine specimen would be used for testing purposes. An applicant who tests positive (confirmed positive) for the use of a controlled substance, which is prohibited under 49 CFR 391.41(b)(12), would be medically unqualified. The driver cannot use controlled substances, must test negative for controlled substances, and must be medically certified to drive for a motor carrier. A driver-applicant who refuses to be tested could not be medically certified nor drive for a motor carrier until he or she tests negative for controlled substance use.

A motor carrier would be responsible for ensuring that testing is carried out according to the requirements of the proposed rule, for receiving and maintaining documentation of the results for hired drivers for 3 years, and for notifying applicants of the results.

A motor carrier would be held responsible for ensuring that a driver-applicant is tested prior to employment. However, a driver who is regularly employed by a motor carrier could be hired temporarily by another motor carrier on the basis of a negative controlled substance test from the primary motor carrier if the driver meets the requirements of § 391.65 of the regulations.

The FHWA is concerned about the special circumstances that may confront an owner-operator who leases his or her service to other motor carriers over the course of a year. We believe that employers and the public should be assured that owner-operators and other drivers are not impaired by the use of controlled substances. When leasing his or her services, the driver would not be exempt from pre-employment testing. We request comments on the practicality of requiring multiple tests for these drivers and possible workable alternatives for assuring that they do not abuse controlled substances.

Periodic

The FHWA proposes that all drivers be biennially tested for the use of controlled substances. A urine specimen would be used for testing purposes. A motor carrier would maintain written documentation that such testing shows no evidence of the use of controlled substances. Drivers would be tested as part of their routine medical examination every 24 months and certified initially upon entrance into the industry. A driver who tests positive for controlled substance use would be medically unqualified. In order to drive for a motor carrier, the driver must not use controlled substances, must test negative for controlled substances, and must be medically recertified. A motor carrier would be responsible for assuring that testing is done, for notifying drivers of the results, and for receiving and maintaining documentation of the results for the required 3 years.

Because the date of periodic testing is known to the employee, an individual who uses drugs could stop taking them prior to the test in order to avoid detection. However, not all individuals would have sufficient control over their drug use to do so. Periodic testing would have the advantage of being less costly, since it would be performed during an already required exam. Because of the scheduled nature of periodic testing, comment is requested concerning its effectiveness. Should this type of testing be a part of all future drug programs, or should it be phased out after several years when the other forms of testing are established and working smoothly? Periodic testing would appear more likely to detect dependent drug users as opposed to casual users. After an initial round of periodic testing, most of the dependant users should be detected and, therefore, the benefits of additional periodic testing may decrease. The FHWA is also considering only requiring periodic testing once for each driver. This alternative would significantly cut down on the costs of testing, and in light of other testing measures such as pre-employment and random testing, commenters should address the costs and benefits associated with this alternative. How are the benefits affected after the driver is tested once?

Post-accident

Post-accident testing is a necessary part of a drug prevention program. In addition to providing a deterrence to controlled substance use, the data collected from the tests will provide valuable information on the association of controlled substance use and motor carrier accidents. Such data will be useful in identifying problems and establishing effective countermeasures.

The FHWA proposes mandatory testing for operators of commercial motor vehicles involved in fatal accidents. The limitation to fatal accidents is purely a practical matter, and this proposed regulation should not be interpreted to prohibit carriers from testing operators involved in other categories of accidents. In 1985, there were approximately 40,000 interstate or foreign commercial motor vehicle accidents reported to FHWA, 2,161 of which involved a fatality, including 416 in which the driver of a commercial motor vehicle was killed.

A motor carrier would be responsible for ensuring that testing is done in the prescribed manner after a fatal accident. A fatal accident is defined as one in which a fatality occurs within 24 hours of the accident. Testing would be done as soon as possible, but no later than 12 hours after the fatality. The test results would be sent to FHWA within 24 hours after receipt. If testing is not done, the motor carrier would be required to furnish an explanation and attach it to the FHWA accident report.

Post-accident testing would require the driver to go to a collection site and provide a urine sample within 12 hours of the fatality. A 12-hour period was selected because the FHWA believes that testing within 12 hours will detect most individuals who used prohibited drugs a short-time prior to the accident. Furthermore, this timeframe takes into consideration the myriad factors (geographic isolation of the accident, late notification of the accident to the motor carrier, injury, etc.) which could delay collection of a sample.

Currently, § 394.7 requires a motor carrier to notify the FHWA as soon as possible after a fatal accident. We are now proposing that, additionally, the motor carrier would provide a post-accident toxicological test result to the FHWA within 24 hours of its receipt from the laboratory. The FHWA would review the post-accident toxicological test result and, in the case of a confirmed positive test report or a driver who refuses to be tested, would issue a letter of disqualification to the driver and a copy to the motor carrier. The letter of disqualification would notify the driver that he or she is disqualified from driving a commercial motor vehicle in interstate or foreign commerce for a period of at least 1 year from the date of the letter. The letter would also state that the driver has the right to petition to the issuing official to rescind the letter or to petition the Associate Administrator for review of the disqualification under 49 CFR Part 386. At the end of the disqualification period, the driver cannot use controlled substances, must test negative for controlled substances, and must be medically recertified in order to drive for a motor carrier.

The purpose of this provision is to enable the FHWA to take immediate action against a driver involved in a fatal accident who has violated the controlled substance prohibition. However, a driver in this situation may face a period of disqualification longer than 1 year, as well as criminal or civil penalties. In certain cases, a State or local criminal conviction is cause for disqualification under the FMCSRs. Under 49 CFR 391.15 of the FMCSRs, if a driver is convicted by a State or local court for a first offense driving a commercial motor vehicle under the influence of a narcotic, the driver is automatically disqualified from driving a commercial motor vehicle in interstate or foreign commerce for a 1 year period. This disqualification is consistent with the Commercial Motor Vehicle Safety Act of 1986.

The FHWA is aware of the difficulties in establishing a post-accident testing program, and is especially concerned about the process of assuring proper testing procedures when the involved driver is geographically far removed from the responsible motor carrier. The FHWA is also concerned about the difficulties in ensuring that fatally injured drivers are accurately tested.

Comments are invited on these and related issues.

Specific comments are requested on the following:

(1) Should the FHWA require testing after all accidents or only those involving the death of a person, serious personal injury, or property damage of a certain dollar amount? Should testing be required only after accidents about which there is reason to believe that the regulated driver was at fault? Should the FHWA require post-accident testing after all accidents involving a vehicle carrying hazardous material which is required to be placarded?

(2) Should the FHWA rely on evaluations made by emergency response personnel and require that persons subject to this rule be tested only if requested by Federal, State, or local officials on the scene? Would this help to resolve the potential problems arising with motor carriers who have only been informed of the accident once the time for testing has passed? Should the FHWA seek authority to require State and local enforcement agencies to require drug testing of all culpable parties involved in a fatal commercial motor vehicle accident? If State or local enforcement agencies conduct a test as part of their investigation, should the test serve as meeting the post-accident testing requirement of this proposal?

(3) Should the FHWA specify the amount of time within which the body fluid sample must be taken? Is 12 hours after the fatality reasonable? Are there effective ways to collect the sample more quickly?

(4) Should the FHWA require all drivers subject to this requirement to expressly authorize (i.e., in writing) body fluid testing after an accident?

(5) Is an implied consent for testing sufficient to require a driver to submit to such testing? What consequences should follow a driver's refusal to submit to such a test? Should refusal by the driver to submit to testing constitute a presumption that the driver used, or was under the influence of, a controlled substance for the purposes of disqualifying or otherwise penalizing the person?

(6) Should States that conduct post-accident testing of commercial motor vehicle operators provide the results to the FHWA? On an annual basis, or after each accident?

(7) Should the FHWA require the driver or the motor carrier to check with the medical facility to determine whether an injured party died within 24 hours of the occurrence of the accident?

Reasonable Cause

The FHWA currently prohibits motor carriers from allowing a driver to operate a motor vehicle if the driver's ability or alertness is impaired as a result of fatigue, illness, or any other cause. For assistance in the enforcement of this prohibition, we propose to require a motor carrier to conduct testing when it has reasonable cause to believe that an on-duty driver has used a controlled substance.

Testing based on reasonable cause would require that the operator be involved in a specific triggering event in the job environment. These events would consist of violations of the FMCSRs, State or local traffic laws that could reasonably lead to, or have resulted in, serious personal injury or death. Comment is requested on the sufficiency of this requirement. Should this category be limited or expanded to a list of specific violations or general classes of violations?

Commenters also should present any data on the effectiveness of existing programs which use reasonable cause- or suspicion-type testing. At least one program that we are aware of provides for rehabilitation similar to that proposed under option 3 below, but which was worked out by labor and management. Sanctions, in terms of salary loss, are potentially quite severe for persons discovered to have drugs in their systems as a result of a test. Commenters should address the benefits, costs and deterrence value of such a program.

Reasonable cause testing could also be based on a belief that an individual is using or is under the influence of controlled substances while on duty. Changes in character or behavior may evidence the use of controlled substances. These changes are often characterized by mood swings and changes in appearance, attitude, speech, and work habits. In light of the subjectivity of this criteria, two witnesses would be required to substantiate this determination. At least one witness would have to be a person in a supervisory capacity. Is this sufficient or should both witnesses be supervisory personnel? Are two witnesses enough or should three or more be required?

With respect to this type of reasonable cause testing to owner-operators and small motor carriers, it may not be possible to require two supervisors. Comment is requested concerning possible exemptions for owner-operators and small carriers from part or all of reasonable cause drug testing.

The FHWA realizes that reasonable cause testing can be misused order to harass an employee. In those instances where witnesses are necessary to substantiate the need for testing, a written and signed statement from each witness would be required. The FHWA requests comment on the necessity and sufficiency of this requirement. What other criteria could be used that would protect a disfavored employee from potential harassment through drug testing? Should there be a limit to the number of times an employee can be subjected to reasonable cause testing, in order to prevent unwarranted harassment?

A driver who has tested positive for controlled substance use must cease usage of a controlled substance, must test negative for use of controlled substances, and must obtain a medical recertification in order to drive for a motor carrier. A driver who refuses to be tested could not be permitted to drive. The motor carrier can institute additional policies or penalties pertaining to such drivers.

Random

Random testing can be an extremely effective method for decreasing drug use among drivers because abstinence from use is the only way to prepare for an unannounced test. The success of random drug screening has been demonstrated in various programs. The United States Coast Guard implemented a random testing program for its uniformed personnel which led to a 75 percent decrease in drug use over a 5-year period. The Department of Defense has a random testing program which has resulted in a drop from 27 percent use-rate in 1980 to 8.9 percent in 1985. The FHWA also requests commenters to address whether the experiences of the Coast Guard or DOD programs are valid indicators of how motor carrier employees would respond to a similar program.

The FHWA believes that an employer-sponsored program is the most effective form of random testing. The motor carrier has an interest in ensuring that its vehicles and equipment are used by drivers who do not use controlled substances. The DOT is mandating that all interstate or foreign commerce motor vehicle operators, as well as operators in other transportation modes, be subject to random drug testing. This will assist in achieving a drug-free transportation environment. We realize that there may be difficulties in applying these types of testing to owner-operators and small motor carriers who do not operate under long-term lease

agreements with large carriers. Those owner-operators and small motor carriers operating with long-term lease agreements will, depending on the specific terms of their agreement, be subject to the testing program of the large carrier. FHWA realizes that there is a significant number of small entities that do not operate under these arrangements. Comment is requested on the problems inherent in such an application and solutions that would ensure an effective random testing program for owner-operators and small carriers. Should the rule permit motor carriers, especially the small ones, to use a third party to set up and maintain their drug testing program? They could choose to comply with the rule through the use of several options, including:

1. Form consortiums made up of owner-operators and small carriers that would develop a centrally administered random testing program.

2. Form consortiums, and hire a contractor to develop and implement a random testing program.

3. Contract separately with an outside company that would set-up and provide these services.

4. Have existing industry-related groups (e.g. trade associations) set-up drug programs in which small entities could participate.

5. Arrange to be included as a part of a larger company's drug testing program.

The FHWA invites comments as to what methods might be used to facilitate the inclusion of small entities in the program and whether all small entities should be required to develop and implement a drug abatement program. Commenters who believe that the proposed rule should not cover small entities, either in whole or in part, should explain the basis for their views and describe how they would define small entity for this purpose.

Under the proposed random testing, a motor carrier would request a driver to submit to random testing. Random driver selection is a necessary part of a successful random testing program. Random selection ensures that every member of a given population will have an equal chance of being tested. The possibility of selection at each testing acts as a deterrent to controlled substances use. Random testing would be performed at the direction of the motor carrier for its employees at a designated collection site. Random testing, as proposed in this rule, would not be performed on the side of the road.

The FHWA notes that Senate Bill S. 1485, Air Passenger Protection Act, includes a provision that would require the Secretary to establish a pilot program among four States for development and implementation of random drug testing of commercial motor vehicle operators. The purpose of the pilot program, in part, would be to analyze the effectiveness of different approaches to State testing of commercial motor vehicle drivers, especially for small businesses. Such a pilot program might involve state troopers setting up testing facilities at truck stops or roadside inspection sites. The FHWA is requesting comment on whether, and how, such a State-run random testing program could fit into the proposed random testing requirements, especially for small businesses. What constraints, such as compliance with HHS testing standards, would the roadside checks need to meet?

The FHWA is requesting comment on what percentage of drivers should be tested yearly. For example, if a motor carrier employed 100 drivers and tested at a 50 percent rate, it would perform 50 tests annually. (Because the test selection is done on a random basis, some people may be tested twice.) The FHWA is considering a sampling rate of up to 125 percent. The FHWA notes that this sampling rate has been shown to be a viable deterrent in the Coast Guard program to future drug use and has been proven effective in reducing the current incidence of drug use. This does not mean that the rate will be set at that percentage, but it serves as a cap upon which comments and data are requested. The Coast Guard's random testing program of its uniformed personnel resulted in reducing detected drug use by 75 percent in the 5 years since the program was implemented. The FHWA believes that the rate should serve as a deterrent to current and potential drug users. The FHWA intends to select an appropriate rate based on effectiveness, deterrence costs and benefits. Commenters should identify what that needs to be and provide data and the basis for their views. Would a lower rate be more effective if the severity of the sanction is increased?

The proposal mandates that a driver who tests positive for use of a controlled substance cannot use drugs, must test negative for controlled substances, and must be medically recertified to drive for a motor carrier. A driver who refused to be tested would have to test negative before he or she could drive. For first-time drivers who are detected, this form of sanction could result in lost wages and the possible expense of rehabilitation if required. Second-time users could lose their jobs. The loss of a job could occur under the fourth option of the rehabilitation component for first-time users. The fourth option, however, would leave to labor-management what a driver who tests positive could expect in the way of an opportunity for rehabilitation. Eliminating the Federally-required rehabilitation requirement also would provide additional incentives to drivers to abate any potential drug use. Comment is requested on these approaches and the cost implications and effectiveness of various testing percentages.

Commenters also should address how, for example, to conduct random tests on an employee population consisting of only one employee or a few employees. This problem is particularly acute if the owner or manager of the business is also the sole person, or one of only a few persons, subject to testing. Similarly, although surprise is an essential feature of a true random testing program, how can this be achieved when the employee is located in a remote location and must be transported some distance to provide a sample? This could result in the loss of the element of surprise in many cases. The FHWA seeks comment on how to deal with these problems.

The FHWA is considering whether programs should provide for adjustment of the minimum sampling rate based upon the success of the program. Although a numerical target is needed as a benchmark for discussion, in actual practice there may come a point of sharply diminishing returns from any set level as the mix of countermeasures detects most chronic substance abuse and deters casual use. The testing program could be designed so that it could be phased up or down as appropriate and in response to the pattern of results obtained through the program. In combination with post-accident testing experiences, the results of random testing would provide the most useful gauge of the need. The FHWA is considering whether there are circumstances under which the program should allow for the level of effort to be increased or scaled back based on a method of evaluation stated in the rule or, if an approval process is used, based on individual applications and specifically requests comments on this issue. The FHWA also solicits comments on whether companies that develop exemplarity records should be relieved at some future time from some or all of the requirements of this proposal. As with other issues, the FHWA reserves the right to make appropriate adjustments in the rule in response to public comments. Are there any other ways to reduce costs or improve the effectiveness of the proposed rule? For example, are there any ways to grant employers flexibility

without compromising the objectives of the rule? What would be the likely cost savings, if any, in a more flexible approach.

The FHWA also requests comments as to whether the rule should contain a provision allowing a company with a high level of safety with regard to drug use, demonstrated over a designated time period, more latitude in determining the application of its anti-drug program.

The FHWA recognizes that the proposed rule may present legal difficulties for motor carriers based in Canada, because of human rights statutes specifically prohibiting random testing programs. The FHWA does not intend that foreign motor carriers violate Canadian laws or regulations that may prohibit random or other drug testing in Canada. The FHWA understands, however, that random testing of Canadian drivers may be permitted while such drivers are operating in the United States. The FHWA expects foreign motor carriers to comply with the proposed random test rule while operating in the United States. The FHWA is requesting comment on the applicability of the rule to Canadian motor carriers while operating in the United States, and on any special considerations in this regard which the FHWA should be aware of as it prepares the final rule. In addition, FHWA believes that applying this program to Canadian drivers would be consistent with the Free Trade Agreement because there is an exemption for safety regulations. Commenters should address what problems are perceived by applying the program to Canadian under that Agreement and any other potential problems.

Type Of Body Fluid To Be Tested

Several types of body fluid can be analyzed to detect the presence of controlled substances in the body. Urine testing will detect the presence of a controlled substance but not the impairment associated with a controlled substance. Blood testing can be used to measure the amount of a controlled substance in the system. However, that information may not always be useful since unlike alcohol, many controlled substances do not have readily accepted impairment levels. Tissue samples are sometimes collected from a fatally injured person and can indicate the presence of controlled substances. Saliva testing has been used to detect some controlled substances but currently does not have wide acceptance. Based on the advantages and disadvantages of the various testing methods, we propose to use urine testing to fulfill the requirements of this regulation.

Urine testing is the most widely used and accepted method for screening for controlled substances. It involves a noninvasive sample collection procedure and is relatively inexpensive to screen. Opiates (narcotics) can be detected for 2 to 3 days after use; cocaine, for 2 to 5 days after use; amphetamines, for 2 to 7 days after use; and marijuana, in some instances, for several weeks. Urine testing is proposed for pre-employment, periodic, reasonable cause, and random drug testing. The primary test sample for post-accident testing would also be urine. If the driver is fatally injured, blood, a tissue sample, or other body fluid sample may be substituted for or supplement a urine sample. A blood sample can also be used if the attending physician believes that it is in the best interest of an injured driver.

Prescription Medication

A driver would be allowed to use a controlled substance (except for methadone) when taken as prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties. Under 49 CFR 382.203, Prescribed drugs, a driver would have an affirmative defense to an allegation that he or she unlawfully used a controlled substance. The driver would have to prove through clear and convincing evidence that his or her use of the controlled substance was as prescribed by the licensed medical practitioner.

The motor carrier and the driver would have flexibility in applying this provision. For example, when a driver tests positive for the use of controlled substances, a driver has the burden of proof to document the use was lawful. The motor carrier may accept the affirmative defense and allow the driver to continue to operate, or request the opinion of another physician. If the motor carrier elects the latter option and a medical dispute follows, the motor carrier or the driver has the option of bringing the question of the driver's qualification to the Office of Motor Carriers for resolution through 49 CFR 391.47, Resolution of conflict of medical evaluation.

The FHWA views use of § 391.47 as a last resort, however, and believes that the motor carrier, the licensed physician, and the driver can best resolve disputes regarding a positive test result due to the use of prescribed controlled substances. The final decision should be based on whether there is evidence of abuse of the medication or whether the controlled substance causes the driver to be a risk while operating a commercial motor vehicle. This process may be unworkable for owner-operators, and commenters should address how to apply this provision.

Under 49 CFR 382.203, Prescribed drugs, a driver could have an affirmative defense in an enforcement action brought by the FHWA against the driver for violating a regulation prohibiting the use of controlled substances. The FHWA action would take place as a result of a driver testing positive for controlled substance use when the driver was involved in a commercial motor vehicle fatality. The proposed affirmative defense means that the driver would have to prove through clear and convincing evidence that his or her use of the controlled substance was as prescribed by a licensed physician who knew of the driver's assigned duties and medical history. The FHWA requests comments on the potential for a driver abusing prescribed controlled substances or using prescribed controlled substances to contrive an affirmative defense that would refute a positive test when the driver is using other controlled substances illicitly. Should the FHWA provide additional guidance in the regulation?

The FHWA currently prohibits the use of methadone by interstate or foreign commerce drivers. Docket comments to the ANPRM of May 13, 1986, from the Legal Action Center of New York requested that we allow drivers in interstate or foreign commerce to use prescribed methadone. The Center stated that a driver on a methadone maintenance program is a safe driver even though he or she is taking an addictive controlled substance. The FHWA requests comments on whether to continue its prohibition on the use of methadone.

Proposed § 382.203(b) provides that nothing in this proposal would restrict a motor carrier from requiring a driver to notify the motor carrier of therapeutic drug use before driving. The FHWA requests comments on whether it should require such advance notice to the motor carrier. Should the FHWA provide that a driver must have notified the motor carrier before driving while using a prescribed drug if the driver is to be allowed to raise the affirmative defense of therapeutic drug use?

Who Is To Be Tested

The FHWA believes that the driver is the most critical individual involved in ensuring the safe operation of a commercial motor vehicle. In addition to

the actual operation of the motor vehicle the driver is required to ensure that the vehicle is in safe operating condition (49 CFR 396.13). Furthermore, the driver is required at the completion of each day's work to report in writing any defect or deficiency discovered which would affect the safety operation of the motor vehicle or result in its mechanical breakdown (49 CFR 396.11). In addition, a driver before operating a motor vehicle must sign the report if defects were noted acknowledging that it has been reviewed and that there is a certification that the required repairs have been made (49 CFR 396.13(b)).

The FHWA believes that a person who tested positive for the use of a controlled substance would be less likely to ensure that the vehicle is in safe operating condition and be able to perform the required inspection as noted above.

Other occupations within the motor carrier industry, most notably mechanics, are not proposed to be covered by this rule due to the difficulty in identifying mechanics, especially those who do not work for a motor carrier. The FHWA believes if would be very difficult to identify and test in a credible manner all the individuals who maintain and repair commercial motor vehicles given the diverse nature of this occupation. Some of these functions are performed by employees of the motor carrier, including the driver, as well as by persons employed by private garages not associated with any motor carrier. In this latter case, the FHWA does not have authority to regulate these individuals. The proposal, however, does not limit motor carriers from including their mechanics in the program.

There are two possible alternative definitions that FHWA is considering in proposing to regulate motor carriers and drivers. The first is based on the definition of "commercial motor vehicle" contained in the Motor Carrier Safety Act of 1984 and as specified in 49 CFR 390.3, General Applicability. The FHWA published a final rule regarding the general provisions of the Federal Motor Carrier Safety Regulations on May 19, 1988 (53 FR 18042). This definition uses a vehicle weight rating criteria of 10,001 pounds or more. The Commercial Motor Vehicle Safety Act of 1986 which defines "commercial motor vehicle" using a vehicle weight rating criteria of 26,001 pounds or more. In reviewing and commenting upon which alternative definition to use, commenters should be aware that the Fatal Accident Reporting System of the National Highway Traffic Safety Administration shows that there were 669 fatal accidents resulting in 753 fatalities in 1986 involving vehicles with a gross vehicle weight rating of 10,000 to 26,000 pounds. For the same time period there were 4421 fatal accidents resulting in 4881 fatalities involving vehicles with a gross vehicle weight rating of over 26,000 pounds. Assuming that the larger vehicles travel twice as much, their accident rate, per miles traveled, would be over three times as great as that of the smaller vehicles. It is, however, the absolute number of accidents that are of concern. In view of this data, commenters should address whether it is more cost effective to focus on drivers operating commercial motor vehicles above the 26,000 pound threshold. Commenters who believe that the 10,001 pounds threshold should be used, should provide the basis for their views and supporting data on the costs of benefits. In addition, use of this cutoff may ease potential implementation problems and also focus on drivers that may be more likely to be using certain drugs to provide long haul service.

The FHWA also notes that the 26,001 pounds or greater threshold is consistent with the entire Commercial Driver's License program. The FHWA estimates that there are 5 million drivers of vehicles with a gross vehicle weight rating of 10,001 pounds or more operating in interstate commerce and 3 million drivers operating the larger vehicles in interstate commerce. Comments are requested on which definition should be used.

This proposal only covers interstate drivers (with regard to the weight discussion above). It does not cover intrastate drivers. This proposed rule would be issued under the authority of the Motor Carrier Safety Act of 1984, which does not provide FHWA with authority to regulate intrastate operations. While most States, under the Motor Carrier Safety Assistance Program (MCSAP) have adopted the FMCSRs for intrastate operations, such an adoption is considered a State's prerogative. The decision to test intrastate drivers is left to each State, consistent with E.O. 12612 on "Federalism."

Sample Collection, Testing, and Laboratory Standards

The FHWA is proposing to use the guidelines for drug testing issued by the Alcohol, Drug Abuse, and Mental Health Administration, U.S. Department of Health and Human Services (HHS), for its drug testing program. These guidelines, entitled "Scientific and Technical Guidelines for Drug Testing Program," are available for inspection and copying at all FHWA regional and division offices as found in 49 CFR Part 7, Appendix D. A copy is also available in the docket. These guidelines are used by the Department of Transportation in the conduct of its own drug testing program.

The HHS sample collection standards include requirements for collection sites, collection procedures, chain-of-custody, and transportation of the sample to the laboratory. Instructions are provided to assure individual privacy, preserve the integrity of the urine sample during the collection procedure, identify the sample container with all pertinent information. Directions for packaging and shipping of the sample to the laboratory are also included. Sample collection chain-of-custody requirements are designed to maintain control and accountability from the point of collection to the final disposition of the sample.

The HHS laboratory standards include procedures for receiving, storing, and processing specimens, reporting results, qualifications of laboratory personnel, and quality assurance and control. The standards list the procedures for assuring accuracy of test results, authoritative interpretation, prompt reporting, and protection of employee privacy.

The HHS testing standards identify which controlled substances to test for and how to test for each drug. The FHWA proposes to require testing for marijuana metabolites, cocaine metabolites, opiates, phencyclidine, and amphetamines. The FHWA invites comments as to which additional drugs, if any, should be include. Commenters should also provide cost and benefit data regarding any additional drug groups. The FHWA would use the cutoff levels for detection as established by HHS. The test standards require immunoassay testing for the initial screening test. If an initial test is positive for a controlled substance above the cutoff level, then a confirmation test will be performed. A cutoff level is that level established by the HHS for a controlled substance below which, the test will be reported negative for the substance. Gas chromatography/mass spectrometry is required for confirmation testing.

The majority of the motor carrier industry has limited experience in managing drug testing programs for its employees, and only a few motor carriers have mandatory drug testing of drivers. These motor carriers generally arrange with a laboratory to devise appropriate collection procedures and chain-of-custody requirements, conduct the tests, and establish laboratory and

testing standards. The FHWA believes that testing laboratories could be an important resource to motor carriers when complying with the provisions of these proposed rules. However, motor carriers would have broad discretion in deciding the means for establishing and managing a drug testing program as long as they comply with the HHS Drug Testing Guidelines, including the use of drug testing laboratories approved by HHS under its guidelines.

Action on Receipt of Positive Drug Test

Upon receiving a confirmed positive drug test report, a motor carrier would review the information on the "chain-of-custody record" (COCR) and the report. The original COCR or a legible copy would accompany the laboratory report of a positive drug test. A motor carrier would ensure that the procedures established under the HHS guidelines for the collection, testing, and laboratory procedures were followed. A substantial variance from the guidelines may invalidate the test. Substantial variance means any action which differs from prescribed format as authorized by HHS guidelines that could reasonably lead to an error in the collection, testing, or laboratory procedures. The motor carrier would verify that the individual personal identifiers of the COCR match those of the driver. The motor carrier would take appropriate personnel action consistent with Federal or State regulations or laws.

A motor carrier would inform the driver or driver-applicant that he or she is medically unqualified if the driver tests positive for controlled substances. The driver or driver-applicant cannot use controlled substances, must test negative for controlled substances, and must be medically certified in order to drive for a motor carrier. Individuals who refuse to be tested would be relieved from driving and could only drive if they test negative for controlled substance use. An affirmative defense would be allowed for a driver using a legally prescribed medication.

In some cases, Federal or State law may supersede the action of a motor carrier. Under the proposed post-accident standard, the FHWA will issue a letter of disqualification for at least 1 year if the driver has refused to give a sample or tests positive for controlled substance use after having been involved in a fatal accident.

Implied Consent

The proposed regulations state that a driver or driver-applicant employed by a motor carrier operating in interstate or foreign commerce would be deemed to have consented to submit to drug testing for all the specified types of drug testing.

Recordkeeping Requirements

A motor carrier must maintain the test results and records in a secure manner and establish procedures for handling this information to safeguard against unauthorized release. Motor carriers would also be required to retain these test results for 3 years. Is this a reasonable amount of time to hold the results? Comment is also sought on the recordkeeping requirements, specifically concerning access to test results. How can the results be used to achieve the goal of a drug-free highway environment and still ensure a driver's privacy?

The NPRM does not state whether and under what circumstances an employer can make the results available to a third party. For example, should the testing employer allow access to a subsequent or prospective employer or should this information only be released upon signed permission of the employee? If an employer can release the testing data without permission of the employee, could this infringe upon an employee's contest of the result? In order to avoid privacy concerns, should motor carriers be permitted to release gross numbers or summaries of their drug test results? If so, could employees of small motor carrier employees who have tested positive be identified by unauthorized third parties? To further protect employee privacy rights, should FHWA provide that no record of tests shall be used or disseminated for any purpose other than complying with this part, or except with the voluntary written consent of the employee? Also, should FHWA require that each motor carrier institute procedures to prevent inappropriate disclosure? The FHWA also encourages comment on any other aspect of this section.

Under any rehabilitation option (discussed later), a motor carrier would not be required to provide a person testing positive for the second time the opportunity for rehabilitation and continued employment even if the individual successfully completed a rehabilitation program as a result of the initial test or voluntary action. The FHWA is concerned about situations in which the person testing positive, successfully completes a rehabilitation program and test positive again, but this time, for another motor carrier. What provisions should be added to the procedures to ensure that the new motor carrier would be made aware of the initial positive test without infringing on the privacy rights of the individual? Should the application for employment required by 49 CFR 391.21 require the applicant to indicate if he/she ever had a confirmed positive test for drugs under the provisions of this proposed rule? Should this also include if the user had ever enrolled in a rehabilitation program and/or successfully completed the program? Are there ways to ensure that an employer is aware of a person's past testing history without denying a driver an appropriate level of confidentiality.

Employee Assistance Programs and Rehabilitation

While the ultimate goal of a drug testing program is to ensure a drug-free transportation system, another important goal is the rehabilitation of persons who have developed a debilitating personal problem. A driver with a drug problem must never be permitted to function in a position where his or her actions could affect the safe operation of a commercial motor vehicle.

The NPRM proposes four different options concerning the circumstances under which employees would be given an opportunity to seek rehabilitation. Under the first option, an employee who comes forward voluntarily or tests positive for drugs for the first time would be eligible for rehabilitation rather than be discharged. Once rehabilitated, the employee could be reinstated into his or her prior position. The second option would give rehabilitation rights to employees who come forward voluntarily or who are identified as drug users during periodic or random tests, but would not require that the same opportunity be afforded to drug users identified in post-accident or reasonable cause tests; those not afforded the right to rehabilitation could be discharged. In the third option, only volunteers could claim rehabilitation rights. Anyone testing positive for drugs could be fired immediately. In the fourth option, rehabilitation and employment rights to employees would not be Federally required. In all cases, of course, employers would be free to offer more rehabilitation options than the minimums the FHWA proposes. Thus, for example, an employer could voluntarily offer two chances at rehabilitation rather than one. On the other hand, non-employees given a pre-employment drug test need not be given an opportunity for rehabilitation.

Each of these approaches has its own merits. For example, the broad rehabilitation program that would be provided by the first option is likely to maximize the benefits to society, by ensuring that more drug users will get the help they need. If users are simply fired, they will often lose access to help,

and they will continue to be drug users. However, it could be argued that employees who are found to be drug users through post-accident or reasonable cause tests are less deserving of an opportunity for rehabilitation. Unlike reasonable cause or post-accident testing, random testing is not triggered by an event that provides a particularized basis for injury as to the fitness of a given employee. Further, it is not accompanied by blood testing or a blood test option, an investigation technique that can yield information more specific to current fitness. Therefore, there may be good reason to offer abatement or rehabilitation only to employees whose drug use is identified by self-referral, co-worker-referral, or random testing. The third alternative is to require no program of rehabilitation and abatement following a positive test. This alternative is likely to be low in direct costs, because rehabilitation would only be required for employees who seek it voluntarily, but for the same reason this alternative might produce less in societal benefits. On the other hand, it could provide additional incentives for non-dependent users to stop their drug use since there would be no Federally-required right to rehabilitation. The fourth option may provide the most flexibility to labor and management to determine the need for and shape of any rehabilitation program. It could also provide deterrence to drug use and thus, may yield large benefits with low costs.

We specifically invite comment on which of these or other alternatives offers the greatest benefits at the lowest cost. We are especially interested in comments on how to implement opportunities for rehabilitation among owner-operators and small motor carriers. In addition, commenters should address the following questions:

(1) How would different random sampling rates affect the numbers of drug users who volunteer for rehabilitation under each of the rehabilitation options? Is there any evidence to support alternative assumptions regarding the rates at which drug users would volunteer for rehabilitation?

(2) What is the lowest sampling rate for random testing that would be effective in deterring drug abuse?

(3) Would higher sampling rates result in sufficiently higher benefits to justify the costs?

(4) Would the higher sampling rate add sufficient deterrence to reduce the costs of and need for rehabilitation?

(5) Who should be afforded EAP services and under what circumstances?

(6) What is the estimated level of voluntary enrollment in EAP services at sampling rates of 125 percent and at 12.5 percent under each rehabilitation option?

(7) What are the estimated costs of individual EAP rehabilitation services under each rehabilitation option?

(8) To what extent would each of the four alternatives raise or lower costs and benefits? Is it reasonable to assume that more drug users would self-identify under Option (3)?

(9) Are the costs of required rehabilitation programs warranted by the reduction in societal costs resulting from drug abuse?

We note that under the Commercial Motor Vehicle Safety Act of 1986, drivers are disqualified for 1 year if they are convicted of operating a motor vehicle under the influence of alcohol or drugs. However, the issue of being under the influence of a drug is different from simply having drugs in one's system. It is to the latter, stricter standard that this proposal is addressed.

Nevertheless, we recognize that our goal of rehabilitation and reemployment must be reconciled with the statutory requirement. Therefore, we invite comment on whether someone disqualified following a conviction should nevertheless be entitled to rehabilitation. Should it depend on whether the disqualification and the drug test came from the same incident? If we do allow rehabilitation after a disqualification, we would expect to require that the employee's return to work would follow both the disqualification and any necessary rehabilitation. Are there any problems with this approach?

An Employee Assistance Program (EAP) is designed to help employees solve problems and provide motor carriers with a method for dealing with driver problems, such as drugs. An EAP may include the following components:

(a) Employee policy and procedures on drug use based on a motor carrier's unique needs, organizational structure, and goals and resources;

(b) Employee communications that include ongoing printed educational materials directed at both drivers and family members;

(c) Service delivery system which may include:

(1) Drug screening and confirmation testing and

(2) Treatment (rehabilitation) and/or referral to more appropriate or specialized professional facility (usually all testing is on a contract basis);

(d) Training of supervisors; and

(e) Evaluation of the effectiveness of the EAP.

The FHWA has determined that properly managed EAPs benefit both the motor carrier and the driver. We propose to require that all motor carriers develop EAPs for their employees. Each EAP would be required to have an educational component which would minimally have display and distribution of informational material; display and distribution of the community-service hot-line telephone number for driver assistance (if one is available); and display and distribution of the company policy regarding drug use by drivers. Additionally, each EAP of a motor carrier would be required to provide annual training for drivers and supervisory personnel. The training would minimally require the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral causes that may indicate drug use and abuse; and documentation of training given to drivers and motor carrier's supervisory personnel. EAP training programs for drivers and supervisory personnel would consist of at least 60 minutes for each driver and supervisor the first year. In subsequent years, only the supervisor would need this training. Should FHWA specify the minimum training period? Is 60 minutes appropriate? Or is some other period justified? Finally, each EAP (under options 1–3 above) would provide an opportunity for rehabilitation. How should owner-operators and small motor carriers establish and manage EAPs?

Employers would be required to appoint or designate a Medical Review Officer (MRO). The MRO would perform several functions, including review of the results of the employer's drug testing program; interpretation of each confirmed positive test result; and evaluation of an individual in conjunction with an EAP rehabilitation program. The FHWA also seeks comments on the MRO's appropriate role in determining when an individual might be returned to duty. The proposed rule requires than an MRO be a licensed doctor of medicine or osteopathy. The MRO could be a currently employed company physician or could be a private physician who performs MRO service for the employer on a contractual basis. Comments are requested on the need for an MRO and if the MRO need be a licensed doctor of medicine or osteopathy or another type of medical professional.

EAPs would operate on the premise that drivers who are referred would be afforded the opportunity to retain their jobs based on the following points:

(a) Completion of a rehabilitation program. What are the minimum elements necessary for a drug rehabilitation program? Should a driver be granted more than one opportunity for rehabilitation?

(b) A recommendation and medical certification by a motor carrier's MRO under 49 CFR 391.41(b)(12) and is otherwise medically certified under 49 CFR Part 391.

(c) A driver would be provided the opportunity to obtain counseling and/or treatment, for which a motor carrier would allow up to 90 days of leave. Is a 90-day period a reasonable time period for rehabilitation? What additional, if any, outpatient treatment should be required of those individuals who have successfully completed inpatient rehabilitation? What are the economic consequences to a motor carrier (particularly a small motor carrier) due to its granting of a 90-day leave period? Should there be a uniform testing period after rehabilitation, or should this be determined on a case-by-case basis? Who should make such a determination: The MRO, the EAP counselor, or both together? Should the employee be involved? How could employee involvement be accomplished? If we adopt a uniform post-rehabilitation period, how long should it be? Should the length of the follow-up period depend on the kind of drug that was detected? Should it depend on the severity of the individual's drug problem, as indicated by the kind of treatment that was found to be necessary? For example, should someone undergoing inpatient rehabilitation be subject to post-rehabilitation testing for a longer time than someone who needs only abatement counseling?

During the post-rehabilitation period, should we prescribe the minimum and/or maximum number of tests to be administered? We would want to ensure that any necessary tests would be given frequently enough to ensure that the employee is free of drugs. At the same time, however, we do not want drug testing to become an instrument of harassment. Here, again, is the issue of whether the number of tests given should vary with the kind of drug used and the severity of the problem.

One alternative, on which we also invite comments, is a specified post-rehabilitation testing period that would apply only if the employee, the EAP counselor, and perhaps the employer failed to agree on an individualized program. Such a fall-back system could provide, for example, for up to four additional tests over the 12 months following rehabilitation.

(d) Voluntary referral to an EAP for the purpose of avoiding the adverse consequences of controlled substance abuse which occurred before the voluntary referral would not afford the driver immunity from appropriate discipline by the motor carrier.

Temporary Employees

Although the rehabilitation of drug users is a cornerstone of this program, we believe that there may be some employees in the industry whose normal period of employment is too short to make it practical to require rehabilitation and reemployment. For example, even if a short-term hire seeks rehabilitation, the end of the schedule employment term might come before the completion of a rehabilitation program. Therefore, we are considering not requiring employers to offer an opportunity for rehabilitation to temporary employees who are hired for a period of less than 90 days. That is, if such employees are found to be drug users, it would be permissible to dismiss these persons immediately.

However, we recognize that some employees hired on a "temporary" basis are actually regularly reemployed. Some of these employees are recurring seasonal hires, others are continually reemployed at the end of each specified term. These persons are regular members of the industry, and thus, should not be excluded from the opportunity for rehabilitation and reemployment. Under the proposal, an employee would not be considered temporary for the purposes of rehabilitation, if he or she is eligible for reemployment by the same employer within 90 days following the end of the employment term. We specifically request comments on (1) the merits of excluding temporary employees from the opportunity for rehabilitation, and (2) the definition of temporary employee.

The FHWA recognizes that not all motor carriers have the fiscal resources to implement a "company" EAP. However, a motor carrier has a responsibility to both its drivers and the public to provide an environment where safety is not jeopardized by drug abuse. It is suggested a motor carrier provide EAP services through one of the following means:

(a) Motor carrier operated EAP;

(b) Contractor/consortium arrangment;

(c) Arrangements with local community service organizations; or

(d) Other workable alternatives which provide an equivalent level of service. Please comment on specific workable alternatives, and how these should be funded.

We believe that a long-term, well-run EAP will pay for itself over time in lower costs for health care, absenteeism, accidents, and worker compensation. A large motor carrier may find that an internal program utilizing the services of fellow drivers is most economical as well as effective. Some motor carriers may have access to programs run by community service agencies which are made available at little or no cost. Labor unions may also provide programs. Counseling services may also be available as part of driver's medical insurance plan. If inpatient rehabilitation services must be utilized through a contractor/consortium arrangement, costs may run anywhere from $5,000 to $25,000 for a 30–45-day stay. Costs for outpatient care may range from about $150 to several hundred dollars. Coverage of these costs is a matter between motor carrier and driver. Companies should investigate the facilities and services available to them and their drivers and the benefit of establishing internal programs consistent with the size and scope of their operation. Comment is requested on the proposed requirement that motor carriers establish EAPs and provide an opportunity for rehabilitation. Are there other alternatives for small motor carriers and owner operators other than those enumerated?

Several Administrations within the Department of Transportation have developed proposed rules which would mandate drug testing, and would require that drug programs formulated in the private sector be submitted to them for approval prior to being implemented. Because of the large number of entities covered by the proposed FHWA rule, we question whether it is feasible to require that drug programs mandated by the proposed rule be submitted to FHWA for approval and seek comment on this. The FHWA also invites comments on whether companies should have the flexibility to develop company-specific drug abatement programs and submit such programs to FHWA for approval in lieu of following the FHWA-proposed program. If they are submitted for approval, one possible approach is to require the plans to be submitted and to have them go into effect a set number of days after their submissions unless FHWA determines that they are inadequate and notifies the submitter of the inadequacy. Another approach would be for the major motor carrier organizations to develop model drug programs which would then be submitted to FHWA for approval. Once approval was given, the programs could serve as a framework for motor carriers

to implement drug programs. Comments are requested on this point.

Implementation Date

The FHWA proposes that all motor carriers subject to this rule would have to implement drug testing programs within 6 months after the rule is made final. In the event FHWA adopts some form of approval process, as discussed above, this timeframe would be changed. Comments are requested on whether compliance within 6 months is feasible and if not, what would be an appropriate compliance period. Commenters also should consider whether a phasein approach, which would require that some aspects of the program be implemented at different periods of time (e.g., post-accident could be required immediately, while random could be required some months later), would be viable.

Alcohol

The FHWA is also concerned about impairment resulting from the abuse of other substances, principally alcohol. However, we believe that this rulemaking will best accomplish a useful purpose by addressing only controlled substances. Although both alcohol and controlled substances may result in impairment in the driver's ability to control his or her vehicle, and although current regulations prohibit a person from driving while under the influence of either, certain differences are evident. The possession and use of controlled substances is nearly always illegal, while alcohol consumption is in many circumstances legal. Because of the legality of alcohol and its widespread use, most people have enough contact with it to recognize the indicators of its use. The appearance and actions of a person are often clear evidence of alcohol impairment.

Because alcohol is a legal substance, it is necessary to establish violation of existing prohibitions and actual impairment due to use, rather than simply establishing use, as is done in instances where illegal drugs are used. In instances where chemical testing is used, it would be to determine the degree of alcohol impairment. Testing will often be of a different type than is used to determine the use of drugs. While urine testing will show use, it does not accurately establish impairment. Blood testing, which is an invasive process, is the only method generally available to motor carriers that establishes impairment from alcohol. We are not prepared at this time to mandate blood testing programs. However, FHWA regulations in no way prevent a carrier from instituting a program of chemical testing for alcohol impairment. This testing may be done either in conjunction with a drug testing program or separately.

Existing FHWA regulations address and restrict the use of alcohol by drivers. A person is not medically qualified to drive if he or she has a "current clinical diagnosis of alcoholism," 49 CFR 391.41(b)(13). A driver is prohibited from consuming alcohol while on duty or within 4 hours of reporting for duty, and a motor carrier cannot allow a person to drive or remain on duty under these circumstances. Additionally, if a motor carrier believes that the driver has consumed alcohol based on the person's conduct, general appearance, or other evidence, a motor carrier cannot allow the driver to drive, 49 CFR 392.5. The FHWA has issued a rule (52 FR 27200, 1987) to enforce a 24-hour out-of-service period for drivers who violate the prohibition on use of alcohol, as required by section 12008(d) of the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570).

The FHWA has also initiated rulemaking to establish a standard for when a person is deemed to be driving under the influence of alcohol. An advance notice of proposed rulemaking (ANPRM) was published in the Federal Register on March 23, 1987, soliciting public comment on the appropriateness of different blood alcohol concentration (BAC) levels for use as the standard. The ANPRM summarizes the scope of the study by the National Academy of Sciences (NAS) which is also evaluating the appropriateness of BAC levels. The 60-day comment period for the ANPRM closed May 22, 1987. Docket comments were forwarded to the NAS for consideration as part of their study. The FHWA received the final report from NAS last fall and issued an NPRM on May 10, 1988 (53 FR 16656). Most States currently use a 0.10 percent BAC level for determining when a person is deemed to be driving under the influence of alcohol. Under section 12008(f) of the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570), the FHWA must issue regulations that establish a BAC level of 0.10 percent or lower as the standard for when a person is deemed to be driving under the influence of alcohol while driving a commercial motor vehicle. If the FHWA does not establish the standard by October 27, 1988, it will automatically become 0.04 percent.

Economic Summary

The following is a summary of the preliminary industry cost impact and benefit evaluation for the regulatory changes proposed in this notice of proposed rulemaking on drug testing programs for commercial motor vehicle operators. Testing under these proposed rules would be conducted prior to employment, periodically, randomly, after a fatal accident, and upon reasonable cause. Additionally, under options 1 or 2, a motor carrier will be required to offer a one-time opportunity for rehabilitation to a driver who has a confirmed positive drug test. The proposed rules are needed to prohibit absolutely the presence of a prohibited drug in a driver's system at any time. The proposed rules are intended to ensure a drug-free highway environment and to eliminate drug abuse in the commercial motor carrier industry.

The assumptions and cost factors used in preparing the economic impact estimates of the proposed changes have been developed by the FHWA. Cost data were furnished by motor carriers, motor carrier industry associations, drug testing laboratories, and trade publications. These estimates of cost impact may be revised in the final regulatory evaluation based on public comment and other information that becomes available.

The proposed Part 382 would affect approximately 200,000 interstate motor carriers and either 5 or 3 million, depending on which option is chosen, commercial motor vehicle drivers. These entities will incur additional costs because they would be required to comply with the proposed anti-drug programs specified in proposed Part 382.

The FHWA believes that three major benefits will accrue from these proposals. First, there will be benefits due to the prevention of fatalities personal inquiries, and property loss resulting from accidents attributed to neglect or error on the part of commercial motor vehicle operators whose judgment or motor skills were impaired by the use of illicit substances.

Second, benefits would accrue to motor carriers and drivers from the reduction in pilferage, absenteeism, medical and insurance costs, and improved general safety and productivity in the work place. Lastly, the reduction of drug abuse in a vital and socially important industry such as the commercial motor carrier industry would represent a broad public benefit.

The preliminary cost-benefit analysis

for the proposed regulations recognizes that there are many uncertainties in quantifying the benefits and costs. Therefore, the FHWA has analyzed this proposed rule using a range of values for several parameters. Each of the options presented was analyzed independently at two random testing rates: 125 percent and 12.5 percent. In addition the benefits analysis was performed using two methods: the method used in the analysis performed by the Federal Aviation Administration for its notice of proposed rulemaking, Anti-Drug Program for Personnel Engaged in Specified Aviation Activities published in the Federal Register on May 14, 1988 (53 FR 8368), and a more disaggregate analysis. While both analyses have been presented for the benefit of the reader, it should be noted that the disaggregate analysis looks specifically at the trucking industry and thus may be more useful in analyzing the specific costs and benefits of the various alternative proposed here. Concerning the "FAA-type" analysis, commenters should address specifically the analysis of the benefits and recognize that the figures provided are a factor of the total costs to society (based on a June 1984 U.S. Department of Health and Human Services Report), which are estimated to be $66 billion annually.

Note: Copies of the Regulatory Impact Analysis are available upon request. We invite commenters to review the document, particularly because of the impact of these rules and because the analysis for each of the alternatives is dependent upon a series of assumptions.

The results of the FAA-approach benefit computations are presented in tabular form. The results of the cost and benefits analysis using the more disaggregate approach are also presented along with the B/C ratio in tables 1 and 2 for:

- Each option
- For both 125 percent and 12.5 percent random testing rates
- For both 5 and 3 million drivers
- For testing costs of:

—$15 per screen test and $25 for indirect test costs, and

—$25 per screen test and $25 for indirect test costs and a more conservative pilferage assumption.

SUMMARY OF BENEFITS AND COSTS

(net present value, $ billion)

Benefits using FAA procedure:
$8.59 (125% random testing rate)
$.859 (12.5% random testing rate)

TABLE NO. 1

[Assumptions: Screen test cost: $15. Administrative costs: $10. Pilferage Factor: 2.6. Deterrence, Options 1, 2 and 3: 12.5% sample rate 30%/40%; 125% sample rate 60%/80%. Deterrence, Option 4: 12.5% sample rate 40%/45%; 125% sample rate 80%/90%.]

Option	Sampling rate (percent	Net present value, billions		Benefit/cost ratio
		Benefits	Costs	
Program for five million drivers:				
1	12.5	$9.04	$8.49	1.06
1	125.0	18.91	20.24	.93
2	12.5	8.90	8.47	1.05
2	125.0	18.74	20.12	.93
3	12.5	7.97	8.45	.94
3	125.0	15.40	17.00	.91
4	12.5	7.51	6.79	1.11
4	125.0	15.03	13.13	1.14
Program for three million drivers:				
1	12.5	$6.61	$5.12	1.29
1	125.0	13.70	12.15	1.13
2	12.5	6.53	5.10	1.28
2	125.0	13.60	12.08	1.13
3	12.5	6.05	5.08	1.19
3	125.0	11.72	10.21	1.15
4	12.5	5.85	4.09	1.43
4	125.0	11.71	7.88	1.49

TABLE NO. 2

[Assumptions: Screen test cost: $25. Administrative costs: $25. Pilferage factor: 1.0. Deterrence, Options 1, 2 and 3: 12.5% sample rate 30%/40%; 125% sample rate 60%/80%. Deterrence, Option 4: 12.5% sample rate 40%/45%; 125% sample rate 80%/90%.]

Option	Sampling rate (percent)	Net present value, billions		Benefit/cost ratio
		Benefits	Costs	
Program for five million drivers:				
1	12.5	$8.57	$9.01	0.95
1	125.0	17.99	21.65	.83
2	12.5	8.44	8.99	.94
2	125.0	17.82	21.53	.83
3	12.5	7.48	8.97	.83
3	125.0	14.42	18.41	.78
4	12.5	6.99	7.31	.96
4	125.0	13.97	14.54	.96
Program for three million drivers:				
1	12.5	6.20	5.43	1.14
1	125.0	12.89	13.00	.99
2	12.5	6.12	5.41	1.13
2	125.0	12.78	12.93	.99
3	12.5	5.61	5.40	1.04
3	125.0	10.87	11.05	.98
4	12.5	5.39	4.40	1.22
4	125.0	10.78	8.73	1.23

The results of the analysis presented in tables 1 and 2 are based on assumed deterrence rates of 60% in the first year and 80% in subsequent years for options 1 through 3 at a random testing rate of 125%. For option 4 the deterrence rates are assumed to be 80% and 90% for the first year and subsequent years, repectively. Deterrence rates at half these levels were used for a random testing rate of 12.5%. The analysis was also performed using the same deterrence rates for option 4 of 60%/30% in the first year and 80%/40% in the subsequent years. The benefit/cost ratios for this analysis:

5 million drivers with testing costs of $15 for screening and $10 for indirect costs:
12.5% testing rate: .911
125% testing rate: .760
3 million drivers with testing costs of $15 for screening and $10 for indirect costs:
12.5% testing rate: 1.178
125% testing rate: .985
5 million drivers with testing costs of $25 for screening and $25 for indirect costs:
12.5% testing rate: .79
125% testing rate: .65
3 million drivers with testing costs of $25 for screening and $25 for indirect costs:
12.5% testing rate: 1.01
125% testing rate: .84

It should be noted, however, that this cost-benefit analysis did not attempt to estimate the benefits of increased productivity, lower workmen's compensation claims, and reduced insurance rates that a drug-free driver work force would provide to their employers and society-at-large. It is reasonable to assume that adding the value of these more pervasive benefits to the annual cost savings of avoided accidents would significantly offset some of the costs of a drug testing program for interstate or foreign commercial motor vehicle operators.

Regulatory Impact Analysis

Because the impact of this proposal will result in an annual effect on the economy of over $100 million, the FHWA has determined that this document is a major rule under Executive Order 12291. Pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions. A preliminary regulatory evaluation and initial regulatory flexibility analysis have been prepared and are available for review in the public docket.

The impacts of this proposed regulation on small entities are discussed in the initial regulatory flexibility analysis. A significant part of the motor carrier industry and other employers covered by the Act are made up of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the preliminary regulatory evaluation/initial regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally

applicable to the small entity component of the industry. Small entities will have the opportunity to submit comments to this docket. The FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this final rule. We expect the comments to provide further data on this matter.

The FHWA estimates that this proposal will increase the information collection and paperwork requirements for motor carriers. In anticipation of this NPRM the FHWA has submitted to the Office of Management and Budget in a revision to their revised fiscal year 1988 information collection budget, an estimate of the burden hours associated with this rule. Because of options proposed and the uncertainty regarding the population to be covered, a more accurate estimate cannot be made at this time. The FHWA will submit for OMB approval any information collection requirements. Comments on the paperwork burdens should be submitted to the Office of Management and Budget, Attention of Gary Waxman.

Federalism Assessment

This proposal adds Part 382 of the FMCSRs pertaining to testing for controlled substance by drivers of commercial motor vehicles operating in interstate or foreign commerce. These proposed requirements directly affect motor carriers and the drivers for these motor carriers. Nothing in this document directly preempts any State law or regulation. The FMCSRs establish minimum safety regulations which, at the current time, may be supplemented by the States, except for the adoption of inconsistent regulations. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order.

List of Subjects in 49 CFR Part 382

Controlled substances, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: June 9, 1988.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, Chapter III, Subtitle B, of Title 49, Code of Federal Regulations, is proposed to be amended by adding Part 382 as follows:

PART 382—CONTROLLED SUBSTANCES

Subpart A—General

Sec.

Subpart B—Prohibition

Subpart C—Post-Accident Toxicological Testing

Subpart D—Reasonable Cause Testing

Subpart E—Pre-Employment and Biennial Testing

Subpart F—Random Testing

Subpart G—Employee Assistance Programs and Rehabilitation

Authority: 49 App. U.S.C. 2505; 49 U.S.C. 104 and 3102; 49 CFR 1.48.

Subpart A—General

§ 382.101 Purpose and scope.

(a) The purpose of this part is to reduce highway accidents that result from driver use of controlled substances, thereby reducing fatalities, injuries, and property damage.

(b) This part prescribes minimum Federal safety standards to detect and deter the use of controlled substances.

(c) This part does not restrict a motor carrier from adopting and enforcing additional or more stringent requirements consistent with this part.

§ 382.103 Applicability.

This part applies to motor carriers and drivers operating in interstate commerce.

§ 382.105 Definitions.

As used in this part—

"Collection site" means a place where individuals present themselves for the purpose of providing body fluid or tissue samples to be analyzed for specified drugs. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation or shipment of the samples to a laboratory.

"Commercial motor vehicle" means any self-propelled or towed vehicle used on public highways in interstate or foreign commerce to transport passengers or property when:

(1) The vehicle has a gross vehicle weight rating or gross combination weight rating of [10,001 or 26,001] or more pounds; or

(2) The vehicle is designed to transport more than 15 passengers including the driver; or

(3) The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801–1813).

"Controlled substance" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Part 1308).

"Drug" means any substance (other than alcohol) that is a controlled substance as defined in this section.

"Fatal accident" means, for this part, when a commercial motor vehicle occurrence involves the death of a human being within 24 hours after the occurrence.

"FHWA" means the Federal Highway Administration, U.S. Department of Transportation.

"HHS Drug Testing Guidelines" means the Scientific and Technical Guidelines for Drug Testing Programs issued by the Alcohol, Drug Abuse, and Mental Health Administration of the U.S. Department of Health and Human Services. These guidelines are available for inspection and copying at all FHWA regional and division offices as found in 49 CFR Part 7, Appendix D.

"Interstate commerce" means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States.

"Medical practitioner" means a physician or dentist licensed or otherwise authorized to practice by the State in which the person practices.

"*Medical Review Officer*" means a licensed physician with knowledge of drug abuse disorders.

"*Motor carrier*" means a motor carrier as defined in 49 U.S.C. 10102 (13) and includes a motor private carrier as defined in 49 U.S.C. 10102 (16). The term "motor carrier" includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers, and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

"*Random selection process*" means that tests are unannounced; that every driver of a given motor carrier subject to testing has an equal chance of selection; and the total number of random tests conducted annually shall equal or exceed a specified (up to 125 percent) percent of the total number of drivers of a motor carrier.

"*Reasonable cause*" means that the operator has violated a Federal Motor Carrier Safety Regulation or a State or local traffic law that could reasonably lead to, or has resulted in, serious injury or death; or that the motor carrier believes that the actions or appearance or conduct of the driver on duty, as defined in § 395.2 of this subchapter, are indicative of the use of a controlled substance. The conduct must be witnessed and documented by at least two employees, one of whom is in a supervisory capacity.

§ 382.107 Waiver provision.

Any person subject to this part may petition the Administrator for a waiver of compliance.

§ 382.109 Notification of test results and recordkeeping.

(a) The motor carrier shall notify the driver or driver-applicant of the results of a controlled substance test conducted under this part.

(b) A motor carrier shall retain controlled substance test results, conducted under this part, in its driver qualification files for at least 3 years.

§ 382.111 Implied consent.

(a) Any person who drives for a motor carrier on or after [*the effective date of this rule*] shall be deemed to have consented to testing as required in Subparts C, D, E, and F of this part. Consent is implied by driving a commercial motor vehicle.

(b) A driver shall participate in testing as required under the conditions set forth in this part.

(c) A driver who is required to be tested under Subpart C, and who goes or is taken to a medical facility for observation or treatment after an accident, shall be deemed to have consented to the release to the FHWA (upon its request) of the following:

(1) The remaining portion or any body fluid sample taken by the treating facility that is not required for medical purposes, together with any medical facility record(s) pertaining to the taking of such sample;

(2) The results of any laboratory tests conducted by or for the treatment facility on such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility prior to the time samples were taken by the treating facility or prior to the time samples were taken in compliance with this part.

(d) A driver required to participate in body fluid testing under Subpart C (Post-Accident Toxicological Testing) shall, if requested by the motor carrier or the medical facility, consent to the taking of samples and their release for toxicological analysis under Subpart C by promptly executing a consent form, if required by the medical facility.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel body fluid or tissue testing.

(f) A driver shall be deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of the driver, if such driver dies within 24 hours after a fatal accident.

Subpart B—Prohibition

§ 382.201 Drug use prohibitions.

(a) No driver shall be on duty as defined in § 395.2 of this subchapter if the driver uses any controlled substances, except as provided in § 382.203 of this subpart.

(b) No driver shall be on duty as defined in § 395.2 of this subchapter if the drive tests positive (confirmed test) for use of controlled substances, except as provided in § 382.203 of this subpart.

(c) A person who tests positive (confirmed test) for the use of controlled substances is medically unqualified to operate a commercial motor vehicle unless the person has completed a program established under § 382.701 *et. seq.*

(d) A person who refuses to be tested under this part shall not be permitted to drive. Such refusal shall be treated as a positive test and subject the driver to the requirements of paragraph (c) of this section.

§ 382.203 Prescribed drugs.

(a) Affirmative defense. Any driver who is alleged to have violated § 382.201 of this subpart shall have available as an affirmative defense, to be proven by the driver through clear and convincing evidence, that his or her use of controlled substance (except for methadone) was as prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties.

(b) This subpart does not restrict a motor carrier from requiring a driver to notify the motor carrier of therapeutic drug use.

Subpart C—Post-Accident Toxicological Testing

§ 382.301 Testing requirements.

(a) A motor carrier shall ensure that post-accident toxicological tests are conducted on a driver who is involved in a fatal accident.

(b) A driver shall submit to controlled substance testing following a fatal accident.

§ 382.303 Testing procedures.

(a) A motor carrier shall require a driver to be tested for controlled substance use if the driver is involved in a fatal accident. The sample should be collected as soon as possible, but no later than 12 hours after the fatality.

(b)(1) A driver shall report or be transported to a collection site and give a urine sample as soon as possible, but not later than 12 hours following a fatality. If a hazard to occupants of the vehicle or other highway users would be increased by compliance with this subpart, the driver may move the commercial motor vehicle to the nearest safe place to reduce or eliminate the hazard.

(2) If the driver is incapacitated or unconscious, the motor carrier shall request the treating medical facility to obtain a body fluid sample as determined appropriate by a medical practitioner.

(c) A motor carrier shall ensure that a legible copy of instructions for collection, labeling, packaging, and mailing of body fluid samples shall be maintained on each commercial motor vehicle. The instructions for collection, labeling, and packaging shall conform with the HHS guidelines. Mailing instructions shall include the name, mailing address, and telephone number of the test laboratory used by the motor carrier.

§ 382.305 Guidelines for drug testing.

The motor carrier shall ensure that its drug testing program conforms with the HHS Drug Testing Guidelines.

§ 382.307 Fatal accident drug test report.

(a) Within 24 hours of receipt of a drug test result, a motor carrier shall report the result to the Director, Regional Motor Carrier Safety Office of the Federal Highway Administration Region in which the carrier's principal place of business is located. The addresses and jurisdictions of the Federal Highway Administration Regions are specified in § 390.40 of this subchapter.

(b) Refusals. If a motor carrier cannot report a drug test result because a driver refuses to give a sample or for other reasons, the motor carrier shall provide a brief explanation and attach it to the accident report required by § 394.9 of this subchapter.

§ 382.309 Driver fatalities.

(a) A motor carrier shall ensure that controlled substance testing is conducted on a deceased driver in accordance with the procedures of this subpart.

(b) If the driver is deceased, the motor carrier shall request the responsible local authority (e.g., a coroner or medical examiner) to obtain a body fluid or tissue sample as appropriate.

(c)(1) If urine is obtained, the responsible local authority should place 60 milliliters (ml) of urine in a standard 80 ml screw-top container.

(2) If blood is obtained, the responsible local authority should place 20 milliliters of blood in red-top glass tubes.

(3) If tissue is obtained, the responsible local authority should place 50 to 100 grams of liver, kidney, spleen, lung or muscle tissue, as available, or gastric content, up to 100 milliliters, as available, in a red-top glass tube.

(d) Sample handling, packaging, and mailing should follow the instructions prescribed in § 382.303(c) of this subpart.

§ 382.311 Disqualification.

(a) *Disqualification for refusal.* A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year following a refusal to give a urine sample when the driver has been involved in a fatal accident.

(b) *Disqualification for use of controlled substances.* A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year for a positive test of controlled substance use when the driver has been involved in a fatal accident.

Subpart D—Reasonable Cause Testing

§ 382.401 Testing requirements.

(a) A motor carrier shall require a driver to be tested upon reasonable cause for the use of controlled substances.

(b) A driver shall submit to testing upon reasonable cause of the use of controlled substances upon request by a motor carrier.

§ 382.403 Testing procedures.

(a) A motor carrier shall ensure that the driver is transported immediately to a collection site for the collection of a urine sample.

(b) A motor carrier shall ensure its drug testing program conforms with the HHS Drug Testing Guidelines.

Subpart E—Pre-Employment and Biennial Testing

§ 382.501 Pre-employment testing requirements.

(a) A motor carrier shall require a driver-applicant to be tested for the use of controlled substances as a condition of employment.

(b) A driver-applicant shall submit to controlled substance testing as a condition of employment.

(c) Prior to collection of a urine sample under § 382.505 of this subpart, a driver-applicant shall be notified that the sample will be tested for the presence of controlled substances.

(d) Exception. A motor carrier may use a driver who is a regularly employed driver of another motor carrier without complying with paragraph (a) of this section, if the driver meets the requirement of § 391.65 of this subchapter.

§ 382.503 Biennial testing requirements.

(a) A motor carrier shall require a driver to be tested biennially for the use of controlled substances.

(b) A driver shall submit to biennial testing for the use of controlled substances.

§ 382.505 Testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure its drug testing program conforms with the HHS Drug Testing Guidelines.

Subpart F—Random Testing

§ 382.601 Testing requirements.

(a) A motor carrier shall use a random selection process to select and request a driver to be tested for the use of controlled substances.

(b) A driver shall submit to controlled substance testing when selected by a random selection process of a motor carrier.

§ 382.603 Testing procedures.

(a) The sample shall consist of a urine specimen.

(b) A motor carrier shall ensure its drug testing program conforms with the HHS Drug Testing Guidelines.

Option 1

Subpart G—Employee Assistance Programs and Rehabilitation

§ 382.701 Employee assistance program (EAP).

The motor carrier shall provide an EAP for drivers who have voluntarily enrolled for rehabilitation and counseling. The motor carrier may establish the EAP as a part of its internal personnel services or the motor carrier may contract with an entity that will provide EAP services to a driver. Each EAP must include a rehabilitation, an education, and a training component for the drivers and a training component for supervisory personnel. A motor carrier shall have on file and available for inspection a written statement outlining its employee assistance program in its principal place of business.

§ 382.703 EAP rehabilitation program.

(a) Each employer shall provide one rehabilitation opportunity for any driver who voluntarily enrolls in an EAP.

(b) Each motor carrier shall retain or rehire a driver who—

(1) Has successfully completed his or her first rehabilitation program within 90 days after

(i) Notification to the employees that he or she has failed a drug test, or

(ii) Enrolls in an EAP, whichever is earlier. (the driver must elect to be placed in the first rehabilitation placement available); and

(2) Has received a recommendation for a return to duty and has been medically certified under Part 391 as meeting the requirements of § 391.41(b)(12) of this subchapter by the motor carrier's medical review officer and is otherwise medically qualified under Part 391 of this subchapter.

(c) A motor carrier is not required to offer a rehabilitation opportunity or an opportunity to be rehired to an employee who enrolls in an EAP for the purpose of avoiding the adverse consequences of testing positive for prohibited drug use which occurred before the referral.

§ 382.705 EAP education program.

Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community-service hot-line telephone number for employee assistance (if available); and display and distribution of the employer's policy regarding drug use in the workplace.

Option 2

Subpart G—Employee Assistance Programs and Rehabilitation

§ 382.701 Employee assistance program (EAP).

The motor carrier shall provide an EAP for drivers who have voluntarily enrolled for rehabilitation and counseling and for drivers who have been referred to the EAP as a result of a confirmed positive drug test unless excepted under § 382.703. The motor carrier may establish the EAP as a part of its internal personnel services or the motor carrier may contract with an entity that will provide EAP services to a driver. Each EAP must include a rehabilitation, an education, and a training component for the drivers and a training component for supervisory personnel. A motor carrier shall have on file and available for inspection a written statement outlining its employee assistance program in its principal place of business.

§ 382.703 EAP rehabilitation program.

(a) Each employer shall provide one rehabilitation opportunity for the following drivers:

(1) Any driver who voluntarily enrolls in an EAP; and

(2) Any driver who has a confirmed positive drug test.

(b) Each motor carrier shall retain or rehire a driver who—

(1) Has successfully completed his or her first rehabilitation program within 90 days after notification to the employee that he or she has failed a drug test (the driver must elect to be placed in the first rehabilitation placement available;) and

(2) Has received a recommendation for a return to duty and has been medically certified under Part 391 as meeting the requirements of § 391.41(b)(12) of this subchapter by the motor carrier's medical review officer and is otherwise medically qualified under Part 391 of this subchapter.

(c) A motor carrier is not required to offer a rehabilitation opportunity or an opportunity to be rehired to an employee who enrolls in an EAP for the purpose of avoiding the adverse consequences of testing positive for prohibited drug use which occurred before the referral.

§ 382.705 EAP education program.

Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community-service hot-line telephone number for employee assistance (if available); and display and distribution of the employer's policy regarding drug use in the workplace.

Option 3

Subpart G—Employee Assistance Programs and Rehabilitation

§ 382.701 Employee assistance program (EAP).

The motor carrier shall provide an EAP for drivers who have voluntarily enrolled for rehabilitation and counseling and for drivers who have been referred to the EAP as a result of a confirmed positive drug test unless excepted under § 382.703. The motor carrier may establish the EAP as a part of its internal personnel services or the motor carrier may contract with an entity that will provide EAP services to a driver. Each EAP must include a rehabilitation, an education, and a training component for the drivers and a training component for supervisory personnel. A motor carrier shall have on file and available for inspection a written statement outlining its employee assistance program in its principal place of business.

§ 382.703 EAP rehabilitation program.

(a) Each employer shall provide one rehabilitation opportunity for the following drivers: Who voluntarily enroll in an EAP.

(b) Each motor carrier shall retain or rehire a driver who—

(1) Has successfully completed his or her first rehabilitation program within 90 days after notification to the employee that he or she has failed a drug test (the driver must elect to be placed in the first rehabilitation placement available); and

(2) Has received a recommendation for a return to duty and has been medically certified under Part 391 as meeting the requirements of § 391.41(b)(12) of this subchapter by the motor carrier's medical review officer and is otherwise medically qualified under Part 391 of this subchapter.

(c) A driver who is identified as a drug user as a result of a drug test authorized by this part is not required to be afforded an opportunity for rehabilitation.

(d) A motor carrier is not required to offer a rehabilitation opportunity or an opportunity to be rehired to an employee who enrolls in an EAP for the purpose of avoiding the adverse consequences of testing positive for prohibited drug use which occurred before the referral.

§ 382.705 EAP education program.

Each EAP education program must include at least the following elements: Display and distribution of informational material; display and distribution of a community-service hot-line telephone number for employee assistance (if available); and display and distribution of the employer's policy regarding drug use in the workplace.

Option 4

Subpart G—Employee Assistance Programs and Rehabilitation

§ 382.701 Employee assistance program (EAP).

Each EAP must include an education and a training component concerning drug use for the drivers and a training component for supervisory personnel. A motor carrier shall have on file and available for inspection a written statement outlining its employee assistance program in its principal place of business.

§ 382.707 EAP training program.

Each EAP training program must be conducted annually for the motor carrier's supervisory personnel. During the first year of the program, such training must be conducted for all drivers. The training program must include at least the following elements: The effects and consequences of drug use on personal health, safety, and the work environment; the manifestations and behavioral causes that may indicate drug use or abuse; and documentation of training given to drivers and motor carrier's supervisory personnel. EAP training programs for drivers and supervisory personnel must consist of at least 60 minutes training.

[FR Doc. 88-13419 Filed 6-10-88; 11:07 am]
BILLING CODE 4910-22-M

Federal Register

Tuesday
June 14, 1988

Part III

The President

Proclamation 5829—Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement the Policies of the Noriega/Solis Palma Regime

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Presidential Documents

Title 3—

The President

Proclamation 5829 of June 10, 1988

Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement the Policies of the Noriega/Solis Palma Regime

By the President of the United States of America

A Proclamation

In light of the current political and economic crisis in Panama and the actions of Manuel Antonio Noriega and Manuel Solis Palma and their forces that engendered this crisis and are preventing the legitimate government of President Eric Arturo Delvalle from restoring order and democracy to that country, I have determined that it is in the interests of the United States to restrict the entrance into the United States as immigrants and nonimmigrants of certain persons who formulate or implement the policies of Manuel Antonio Noriega and Manuel Solis Palma.

NOW, THEREFORE, I, RONALD REAGAN, by the power vested in me as President by the Constitution and laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), having found that the unrestricted immigrant and nonimmigrant entry of officers and employees who formulate or implement the policies of Manuel Antonio Noriega and Manuel Solis Palma would, except as provided for in Section 2 of this Proclamation, be detrimental to the interests of the United States, do proclaim that:

Section 1. The entry into the United States as immigrants and nonimmigrants of Panamanian nationals (and their immediate families), who formulate or implement the policies of Manuel Antonio Noriega and Manuel Solis Palma and who are designated by the Secretary of State or his designee, is hereby suspended.

Sec. 2. Nothing in this Proclamation shall be construed (1) to derogate from United States Government obligations under applicable international agreements or (2) to prohibit the entry into the United States of individuals for the purpose of submitting to legal proceedings initiated by the United States Government.

Sec. 3. This Proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that democracy has been restored in Panama.

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

Ronald Reagan

[FR Doc. 88-13549
Filed 6-13-88; 10:32 am]
Billing code 3195-01-M

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