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federal register

Wednesday
December 28, 1983

Selected Subjects

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Selected Subjects

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

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 12453 of December 23, 1983

Delegation to the Secretary of State

By the authority vested in me as President of the United States of America by Section 301 of Title 3 of the United States Code, in order to assign certain functions to the Secretary of State, it is hereby ordered as follows:

Section 1. The functions vested in the President by Section 620 of the Agriculture, Rural Development and Related Agencies Appropriations Act, 1984 (H.R. 3223) ("the Act"), as enacted into law by Section 101(d) of the Joint Resolution "Making further continuing appropriations for the fiscal year 1984" (Public Law 98–151), and any function, which may be vested in the President by any other legislation, requiring the submission of periodic reports to Congress as a condition for the payment of United States funds in satisfaction of guarantees or assurances given by the United States with respect to loans made and credits extended to the Polish People's Republic, are delegated to the Secretary of State.

Sec. 2. Before making the determination and providing the written reports referred to in Section 620 of the Act, as enacted into law by Section 101(d) of Public Law 98–151, or in any other legislation which contains a reporting requirement referred to in Section 1 above, the Secretary of State shall confer with the Secretary of the Treasury and, as appropriate, with the Secretary of Agriculture and the heads of other interested Executive departments and agencies.

Ronald Reagan

THE WHITE HOUSE,
December 23, 1983.

[FR Doc. 83-34512
Filed 12-23-83; 3:53 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 48, No. 250
Wednesday, December 28, 1983

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Inshell Trade Demand and Final Free and Restricted Percentages for the 1983–84 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Emergency interim final rule.

SUMMARY: This emergency interim final rule establishes a trade demand and marketing percentages for inshell filberts for the marketing year which began July 1, 1983. The action is taken to promote orderly marketing conditions for the 1983 crop. This action is based on recommendations of the Filbert/Hazelnut Marketing Board which works with the USDA in administering the program. A finding is included for determining that an emergency situation exists which warrants prompt implementation of this rule.

DATES: Effective July 1, 1983 to June 30, 1984. Comments must be received by January 12, 1984.

ADDRESSES: Send two copies of comments to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that an emergency situation exists and that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice and opportunity for comment prior to issuance and good cause is also found for not postponing the effective time of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The 1983–84 marketing year began July 1, 1983, and growers and handlers are conducting their operations in anticipation of the establishment of the trade demand and final percentages contained in this document. Moreover, the percentages established herein apply to all merchantable filberts handled during the marketing year and must be established promptly to maintain orderly marketing conditions for the 1983 crop. Comments will be solicited for 15 days after publication of this document, and this emergency interim final action will be reviewed at that time.

This emergency interim final rule establishes an inshell filbert trade demand of 5,500 tons and final free and restricted percentages of 67 percent and 33 percent, respectively, for the 1983–84 marketing year. The establishment of the trade demand and percentages is pursuant to § 982.40 of the marketing agreement and Order No. 982, both as amended (7 CFR Part 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Section 982.40(b) of the order provides that the Board shall recommend establishment of an inshell trade demand for a marketing year to the Secretary. If the Secretary finds on the basis of the Board's recommendation or other information that volume regulation for merchantable filberts for that marketing year would tend to effectuate the declared policy of the act, the Secretary shall establish that inshell trade demand. For the 1983–84 marketing year, the Board recommended a trade demand of 5,500 tons in accordance with paragraph (b).

Sales of domestic inshell filberts average about 5,000 tons per year, and historically the filbert industry needs about 500 tons of inshell filberts as a desirable carryout for sales until the new crop is harvested and available for marketing. Consequently, the Board recommended a trade demand of 5,500 tons. It was the Board's view that a 5,500 ton inshell trade demand would promote orderly marketing conditions during the 1983–84 season by providing enough merchantable filberts to meet 1983–84 demand and a carryover for early 1984–85 market needs.

On or before November 15 (after the November crop estimate is available) the Board is required to meet and recommend to the Secretary final free and restricted percentages to release 100 percent or up to 110 percent, if market conditions justify, of the trade demand. Accordingly, the Board adopted the November USDA crop estimate of 6,500 tons, and recommended free and restricted percentages of 67 percent and 33 percent.

In calculating the percentages, the Board considered the following supply and demand information for the 1983–84 marketing year:

	Tons
Inshell supply:	
(1) Total production	6,500
(2) Less substandard, farm use, etc	581
(3) Merchantable production	5,919
(4) Plus carryover July 1, 1983, subject to regulation	858
(5) Supply subject to regulation (item 3 plus item 4)	6,777
Inshell requirements:	
(6) Trade demand	5,500
(7) Less carryover July 1, 1983, not subject to regulation	957
(8) Adjust trade demand	4,543
Percentages:	
(9) Free percentage (item 8 divided by item 5)	[1] 67
(10) Restricted percentage (100 percent minus 67 percent)	[1] 33

[1] Percent.

The free percentage prescribes that portion of the total merchantable supply subject to regulation which may be handled as inshell filberts. The restricted percentage prescribes that portion which must be withheld from such handling. Restricted filberts may be shelled (for domestic or foreign consumption), exported, or disposed of in outlets determined by the Board to be non-competitive with normal market outlets for inshell filberts.

The final free percentage of 67 percent would release 100 percent of the trade

demand. This is about 125 percent of the average shipments for the last 3 years, and about 120 percent of the highest yearly trade acquisitions (domestic and imported filberts combined) during the last 4 years.

After consideration of all relevant matter presented, the information and recommendations submitted by the Board, and other available information, it is found that the establishment, under § 982.40, of the inshell trade demand and final free and restricted percentages, as hereinafter set forth, for the 1983–84 marketing year will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 982

Marketing agreement and order, Filberts, Hazelnuts, Oregon and Washington.

Therefore, § 982.232 is deleted and a new § 982.232 is added to read as follows: (The following section will not be published in the Code of Federal Regulations).

§ 982.233 Trade demand and free and restricted percentages—1983–84 marketing year.

(a) The trade demand for merchantable inshell filberts/hazelnuts for the 1983–84 marketing year shall be 5,500 tons.

(b) The final free and restricted percentages for merchantable filberts/hazelnuts for the 1983–84 marketing year shall be 67 percent and 33 percent, respectively.

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

Dated: December 22, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 83-34349 Filed 12-27-83; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1945

Emergency Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Emergency (EM) loan regulations to clarify the method the Secretary of Agriculture uses to determine that a natural disaster has occurred. This action is needed to address certain changes made to clarify the processes by which EM loans are made available. The intended effect of this action is to clarify existing regulations and to clearly show that the practices followed are in compliance with statutory requirements.

EFFECTIVE DATE: December 28, 1983.

FOR FURTHER INFORMATION CONTACT: Wilbert Campbell, Jr., Acting Chief, Loan Processing Branch, Emergency Division, Farmers Home Administration, USDA, Room 5344–S, Washington, D.C. 20250, telephone 202–382–1652.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291 and has been determined to be "nonmajor." This action will cause no annual effect on the economy of $100 million or more, or a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not directly affect any FmHA programs or projects that are subject to A–95 clearinghouse review. After September 30, 1983, the A–95 review requirements will be rescinded and replaced by Executive Order 12372, "Intergovernmental Review of Federal Programs." However, this action is exempt from the Executive Order's provisions.

The catalog of Federal Domestic Assistance number is 10.404 for emergency loans.

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law (Pub. L.) 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1945

Agriculture, Disaster assistance and Intergovernmental relations.

Need for Governmental Action

Questions were raised as to whether existing regulations comply with a statutory changes. FmHA determined that the methods of making natural disaster decisions were not clear and should be revised to more clearly conform with statutory language. Clarification was provided in an "interim final" rule which was published in the **Federal Register** (48 FR 15881) on April 13, 1983. This action clarified the existing regulation by restating the criteria as to what constitutes a natural disaster and how the determination is made. A 30-day period was granted for public comments which ended on May 13, 1983.

One comment was received. It concerns the prescribed reporting requirements in § 1945.19, "Reporting Potential Disasters and Initial Actions", of the regulation for the County Emergency Boards (CEB) and State Emergency Boards (SEB). Accordingly, the CEB will report potential disasters to the SEB and "appropriate county government representative(s)", and the SEB will report potential disasters to "the State Governor's Emergency Coordinator and the State Department of Agriculture" in addition to the USDA Washington Offices of ASCS, FmHA and the Office of Intergovernmental Affairs. The referenced comment is in order inasmuch as this provision in the regulation is not consistent with the reporting requirements contained in the USDA Emergency Operations Handbook (EOH). Since the EOH will be updated to coincide with the above-mentioned reporting requirements of this regulation, no changes will be made to the regulation with respect to the CEB and SEB reporting potential disasters.

It was determined after reviewing the "interim final" rule that certain editorial changes were needed to further clarify this regulation and to make it consistent with the provisions of the EM loanmaking regulation (Part 1945, Subpart D) which was published in the **Federal Register** (48 FR 10293) on March 11, 1983. Accordingly, it is necessary to include in this action the revised definition of "termination date" which was inadvertently omitted from the revision of the EM loanmaking regulation when it was published as a final rule on March 11, 1983, resulting in a conflict because both regulations do not contain the revised definition of *"termination date."*

To comply with 5 CFR Part 1320, a section is added to Subparts A and D of Part 1945 to display OMB control numbers.

Accordingly, Part 1945 of Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1945—EMERGENCY

Subpart A—Disaster Assistance—General

1. Section 1945.6 is amended by revising paragraphs (c)(3)(iii) introductory text, (c)(3)(iii)(C) and (c)(4) to read as follows:

§ 1945.6 Definitions.

* * * * *

(c) * * *

(3) *Natural disaster.*

* * * * *

(iii) Severe *production* losses within a County are those in which either:

* * * * *

(C) The Secretary, after exercising discretion, determines that, although the conditions set forth in subsections (A) and (B) above have not been met, the unusual and adverse weather conditions or natural phenomena have resulted in such significant production losses, or have produced such extenuating circumstances as to warrant a finding that a natural disaster has occurred. In making this determination, the Secretary may request the Administrator to provide for consideration such factors as (*1*) the nature and extent of production losses; (*2*) the number of farmers who have sustained qualifying production losses; (*3*) the number of farmers in paragraph (c)(3)(iii)(C) (*2*) that other lenders in the county indicate they will not be in position to finance; (*4*) whether the losses will cause undue hardship to a certain segment of farmers in the county; (*5*) whether damage to particular crops has resulted in undue hardship; (*6*) whether other Federal and/or State benefit programs which are being made available due to the same disaster will consequently lessen undue hardship and the demand for EM loans; and (*7*) any other factors considered relevant. The Secretary will consider the information set forth in § 1945.6(h) of this Subpart in deciding whether a natural disaster has occurred.

(4) *Potential natural disaster.* Unusual and adverse weather conditions or natural phenomenon that have caused physical and/or production losses, but which have not yet been examined by the Secretary or the Adminstrator for consideration as a natural disaster.

* * * * *

2. Section 1945.19 is amended by revising the title and paragraphs (a), (b), (c), (c)(1), (c)(2), (c)(3) introductory text, (c)(5), the introductory text of (c)(6) and (c)(7) to read as follows:

§ 1945.19 Reporting potential natural disasters and initial actions.

(a) *Purpose.* The purpose of reporting potential natural disasters is to provide a systematic procedure for rapid reporting of the occurrence and extent of damage and loss caused by such event, which may result in a natural disaster determination.

(b) *Responsibility for assessing and reporting disasters.* USDA SEBs and CEBs representing their member agencies are best qualified at the State and County levels to accomplish the assessment of agricultural production losses resulting from a potential natural disaster. These Boards are charged with the responsibility of reporting the occurrence of and assessing the damage caused by disasters and will perform this responsibility under policies and procedures as set forth in the EOH.

(c) *Actions to be taken.* Immediately after the occurrence of a potential natural disaster:

(1) The FmHA County Supervisor will report to the State Director who will advise the Administrator that there has been a potential natural disaster with severe physical property losses to one or more farmers. This report must be made to the Administrator within 3 months after the disaster(s) occurs. Upon receiving the report, the Administrator will make EM loans available to any individual with a qualifying physical loss. Availability of EM loan assistance under this action by the Administrator shall be limited to physical losses only. Notices that EM loans are available will identify the county in which the unusual and adverse weather condition, or natural phenomenon, has occurred.

(2) The FmHA County Supervisor will report to the CEB chairperson, as specified in the EOH, all substantial physical property loss, damage or injury and severe production losses that have occurred in the County Office area. The County Supervisor will assist the CEB in preparing the 24 hour report required in paragraph (c)(3) of this section. If the CEB has not completed its 24 hour report within two workdays after the occurrence of a potential natural disaster, the County Supervisor will report to the State Director on Form FmHA 1945–27, "Report of Natural Disaster." In urgent situations, the report may be made by telephone, followed by the CEB report or Form FmHA 1945–27. Either of these reports will be based on information obtained from personal knowledge and from farmers, agricultural and community leaders, and from any other personally contacted reliable source(s). The County Supervisor will convey to the CEB chairperson all information pertaining to the potential disaster and provide the chairperson with a copy of Form FmHA 1945–27, if prepared.

(3) The CEB will report the potential natural disaster, in accordance with the EOH, to:

* * * * *

(5) The FmHA State Director will inform the National Office of each potential natural disaster as soon as possible and forward to the National Office a copy of the CEB report or Form FmHA 1945–27, with any attachments, and supplemented with the State Director's comments and recommendations. The State Director must include a statement as to the number of farmers, ranchers, and aquaculture operators affected by the potential natural disaster. In urgent situations, the State Director will report to the National Office, Emergency Division, by telephone, and immediately thereafter send a written report to the National Office, Emergency Division. The State Director will continue to notify the SEB chairperson of any additional information received concerning the potential natural disaster.

(6) When inquiries are received from persons affected by a potential natural disaster, they will be provided the following information:

* * * * *

(7) When inquiries are received from a governor, a County Governing Body or Indian Tribal Council concerning a potential natural disaster, they will be informed of the procedure for making EM loans available.

* * * * *

3. Section 1945.20 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 1945.20 Making EM loans available.

* * * * *

(b) *Determination by the Secretary of Agriculture.* * * *

(2) * * *

(i) Notify the SEB chairperson that a Damage Assessment Report (DAR) is needed, unless the Governor has already made such request to the SEB chairperson, in accordance with the EOH for the requested county(ies); and

* * * * *

4. Section 1945.50 is added to read as follows:

§ 1945.50 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been

assigned OMB control number 0575–0054.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

5. Section 1945.154 is amended by revising paragraph (a)(36) to read as follows:

§ 1945.154 Definitions and abbreviations.

(a) *Definitions.*

* * * * *

(36) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted. For both physical and production losses, the termination date will be 6 months from the date of the disaster declaration/determination/notification.

* * * * *

6. Section 1945.161 is amended by revising paragraph (a)(6) to read as follows:

§ 1945.161 Receiving and processing applications.

(a) *Applications.*

* * * * *

(6) Applications may be received and processed from FmHA EM loan borrowers or SBA disaster loan borrowers for the portion of the maximum actual loss loan originally authorized, but not requested initially from FmHA or SBA, provided the application is received within 6 months of the disaster declaration/determination/notification dates.

* * * * *

7. Section 1945.200 is added to read as follows:

§ 1945.200 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0090.

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

Dated: September 19, 1983.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 83-34356 Filed 12-27-83; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Correction

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule; correction.

SUMMARY: This document corrects two errors of omission in the Code of Federal Regulations. Two amendments to § 238.3 Aliens in immediate and continuous transit, published in the **Federal Register**, one at pages 14273–74 of October 14, 1967 (32 FR 14273), and the other at page 16632 of June 25, 1973 (38 FR 16632), were never codified in Title 8 of the Code of Federal Regulations. This action is necessary to correct Title 8.

EFFECTIVE DATE: December 28, 1983.

SUPPLEMENTARY INFORMATION: Two amendments to 8 CFR 238.3(b) were published in the **Federal Register**, but never codified in Title 8.

At pages 14273–74 of the **Federal Register**, of October 14, 1967 (32 FR 14273), an amendment adds alphabetically, "North German Lloyd Passenger Agency, Inc., for: German Atlantic Line" to the list of carriers under § 238.3(b). At page 16632 of the **Federal Register** of June 25, 1973 (38 FR 16632), an amendment adds alphabetically "The Eastern & Australian Steamship Co., Ltd." to § 238.3(b). Neither transportation line was subsequently added to the list of carriers under § 238.3(b). This document adds the transportation lines to the list of carriers under § 238.3(b) as was previously intended and changes the listing sequence of the first-named transportation line.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial correction to the listing of transportational lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Air carriers, Aliens, Common carriers, Government contracts, Inspections, Transportation lines, Travel, Travel restrictions, Treaties.

Accordingly, 8 CFR Part 238 is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by:

1. Adding in alphabetical sequence, "German Atlantic Line (North German Lloyd Passenger Agency, Inc., for)".

2. Adding in alphabetical sequence, "The Eastern & Australian Steamship Co. Ltd.".

* * * * *

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: December 16, 1983.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 83-33914 Filed 12-27-83; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 212

[Docket No. R-0431]

Regulation L, Management Official Interlocks; Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Technical amendment.

SUMMARY: The Board is making a technical amendment to its revision of 12 CFR Part 212, Regulation L (Management Official Interlocks) published at 48 FR 50296 November 1, 1983.

FOR FURTHER INFORMATION CONTACT: Melanie L. Fein, Senior Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452–3594.

SUPPLEMENTARY INFORMATION: The final rules contained on page 50303 are amended as follows:

PART 212—[AMENDED]

1. The authority citation for Part 212 is amended to read:

Authority: 12 U.S.C. 3210, *et seq.*, 15 U.S.C. 19.

Board of Governors of the Federal Reserve System December 22, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-34394 Filed 12-27-83; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 224

Borrowers of Securities Credit; Comparison Chart of Old and New Regulation X Sections

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Regulation X Comparison Chart.

SUMMARY: On December 16, 1983, the Board approved a completely revised and simplified Regulation X. The new regulation is effective as of Janaury 23, 1984. To facilitate an understanding of the new regulation, this chart provides a cross-reference of section numbers in the old Regulations X to their corresponding section numbers in the new regulation and vice versa. This chart will serve as an aid to persons tracing the regulatory treatment of specific issues addressed in Regulation X.

FOR FUTHER INFORMATION CONTACT: Douglas Blass, Attorney, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-2781.

SUPPLEMENTARY INFORMATION: The following comparison chart is being published as an aid to understanding the completely revised Regulation X.

COMPARISON CHART

Comparison of old with new section Nos.	
Old With New	
224.1:	
First part	224.1 (a) and (b) (first sentence).
(a)	224.1 (a) and (b) (first sentence).
(b)	224.1 (a), (b) (first sentence), 2 (a) and (c).
224.2:	
(a)	224.1 (b)(1) and 3(b) (with modification).
(1)	224.1 (b)(1) and 3(b) (with modification).
(2)	224.1 (b)(1) and 3(b) (with modification).
(3)	224.1 (b)(1) and 3(b) (with modification).
(b)(i)	224.3(a) (first sentence).
(i)	224.3 (a)(3).
(ii)	224.3 (a)(1) (with modification).
(iii)	224.3 (a)(2).
(iv)	224.3 (a)(3).
(2)	Deleted.
(3)	Deleted.
224.3:	
First sentence	224.1 (b).
(a)	224.1 (b)(2) (with modification).
(b)	Deleted.
(c)	224.1 (b)(3).
224.4	Deleted.

COMPARISON CHART—Continued

Comparison of old with new section Nos.	
224.5:	
Opening sentences	224.2 (opening sentences).
(a)	Deleted.
(b)	Deleted.
(c)	Deleted.
(d)	Deleted.
(e)	Deleted.
(f)	Deleted.
(1)	Deleted.
(2)	Deleted.
(3)	Deleted.
(g)	Deleted.
(h)	Deleted.
(i)	Deleted.
(j)	Deleted.
(1)	Deleted.
(2)	Deleted.
(3)	Deleted.
(4)	Deleted.
(k)	Deleted.
(l)	Deleted.
224.6:	
(a)	224.1(b) (1) and 3(c).
(b)	Deleted.

Comparison of new with old section Nos.	
New With Old	
224.1:	
(a)	224.1 (first part), (a) and (b).
(b)	224.1 (first part), (a) and (b).
(1)	Added.
(2)	224.3 (a) (modified).
(3)	224.3 (c).
224.2:	
Opening sentences	224.5 (opening sentences).
(a)	Added.
(b)	Added.
(c)	Added.
224.3:	
(a)	224.2 (b)(1).
(1)	224.2 (b)(1)(ii) (modified).
(2)	224.2 (b)(1)(iii).
(3)	224.2 (b)(1) (i) and (iv).
(b)	224.2 (a) (modified).
(c)	224.6 (a).

Board of Governors of the Federal Reserve System, December 21, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-34354 Filed 12-27-83; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 250

[Docket No. R-0474]

Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: Section 207 of the Bank Export Services Act provides that any portion of an eligible bankers' acceptance created by an institution subject to the bankers' acceptance limitations of the Act that is conveyed through a participation to another institution subject to the bankers' acceptance limitations of the Act shall not be included in the calculation of the creating institution's bankers' acceptance limits. However, the amount of the participation is to be included in the bankers' acceptance limits of the institution receiving the participation. The language of the statute does not define what constitutes such a participation. Accordingly, the Board has clarified the meaning of participations in bankers' acceptance for purposes of the bankers' acceptance limitations of the Bank Export Services Act.

EFFECTIVE DATE: June 10, 1984.

FOR FURTHER INFORMATION CONTACT: Gilbert T. Schwartz, Associate General Counsel (202/452-3625), or Robert G. Ballen, Attorney (202/452-3265), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: *a. The BESA.* Section 207 of the Bank Export Services Act (Title II of Pub. L. 97-290) ("BESA") provides that a member bank or a Federal or State branch or agency in the United States whose parent foreign bank has, or is controlled by a foreign company or companies that have, more than $1 billion in total worldwide consolidated bank assets,[1] may create eligible bankers' acceptances ("BAs")[2] in the aggregate up to 150 percent of its paid up and unimpaired capital stock and surplus ("capital") and, with the permission of the Board, up to 200 percent of its capital (12 U.S.C. 372). Section 207 also prohibits these institutions from creating eligible BAs for any one person in the aggregate in excess of 10 percent of the institution's capital. Eligible BAs growing out of domestic transactions are not to exceed 50 percent of the aggregate of all eligible acceptances authorized for such an institution.

This section of the BESA also provides that any portion of an eligible BA created by a covered bank ("senior bank") that is conveyed through a "participation agreement" to another covered bank ("junior bank") shall *not* be included in the calculation of the senior bank's bankers' acceptance limits.[3] However, the amount of the

[1] The institutions subject to the BA limitations of BESA will hereinafter be referred to as "covered banks."

[2] An eligible BA includes a BA that meets the criteria of the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372).

[3] The use of the terms "senior bank" and "junior bank" has no implications regarding priority of claims. These terms merely represent a shorthand method of identifying the depository institution that has created the acceptance and conveyed the participation (senior bank) and the depository institution that has received the participation (junior bank).

participation *is* to be included in the BA limits applicable to the junior bank.

The language of the statute does not define what constitutes a participation agreement for purposes of the applicability of the BESA limitations. The statute authorizes the Board to further define any of the terms used in section 207 of the BESA (12 U.S.C. 372(g)).

b. The Board's proposal. The Board issued for public comment a proposed definition of a participation agreement for purposes of determining compliance with the BESA limits that included the following minimum requirements:

1. A written agreement entered into between the junior and senior bank under which the junior bank acquires the senior bank's claim against the account party to the extent of the amount of the participation that is enforceable in the event that the account party fails to perform in accordance with the terms of the acceptance. The agreement between the senior bank and the account party must indicate that the rights that the senior bank acquires under the agreement are assignable by the senior bank; and

2. The agreement between the junior and senior bank provides that the senior bank obtains a claim against the junior bank to the extent of the amount of the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance.

In its proposal, the Board stressed that both the junior bank's claim on the account party and the senior bank's claim on the junior involve risk. Accordingly, the Board proposed that the junior bank review the creditworthiness of each account party on a case-by-case basis before it acquires a participation and the senior bank review the creditworthiness of the junior bank. Similarly, the Board proposed that the actual assets acquired be included for purposes of assessing capital adequacy. 48 FR 29001 (June 24, 1983).

c. Discussion of comments. The Board received a total of 29 comments. Comments were received from 15 depository insitutions, the American Bankers Association, the Bankers' Association for Foreign Trade, and 12 Reserve Banks. The commenters generally supported the Board's overall approach to the definition of particiaption.

Ten commenters opposed the requirement in the Board's proposal that the agreement between the senior bank and the account party indicate that the rights that the senior bank acquires under the agreement are assignable by the senior bank. These commenters believed that this requirement would interrupt the smooth flow of funds in the acceptance market in view of the fact that agreements between the senior bank and the account party often must be entered into rapidly and often are not formalized beyond tested telexes, powers of attorney, and simple letters. Nine of these commenters stated that this requirement was superfluous because, in the absence of a prohibition against assignment, the senior bank's rights would be assignable under general principles of commercial law. Finally, five of these commenters also suggested that this provision would restrict the use of participations, as those account parties that prefer to deal only with the senior bank would, upon being notified of the assignability, prohibit the senior bank from participation acceptances and thus disrupt the smooth functioning of the participation mechanism.

After consideration of the comments, the Board has determined not to include in the final rule the proposed requirement that the agreement between the senior bank and the account party indicate that the senior bank's rights are assignable. The Board is not requiring the senior bank and the account party specifically to agree that the senior bank's rights are assignable because the Board believes such rights to be assignable in the absence of an explicit agreement. In this regard, given the nature of the agreements between the senior bank and the account party and the speed with which these agreements often are required to be formed, the proposed requirement for assignability could have a disruptive effect upon the operations of the bankers' acceptance market.

Five commenters urged the Board not to prohibit the junior and senior bank from agreeing among themselves that the senior bank would be responsible for administration and enforcement of the entire obligation of the account party. In the absence of such an arrangement, these commenters argued that account party defaults would likely result in multiple enforcement actions. Such multiple actions, possibly in different forums, could result in substantially increased litigation costs, inconsistent judgments, and administrative problems. One of these commenters indicated that permitting each junior bank to pursue its own enforcement action could result in minority interests impairing delicate workout negotiations that were in the best interests of the majority. Two of these commenters argued that junior banks should be able to benefit from senior bank expertise in recovering from a defaulting account party.

The Board has determined that, for the reasons set forth by the commenters, junior and senior banks may contract among themselves as to which party(ies) will have the responsibility for administering the arrangement, enforcing claims, or exercising remedies. In this regard, the Board believes that the parties should be aware of the risks inherent in such arrangements, such as the possibility that the bank with administration or enforcement responsibility would promote its own interests to the detriment of the others. If the parties do wish to contract among themselves as to administration and enforcement, the Board encourages that such arrangements clearly delineate the responsibilities of the relevant parties.

With regard to the Board's proposed requirements concerning credit reviews, two commenters indicated that they were unsure as to the meaning of the term "high credit standards." These commenters indicated that this term may cause confusion to those parties subject to the regulation. They suggested that the risks be reviewed in accordance with "prudent and sound banking practices" or "prudent banking practices." One of these commenters suggested that a junior bank be permitted to commit to purchasing all acceptance participations offered by a senior bank on an ongoing basis, subject to periodic review of the arrangement by the junior bank. This commenter also suggested that blanket agreements to purchase all participations from the senior bank be permitted between a parent bank and its Edge affiliates where the credit approval process for both organizations is handled by the parent bank. Another commenter argued that the junior bank should be required to make an independent evaluation of each account party and that blanket agreements probably do not display the degree of scrutiny of each arrangement that the phrase "participation" appears to contemplate. Finally, one commenter cautioned against a senior bank concentrating participations in particular junior banks.

In view of the potential confusion regarding the term "high credit standards," the Board has determined that the junior and senior banks be required to assess their respective risks in accordance with "prudent and sound banking practices." The examiners will in the normal course of the examination process review the risk assessment procedures instituted by the banks. The Board continues to believe that the junior bank should review the

creditworthiness of each account party when the junior bank acquires a participation and the senior bank should review on an ongoing basis the creditworthiness of the junior bank. Junior bank agreements to purchase from a senior bank all participations in BAs with specified account parties subject to periodic review of each specified account party will be reviewed by examiners to assure that the amounts are reasonable in relation to the two banks and that periodic reviews of each specified account party are made and are up to date. Junior bank agreements to rely exclusively upon the credit judgment of the senior bank and purchase on an ongoing basis from a senior bank all participations in BAs regardless of the identity of the account party are not appropriate in view of the risks involved. However, in those cases involving a participation between a parent bank and its Edge affiliate where the credit review for both entities is performed by the parent bank, the Edge Corporation should maintain documentation indicating that it concurs with the parent bank's analysis and that the acceptance participation is appropriate for inclusion in the Edge Corporation's portfolio.

Seven commenters stated that the amount of a BA conveyed through a participation should be excluded from the asset base of the senior bank for purposes of assessing capital adequacy. Six of these commenters argued that such an exclusion was necessary to avoid double counting of the asset. Two of these commenters noted that such an exclusion would be consistent with the treatment of loan participation. One of these commenters believed exclusion to be appropriate because the senior bank has transferred the risk of account party default to the junior bank through the participation.

After consideration of the comments, the Board has determined not to change its proposed position on this issue. As discussed above, the junior bank incurs the risk of account party default and the senior bank incurs the risk of junior bank default. Although the senior bank's ultimate risk may be less than its risk prior to conveyance of the participation, and may be less than the risk of the junior bank, the senior bank does incur the risk that both the account party and the junior bank will default. The Board believes that including the risks incurred by the senior bank in assessing the senior bank's capital and the risks incurred by the junior bank in assessing the junior bank's capital is not "double counting" but rather appropriate recognition of the risks involved.

One commenter suggested that the Board defer the effective date of its final rule one year to allow banks sufficient time to revise existing BA forms and to permit outstanding BA participation agreements to mature. Another commenter stated that the final rule should not apply to participations entered into before the effective date of the final rule or to renewals of such participations. A third commenter indicated that the Board may wish to consider "grandfathering" participation agreements entered into before the effective date of the final rule.

The Board has determined to delay the effective date of the rule for six months. The Board believes that six months should provide institutions sufficient time to prepare for the minimum requirements, particularly in view of the fact that the proposed requirement that the senior bank and the account party agree that the senior bank's rights are assignable has not been adopted. A six month delay will result in currently outstanding individual participations not being affected by this rule because of the maximum six month maturity of eligible BAs. The Board determined that the six month delayed effective date was preferable to grandfathering existing participations because the grandfathering approach would require examination of each individual participation to determine whether it was affected by this rule. Accordingly, the rule will apply to all participations in BAs created or renewed on or after the effective date of the rule.

One commenter indicated that a number of banks have deleted participated portions of BAs that they have created from their books of accounts. In this regard, the Report of Condition and Income currently provides that *all* acceptances created by a bank are to be reflected on that bank's balance sheet whether or not they are subject to participation agreements.

The impact of this rule on small entities has been considered in accordance with section 604 of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 604). The Board's rule will provide small member banks that are covered by the BESA limitations with increased flexibility with regard to the usage of eligible BAs. No new recordkeeping or reporting requirements will be imposed as a result of this action.

List of Subjects in 12 CFR Part 250

Federal Reserve System.

PART 250—[AMENDED]

Pursuant to its authority under the seventh paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 372), the Board of Governors has amended, effective June 10, 1984, 12 CFR Part 250—Miscellaneous Interpretations—by adding a new § 250.165 to read as follows:

§ 250.165 Bankers' acceptances: definition of participations.

(a)(1) Section 207 of the Bank Export Services Act (Title II of Pub. L. 97-290) ("BESA") raised the limits on the aggregate amount of eligible bankers' acceptances ("BAs") that may be created by a member bank from 50 percent (or 100 percent with the permission of the Board) of its paid up and unimpaired capital stock and surplus ("capital") to 150 percent (or 200 percent with the permission of the Board) of its capital. Section 207 also prohibits a member bank from creating eligible BAs for any one person in the aggregate in excess of 10 percent of the institution's capital. Eligible BAs growing out of domestic transactions are not to exceed 50 percent of the aggregate of all eligible acceptances authorized for a member bank. This section of the BESA applies the same limits applicable to member banks to U.S. branches and agencies of foreign banks that are subject to reserve requirements under section 7 of the International Banking Act of 1978 (12 U.S.C. 3105).[1]

(2) This section of the BESA also provides that any portion of an eligible BA created by a covered bank ("senior bank") that is conveyed through a "participation agreement" to another covered bank ("junior bank") shall *not* be included in the calculation of the senior bank's bankers' acceptance limits established by section 207 of BESA.[2] However, the amount of the participation *is* to be included in the BA limits applicable to the junior bank. The language of the statute does not define what constitutes a participation agreement for purposes of the applicability of the BESA limitations. However, the statute does authorize the Board to further define any of the terms used in section 207 of the BESA (12

[1] The institutions subject to the BA limitations of BESA will hereinafter be referred to as "covered banks."

[2] The use of the terms "senior bank" and "junior bank" has no implications regarding priority of claims. These terms merely represent a shorthand method of identifying the depository institution that has created the acceptance and conveyed the participation (senior bank) and the depository institution that has received the participation (junior bank).

U.S.C. 372(g)). The Board is clarifying the term participation for purposes of the BA limitations of the BESA.

(b) The legislative history of section 207 of the BESA indicates that Congress intended that the junior bank be obligated to the senior bank in the event that the account party defaults on its obligation to pay, but that the junior bank need not also be obligated to pay the holder of the acceptance at the time the BA is presented for payment. H. Rep. No. 97–629, 97th Cong., 2nd Sess. 15 (1982); 128 *Cong. Rec.* H 4647 (daily ed. July 27, 1982) (remarks by Rep. Barnard); and 128 *Cong. Rec.* H 8462 (daily ed. October 1, 1982) (remarks by Rep. Barnard). The legislative history also indicates that Congress intended that eligible BAs in which participations had been conveyed not be required to indicate the name(s) (or interest(s)) of the junior bank(s) on the acceptance in order for the BA to be excluded from the BESA limitations applicable to the senoir bank. 128 *Cong. Rec.* S 12237 (daily ed. September 24, 1982) (remarks of Senators Heinz and Garn); and 128 *Cong. Rec.* H 4647 (daily ed. July 27, 1982) (remarks of Rep. Barnard).

(c)(1) In view of Congressional intent with regard to what constitutes a participation in an eligible BA, the Board has determined that, for purposes of the BESA limits, a participation must satisfy the following two *minimum* requirements:

(i) A written agreement entered into between the junior and senior bank under which the junior bank acquires the senior bank's claim against the account party to the extent of the amount of the participation that is enforceable in the event that the account party fails to perform in accordance with the terms of the acceptance; and

(ii) The agreement between the junior and senior bank provides that the senior bank obtains a claim against the junior bank to the extent of the amount of the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance.

(2) Consistent with Congressional intent, the minimum requirements do not require the junior bank to be obligated to pay the holder of the acceptance at the time the BA is presented for payment. Similarly, the minimum requirements do not require the name(s) or interest(s) of the junior bank(s) to appear on the face of the acceptance.

(3) An eligible BA that is conveyed through a participation that does not satisfy these minimum requirements would continue to be included in the BA limits applicable to the senior bank. Further, an eligible BA conveyed to a covered bank through a participation that provided for additional rights and obligations among the parties would be excluded from the BESA limitations of the senior bank provided the minimum requirements were satisfied.

(4) A participation structured pursuant to these minimum requirements would be as follows: Upon the conveyance of the participation, the senior bank retains its entire obligation to pay the holder of the BA at maturity. The senior bank has a claim against the junior bank to the extent of the amount of the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance. Similarly, the junior bank has a corresponding claim against the account party to the extent of the amount of the participation that is enforceable in the event the account party fails to perform in accordance with the terms of the acceptance.

(d)(1) The Board is not requiring the senior bank and the account party specifically to agree that the senior bank's rights are assignable because the Board believes such rights to be assignable even in the absence of an explicit agreement.

(2) The junior and senior banks may contract among themselves as to which party(ies) have the responsibility for administering the arrangement, enforcing claims, or exercising remedies.

(e) The Board recognizes that both the junior bank's claim on the account party and the senior bank's claim on the junior bank involve risk. Therefore, it is essential that these risks be assessed by the banks involved in accordance with prudent and sound banking practices. The examiners will in the normal course of the examination process review the risk assessment procedures instituted by the banks. The junior bank should review the creditworthiness of each account party when the junior bank acquires a participation and the senior bank should review on an ongoing basis the creditworthiness of the junior bank. Junior bank agreement to rely exclusively upon the credit judgment of the senior bank and purchase on an ongoing basis from the senior bank all participations in BAs regardless of the identity of the account party is not appropriate in view of the risks involved. However, in those cases involving a participation between a parent bank and its Edge affiliate where the credit review for both entities is performed by the parent bank, the Edge Corporation should maintain documentation indicating that it concurs with the parent bank's analysis and that the acceptance participation is appropriate for inclusion in the Edge Corporation's portfolio.

(f) Similarly, the Board has determined that it is appropriate to include the risks incurred by the senior bank in assessing the senior bank's capital and the risks incurred by the junior bank in assessing the junior bank's capital.

(g) In view of this clarification of the issues relating to participations in BAs, the Board encourages the private sector to develop standardized forms for BAs and participations therein that clearly delineate the rights and responsibilities of the relevant parties.

By order of the Board of Governors, December 2, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-32753 Filed 12-27-83; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 304 and 349

Forms, Instructions, and Reports; Reports and Public Disclosure of Indebtedness of Executive Officers and Principal Shareholders to a State Nonmember Bank and Its Correspondent Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is amending Parts 304 and 349 of its regulations which require annual reports of ownership of insured State nonmember banks and insider indebtedness to insured State nonmember banks and their correspondent banks. The final rule implements the amendments to section 7(k) of the Federal Deposit Insurance Act ("FDI Act") and section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 ("BHCA Amendments") contained in sections 428 and 429 of the Garn-St Germain Depository Institutions Act of 1982 ("Garn-St Germain Act"). It reduces the existing reporting burden for banks and provides more meaningful information to the public. The final amendment requires an insured State nonmember bank to disclose, upon written request, the names of its executive officers and principal shareholders who (along with their related interests) have substantial borrowings from the bank or its correspondent banks. The reporting and

disclosure requirements of the regulation will apply to institutions, such as mutual savings banks, not previously subject to the reporting and disclosure provisions of section 7(k) of the FDI Act and section 106(b)(2) of the BHCA Amendments as they existed prior to amendment by the Garn-St Germain Act in 1982. The amendment also restates the existing statutory requirement which requires insiders to report to the board of directors of their bank any indebtedness to the correspondent banks of that bank.

DATE: Effective December 31, 1983.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Attorney, Legal Division (202/389-4171), or Bill C. Houston, Examination Specialist, Division of Bank Supervision (202/389-4765), Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Statutory Amendments

(a) *12 U.S.C. 1817(k).* The Garn-St Germain Depository Institutions Act of 1982 (Pub. L. No. 97-320, 96 Stat. 1469) ("Garn-St Germain Act" or "Act") amended, among other things, 12 U.S.C. 1817(k). This provision required each insured bank to make to the appropriate Federal banking agency an annual report which contained the following information with respect to the preceding calendar year:

(A) A list by name of each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of the bank.

(B) A list by name of each executive officer or stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of the bank and the aggregate amount of all extensions of credit by such bank during such year to: (i) such executive officers or stockholders of record, (ii) any company controlled by such executive officers, or stockholders, or (iii) any political or campaign committee the funds or services of which will benefit such executive officers or stockholders, or which is controlled by such executive officers or stockholders.

12 U.S.C. 1817(k)(1). The statute also provides that the bank or the agency shall make the information available, upon request, to the public. 12 U.S.C. 1817(k)(4). In implementing this provision, section 304.4 of the FDIC's regulations required insured State nonmember banks to file the information on or before March 31 of each year. 12 CFR 304.4 The information has been provided on Form FFIEC 003.

Section 429 of the Garn-St Germain Act deleted the language of 12 U.S.C. 1817(k) in its entirety. Instead, it authorized the appropriate Federal banking agencies to issue rules and regulations to require the reporting and public disclosure of information concerning insider indebtedness. However, the Act provided that the provisions of 1817(k) will remain in effect until such new regulations become effective.

(b) *12 U.S.C. 1972(2)(G).* The act also deleted subparagraphs (ii) and (iii) of 12 U.S.C. 1972(2)(G). Subparagraph (ii) required each insured bank to compile and send to its appropriate regulatory agency the following information regarding loans from correspondent banks to its insiders:

(1) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

(2) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

(3) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

(4) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

The information was based on reports which the executive officer or the stockholder in question must make to the board of directors pursuant to 12 U.S.C. 1972(2)(G)(i)* with Form FFIEC 004 being the recommended form for the reports.

The implementing Part of the FDIC's regulations required that the information be reported to the agency on or before March 31 each year. 12 CFR 349.

Subparagraph (iii) of 12 U.S.C. 1972(2)(G) required each insured bank to include in the report to be made under 12 U.S.C. 1817(k) the names of executive officers or principal shareholders who submit information required under 12 U.S.C. 1972(2)(G)(i) and the aggregate amount of loans by correspondent banks to such insiders or to companies controlled by them, or to political or campaign committees benefiting, or controlled by, such insiders.

In deleting subparagraphs (ii) and (iii), section 428 of the Garn-St Germain Act authorized the appropriate Federal banking agencies to issue rules and regulations to require a bank or the executive officers or principal shareholders to report and make public information regarding loans by correspondent banks to such insiders or their related interests. Again, the Act provides that the existing requirements remain in effect until the new regulations become effective.

FFIEC Action

On June 29, 1983, the Federal Financial Institutions Examination Council ("FFIEC" or "Council") announced its approval of the new Commercial Bank Report of Condition and Income that is to become effective with the filing of the March 31, 1984 reports. In this context, the Council decided to take the following action regarding the reporting and public disclosure of insider loans by commercial and mutual savings banks:

(1) Eliminate the requirement that banks annually file Form FFIEC 003, "Report on Ownership of the Reporting Bank and Indebtedness of Its Executive Officers and Principal Shareholders to the Reporting Bank and to Its Correspondent Bank";

(2) Require banks to report quarterly, beginning with the December 31, 1983, Report of Condition, the total amount of extensions of credit by the reporting bank to all of its executive officers and principal shareholders and to their related interests, and the number of these persons having significant amounts of such loans outstanding;

(3) Continue to recommend to reporting banks that they use a specific FFIEC form to get information about the debts of their executive officers, principal shareholders, and their related interests to correspondent banks (Form FFIEC 004); and

(4) Recommend to the three Federal bank regulatory agencies that they adopt, by December 31, 1983, regulations requiring each bank to disclose publicly upon request the names of its executive officers and principal shareholders, or their related interests, who had certain extensions of credit outstanding from

* The Garn-St Germain Act did not affect the provisions of 12 U.S.C. 1972(2)(G)(i); thus, the insiders must continue to provide this information to the board of directors of their bank.

their own bank or from its correspondent banks that were five percent or more of the reporting bank's equity capital, or $500,000, whichever is less.

Pursuant to section 1006 of the Federal Financial Institutions Examination Council Act of 1978, 12 U.S.C. 3305, the Council's action regarding the reporting requirements is immediately effective.

FDIC Action

On October 26, 1983, the FDIC published for public comment a proposed rulemaking to implement the FFIEC's recommendation concerning the public disclosure of certain information about insider indebtedness (see 48 FR 49517).

The proposal required an insured State nonmember bank to disclose, upon written request, the names of executive officers and principal shareholders who had significant loans outstanding from either the bank itself or from its correspondents. In both categories, the triggering threshold was proposed to be five percent of the bank's capital stock and unimpaired surplus or $500,000, whichever is less. The list of the insiders who borrowed from the bank itself would reflect information as of the latest quarter; the disclosure of correspondent loans would contain information regarding loans outstanding at any time during the previous calendar year.

The proposed rule also would require insured State nonmember banks to respond to the request by letter within ten business days and to maintain a record of each disclosure request and the response thereto for a period of two years. The FDIC believes that such records are necessary to monitor compliance with the disclosure requirement, and to evaluate the public interest in such disclosure.

The FDIC received a total of only 25 comments. Of the comments received, 20 were opposed to the proposed rulemaking, and three were in favor of the rulemaking, while two commented on specific aspects of it without either supporting or opposing it. It should be noted, however, that one of the comments supporting the proposal was received from a major organization comprised of the vast majority of banks in the United States.

Eleven commenters stated that the disclosure constituted an invasion of the privacy of executive officers and principal shareholders. Seven of those making the latter comment also stated that they had no objection to banks reporting indebtedness falling within § 349.4(a) of the proposed rule solely to the appropriate Federal bank regulatory agency in confidence or to the retention of the existing reporting system in which insured State nonmember banks file Forms FFIEC 003 and 004 with the FDIC. Although the FDIC recognizes the concerns surrounding the privacy issue, it must be noted that Congress specifically authorized the Federal banking agencies to issue rules and regulations requiring the public disclosure of information concerning insider indebtedness. In addition, the Board of Directors of the Federal Deposit Insurance Corporation ("Board") favors public disclosure as a means of bringing about market discipline and notes that large transactions with insiders constitute a meaningful item of information that should be subject to disclosure.

Those commenting that FDIC should retain the current reporting and not bring about public disclosure of information concerning insider indebtedness have apparently failed to realize that, since the inception of 12 U.S.C. 1817(k) and 1972(2)(G) in 1978, the information provided on Form FFIEC 003 has been available to the public from banks and from the Federal banking agencies pursuant to 12 U.S.C. 1817(k)(4). As a result of the amendment, the names of executive officers and principal shareholders and the aggregate outstanding indebtedness of such insiders and their related interests to a bank will no longer be publicly available from the Federal banking agencies. The actions and recommendations of the FFIEC, from which this amendment is derived, were designed to help reduce reporting burdens on banks, while at the same time making available to the supervisory agencies and the public the kinds of information on insider loans that Congress has called for. Based on the action of Congress, the FFIEC recommendation, and the FDIC's support of public disclosure, the Board chooses to go forward with this final amendment despite the comments opposing it.

Six commenters objected to the proposal on the basis that the members of the public could not make useful evaluations based on the disclosure of a name without any additional information or that the mere disclosure of such a name may bring about an unfounded perception that the indebtedness involved constitutes a threat to the safety and soundness of the bank. Several commenters noted that a bank should be permitted to disclose additional information that could possibly provide some perspective about the nature of the indebtedness. In response to this concern, the FDIC is removing the language of § 349.4(b)(1) of the proposal which specifically prohibits a bank from disclosing information regarding the amount of indebtedness and is inserting new language stating that a bank is not required to disclose additional information regarding the indebtedness. The new language will not require the disclosure of any additional information but will permit banks to provide additional information to the requester if they so choose.

Three commenters said the proposal would discriminate against small banks by requiring the disclosure of loans at small banks that would not be subject to disclosure at larger banks. The Board does not believe that the proposal is discriminatory against small banks because the relationship of the size of a loan to a bank's capital is the same regardless of a bank's size. However, the Board has accepted the suggestion of one commenter that the names of insiders whose aggregate indebtedness is under $25,000 should not be subject to mandatory disclosure. This change also provides consistency with § 215.4(b) of Federal Reserve Board Regulation O (12 CFR 215.4(b)), which requires prior approval by a bank's board of directors for an extension of credit in excess of the higher of either $25,000 or 5% of the bank's capital and unimpaired surplus, or $500,000.

Three commenters felt that the proposal would place an unnecessary burden on banks in terms of recordkeeping, training of employees, and associated expenses. In response to those comments, the Board reiterates the statement it made when the proposal was issued that:

> The disclosure would not place unnecessary or additional burdens on insured State nonmember banks, as the data required for it is readily available from records used to prepare the newly required item in the quarterly Reports of Condition (Call Reports) concerning insider loans at the reporting bank and from information submitted by the insiders on Form FFIEC 004.

Two commenters suggested that the proposal would make it difficult for a bank to attract well-qualified local people as directors. It must be emphasized, however, that the names of directors who are not also executive officers or principal shareholders are not subject to disclosure. Four commenters applied the same argument to a bank's ability to obtain executive management and to attract capital. The Board does not believe that the amendment will inhibit investment in banks or impair a bank's ability to obtain executive management. Principal shareholders and executive officers have motivations for being associated with banks that would

override the disclosure of their names when the specified levels of indebtedness are reached.

One commenter criticized the proposal as inequitable for applying only to commercial banks. The observation is unfounded. The proposal applied to all insured State nonmember banks insofar as borrowing from an insider's own bank is concerned. State nonmember banks include trust companies, savings banks, mutual savings banks, and industrial banks. Insofar as borrowing from correspondent banks is concerned, insiders of banks that accept demand deposits *and* make commercial loans and insiders of mutual savings banks are subject to the disclosure requirements. Those banks which must make the disclosure remain unchanged from the proposal.

Finally, one commenter felt that information should only be disclosed to a requester who had some business relationship to a bank such as depositor or shareholder. Congress clearly did not intend such restrictions when it used the term "*public* disclosure" in the enabling legislation. The Board therefore rejects this suggestion.

In addition to the changes to the proposal brought about by the comments, the Board is changing the definition of "capital stock and unimpaired surplus" from that found in the proposal to incorporate the definition found in § 215.2(f) of Federal Reserve Board Regulation O (12 CFR 215.2(f)) in order to bring about consistency with the definition applicable to national banking associations and State member banks. The new definition will also provide consistency with the incorporation of the Federal Reserve Board's definition of "capital stock and unimpaired surplus" made in § 337.3 of the FDIC's regulations (12 CFR 337.3), which deals with prior board of director approval of insider debt.

The Board is also deleting the language of the proposal requiring that banks respond to a request by letter within ten business days. This change provides consistency with the rules on the same subject being issued virtually simultaneously by the Office of the Comptroller to the Currency and the Board of Governors of the Federal Reserve System.

With the foregoing changes in mind, the final amendment operates as follows. An insured State nonmember bank is required to disclose, upon written request, the names of such insiders who had significant loans outstanding from either the bank itself or from its correspondents. In both categories, the triggering threshold is five percent of the bank's capital stock and unimpaired surplus or $500,000, whichever is less, but in no event shall disclosure be required when the indebtedness is in an amount less than $25,000. The list of the insiders who borrowed from the bank itself reflects information as of the latest quarter; the disclosure of correspondent loans would contain information regarding loans outstanding at any time during the previous calendar year. The bank is not required to disclose any additional information concerning the indebtedness. The rule also requires insured State nonmember banks to maintain a record of each disclosure request and the disposition thereof for a period of two years.

Several deletions in the FDIC regulations are required as a result of the FFIEC's decision to eliminate Form FFIEC 003. Paragraph (y) of section 304.3, which summarizes the format of Form FFIEC 003 and states when the report is due each year, is deleted along with section 304.4, which prescribes the contents of the form. Paragraph (z) of section 304.3 is redesignated as paragraph (y). In addition, Part 349 has been partially rewritten generally to reflect the FFIEC recommendations and to delete section 349.4 because it requires the reporting of certain information on insider indebtedness to correspondent banks to be included in Form FFIEC 003.

To dispel any ambiguity regarding reporting requirements, the regulation also restates the remaining statutory requirement under 12 U.S.C. 1972(2)(G)(i). As discussed above, this provision requires executive officers and principal shareholders of a bank to make an annual report to the bank's board of directors regarding the amounts and terms of loans granted to them by correspondent banks.

The Board has determined that good cause exists for waiving the thirty-day deferral of the amendment's effective date for the following reasons. First, the FFIEC recommended that the regulation become effective on December 31, 1983. Second, § 304.4, which requires the filing of FFIEC Form 003, remains in effect until this amendment becomes final despite the FFIEC's action to eliminate the form. Form 003 is based upon certain information as of December 31 of each year. If the requirement that the form be filed is still in effect when this regulation becomes final, some banks might needlessly file the form which duplicates certain information that must be filed beginning with the December 31, 1983 Report of Condition. The Board wishes to avoid any needless duplication or expenditure. The amendment is therefore final effective December 31, 1983.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board, in proposing the amendment, certified that the proposal would not have a significant economic impact on a substantial number of small entities. The Board based its conclusion, in part, on the belief that the proposed amendments, together with the FFIEC actions, would ease the existing reporting regulations. The Board also indicated that the effect of the amendments is expected to be beneficial rather than adverse, and that small entities are generally expected to share the benefits of the amendments equally with larger institutions. The Board, in approving the final amendments, reiterates those conclusions.

Paperwork Reduction Act

The collection of information requirements contained in the rule have been cleared by the Office of Management and Budget. The rule has been assigned OMB Control No. 3064–0023.

List of Subjects

12 CFR Part 304

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Federal Deposit Insurance Corporation, Foreign banks, banking, Reporting and recordkeeping requirements.

12 CFR Part 349

Banks, banking, Credit, Federal Deposit Insurance Corporation, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FDIC hereby amends 12 CFR Parts 304 and 349 as follows:

PART 304—FORMS, INSTRUCTIONS, AND REPORTS

1. The authority citation for Part 304 reads as follows:

Authority: 12 U.S.C. 1819.

§ 304.4 [Removed]

2. Part 304 is amended by removing § 304.4.

§ 304.3 [Amended]

3. Section 304.3 is amended by removing paragraph (y) and by redesignating paragraph (z) as paragraph (y).

4. 12 CFR Part 349 is revised to read as follows:

PART 349—REPORTS AND PUBLIC DISCLOSURE OF INDEBTEDNESS OF EXECUTIVE OFFICERS AND PRINCIPAL SHAREHOLDERS TO A STATE NONMEMBER BANK AND ITS CORRESPONDENT BANKS

Sec.

Authority: Sec. 2 [9 "Seventh" and "Tenth"], Pub. L. No. 797, 64 State. 881, as amended by sec. 309, Pub. L. No. 95-630, 92 Stat. 3677 (12 U.S.C. 1819 "Seventh" and "Tenth"); secs. 428(b) and 429, Pub. L. No. 97-320, 96 Stat. 1526, 1527.

§ 349.1 Purpose and scope.

Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) ("BHCA Amendments") prohibits (1) preferential lending by a bank to executive officers, directors, and principal shareholders of another bank when there is a correspondent account relationship between the banks, or (2) the opening of a correspondent account relationship between banks when there is a preferential extension of credit by one of the banks to an executive officer, director, or principal shareholder of the other bank. Section 106(b)(2) also imposes requirements on executive officers and principal shareholders to submit reports on their indebtedness to correspondent banks to the board of directors of their bank.

Section 7(k) of the Federal Deposit Insurance Act (12 U.S.C. 1817(k)) and section 106(b)(2)(G)(ii) of the BHCA Amendments (12 U.S.C. 1972(2)(G)(ii)) authorize the Federal banking agencies to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or an executive officer or principal shareholder thereof concerning extensions of credit by the bank or its correspondent banks to any of the reporting bank's executive officers or principal shareholders, or the related interests of such persons. This Part 349 implements the authorization of the latter sections to require such reporting and disclosure by insured State nonmember banks and their executive officers and principal shareholders.

§ 349.2 Definitions.

For the purposes of the reporting and disclosure requirements of this Part 349, the following definitions apply:

(a) "Bank" has the meanings provided in (1) 12 U.S.C. 1841(c), and includes a branch or agency of a foreign bank, or a commercial lending company controlled by a foreign bank or by a company that controls a foreign bank, where the branch or agency is maintained in a State of the United States or in the District of Columbia or the commercial lending company is organized under State law, and (2) 12 U.S.C. 1972(2)(H)(i). Notwithstanding the foregoing, with respect to disclosures made pursuant to paragraph (a)(1) of section 349.4 and with respect to copies of requests maintained pursuant to paragraph (c) of section 349.4, "bank" shall mean "State nonmember bank" as defined in 12 U.S.C. 1813(b), including a "mutual savings bank" as defined in 12 U.S.C. 1813(f).

(b) "Capital stock and unimpaired surplus" shall have the meaning provided in § 215.2(f) of Federal Reserve Board Regulation O, subpart A (12 CFR 215.2(f)). Notwithstanding the foregoing, with respect to "mutual savings banks," the term "total equity capital" found in 12 CFR 215.2(f) shall mean "total surplus accounts."

(c) "Company," "control of a company or bank," "executive officer,"[1] "extension of credit," "immediate family," and "person" have the meanings provided in § 215.2 and § 215.3 of subpart A of Federal Reserve Board Regulation O (12 CFR 215.2 and 215.3). All references to the term "member bank" in § 215.2 and § 215.3 shall be deemed to refer to an insured State nonmember bank for the purposes of this Part 349.

(d) "Correspondent account" is an account that is maintained by an insured State nonmember bank with another bank for the deposit or placement of funds. A correspondent account does not include:

(1) Time deposits at prevailing market rates; or

(2) An account maintained in the ordinary course of business solely for the purpose of effecting Federal funds transactions at prevailing market rates or making Eurodollar placements at prevailing market rates.

(e) "Correspondent bank" means a bank that maintains one or more correspondent accounts for an insured State nonmember bank during a calendar year that in the aggregate exceed an average daily balance during that year of $100,000 or one-half of one percent of the insured State nonmember bank's total deposits (as reported in its first Consolidated Report of Condition during that calendar year), whichever amount is smaller.

(f) "Indebtedness" means an extension of credit, but does not include:

(1) Commercial paper, bonds, debentures and other types of marketable securities issued in the ordinary course of business; or

(2) Consumer credit (as defined in 12 CFR 226.2(p) in an aggregate amount of $5,000 or less from each of the insured State nonmember bank's correspondent banks, provided the indebtedness is incurred under terms that are not more favorable than those offered to the general public.

(g) "Maximum amount of indebtedness" means, at the option of the reporting person, either (i) the highest outstanding indebtedness during the calendar year for which the report is made, (or (ii) the highest end of the month indebtedness outstanding during the calendar year for which the report is made.

(h) For the purpose of this Part 349, "principal shareholder" and "related interest" have the meanings provided in § 215.10(a) of Federal Reserve Board Regulation O, subpart A (12 CFR 215.10(a)), except that the term "principal shareholder" is synonymous with the term "stockholder of record" as that term is used in the reporting provisions of 12 U.S.C. 1972(2)(G)(i). All references to the term "member bank" in § 215.10(a) shall be deemed to refer to an insured State nonmember bank for the purposes of this Part 349.

§ 349.3 Reports by executive officers and principal shareholders.

(a) *Annual report.* If during any calendar year an executive officer or principal shareholder of an insured State nonmember bank or a related interest of such a person has outstanding an extension of credit from a correspondent bank, the executive officer or principal shareholder must make a written report to the board of directors of the insured State nonmember bank on or before January 31 of the following year.[2]

(b) *Contents of report.* The report required by this section shall include the following information:

[1] For the purposes of this Part 349, executive officers of an insured State nonmember bank do not include an executive officer of a bank holding company of which such bank is a subsidiary or of any other subsidiary of the bank holding company, unless the executive officer is also an executive officer of the insured State nonmember bank.

[2] Persons reporting under this section are not required to include information on extensions of credit that are fully described in a report by a person they control or a person that controls them, provided they identify their relationship with such other person.

(1) The maximum amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests to each of the insured State nonmember bank's correspondent banks during the calendar year; and

(2) The amount of indebtedness of the executive officer or principal shareholder and of each of that person's related interests outstanding to each of the insured State nonmember bank's correspondent banks not more than ten business days before the report required by this section is filed; [3] and

(3) A description of the terms and conditions (including the range of interest rates, the original amount and date, maturity date, payment terms, security, if any, and any other unusual terms or conditions) of each extension of credit included in the indebtedness reported under paragraph (b)(1) of this section.

(c) *Retention of reports.* The reports required by this section must ordinarily be retained at the insured State nonmember bank for a period of three years, but the Federal Deposit Insurance Corporation may require that they be retained by the bank for an additional period of time. The reports filed under this section are not required by this regulation to be made available to the public and shall not be filed with the Federal Deposit Insurance Corporation unless specifically requested.

(d) *Bank's responsibility.* Each insured State nonmember bank shall advise each of its executive officers and each of its principal shareholders (to the extent known by the bank) of the reports required by this section and make available to each of these persons a list with the name and address of each of the insured State nonmember bank's correspondent banks.

§ 349.4 Disclosure of indebtedness of executive officers and principal shareholders.

(a) Upon receipt of a written request, an insured State nonmember bank shall disclose to the requester the name of each executive officer or principal shareholder of the bank whose aggregate indebtedness, including the indebtedness of related interests of such person, (1) at the bank itself as of the end of the latest calendar quarter; or (2) at the correspondent banks of the disclosing bank at any time during the previous calendar year equals or exceeds the lesser of five percent (5%) of the disclosing bank's capital stock and unimpaired surplus or $500,000, but in no event shall an insured State nonmember bank be required to make such disclosure where the aggregate indebtedness of an executive officer or principal shareholder is less than $25,000.

(b) *Contents of disclosure.* (1) An insured State nonmember bank is not required to disclose any additional information concerning the indebtedness referred to in paragraph (a), except that it must observe the requirement of subparagraph (2) below.

(2) Disclosures made pursuant to paragraph (a) shall specify whether the individual or individuals named in the disclosure, who are indebted in the amount specified in paragraph (a), are indebted solely to the bank itself or to one or more correspondent banks of the reporting bank or to both.

(c) An insured State nonmember bank shall maintain a copy of any request for information made under paragraph (a) of this section and a record of the bank's disposition of such request for a period of two years.

(d) *OMB review.* The Office of Management and Budget has reviewed and approved the collection of information requirements contained in this Part 349.

(OMB Control No. 3064–0023).

By Order of the Board of Directors.

Dated: December 19, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

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BILLING CODE 6714-01-M

[3] If the amount of indebtedness outstanding to a correspondent bank ten days before the filing of the report is not available or cannot be readily ascertained, an estimate of the amount of indebtedness may be filed with the report, provided that the report is supplemented within the next 30 days with the actual amount of indebtedness.

CIVIL AERONAUTICS BOARD

14 CFR Part 223

[Economic Reg., Reissuance of Part 223 Docket 41193; ER-1371]

Free and Reduced-Rate Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule

SUMMARY: The CAB reorganizes and revises its rule that allows airlines to charge less than tariff rates in specified situations. This action is taken in light of recent regulatory changes, and because the tariff requirement for domestic travel expired on January 1, 1983.

DATES: Adopted: December 8, 1983. Effective: January 27, 1984.

FOR FURTHER INFORMATION CONTACT: David Schaffer, Office of General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: By EDR–452, 48 FR 2385, January 19, 1983, the Board proposed to revise and reissue its rule at 14 CFR Part 223 on *Free and Reduced-Rate Transportation.* Part 223 was originally adopted when the Board strictly controlled air fares through the tariff system under section 403 of the Federal Aviation Act, 49 U.S.C. 1373. Under this system, no airline could charge less than its tariff rate for air transportation unless it was granted an exemption by the Board. Most of the general exemptions that the Board had granted allowing airlines to provide transportation free or at below-tariff rates were contained in Part 223.

As a result of statutory and regulatory changes described in EDR–452, much of Part 223 became obsolete. Airlines were no longer required to file tariffs for air transportation within the United States and were thus able to charge any fare for such transportation or offer it for free. The exemptions in Part 223 allowing free or reduced-rate transportation for travel within the United States were no longer necessary. The situation was different with respect to international travel. The requirement that tariffs be filed and adhered to remained. The Part 223 exemptions therefore were still important for such travel.

Under the revision proposed by EDR–452, Part 223 would contain three subparts. Subpart A would contain definitions and general provisions. Subpart B would contain one section simply stating that airlines could charge any fare for transportation within the United States and to its overseas territories and possessions. Subpart C would contain the exemptions allowing free and reduced-rate foreign air transportation. These were similar to the exemptions in the then existing Part 223, but had been revised and consolidated to remove overlap and redundancy, and to ease restrictions that no longer seemed necessary.

Comments on EDR–452 were filed by one U.S. airline, three foreign airlines, two airline organizations, and several individuals. All generally supported the Board's action, although some suggested changes in specific sections of the rule. For the reasons stated in EDR–452, the Board is adopting the revised Part 223 as proposed, except for the changes described below.

Definition of "Retired"

For the purpose of rules on free and reduced rate air transportation, there are two types of retired persons: retired airlines employees and retired members of the general public. EDR–452 proposed to continue the eligibility of both groups for reduced fares (§§ 223.21(b) and 223.22(a)) but proposed only one definition to cover both groups. That definition, in § 223.1, defined a retired person as one who is "not regularly working at a full-time job, and not intending to do so in the future."

D. D. Taylor and Patrick Connelly pointed out that this definition made sense only with respect to retired members of the general public, not with respect to retired airline employees. Many airline employees continue to work at other jobs after retiring from their airline.

The Board agrees that the definition should be revised to take account of the distinction between retired airline employees and retired members of the general public. As revised, retired airline employees will be eligible for free and reduced-rate transportation if they are receiving retirement benefits from any airline, even if they are still working for another company or intend to do so in the future. This is the standard for retired airline employees in section 403(b)(1) of the Act, so the additional definition in this rule represents no real change. The proposed definition of "retired" will continue to apply to other retired persons.

The authorization and exemption for free and reduced-rate transportation to retired persons is permissive in nature. Airlines retain the discretion to refuse to offer such transportation or to limit it to certain subgroups of retired persons as long as the limitation does not violate established national anti-discrimination policy. PS–93, 45 FR 36058, May 29, 1980. We find this approach to be the most consistent with the Board's mandate under the Airline Deregulation Act (Pub. L. 95–504), and in the public interest.

Transferring Passes

Airlines typically authorize free and reduced-rate transportation by issuing some sort of pass. Proposed § 223.4 would give airlines the discretion to allow the recipient of that pass to sell or give it to any other person. This would apply only to free and reduced-rate passes and not to regular airline tickets. The International Air Transport Association (IATA), Air France, and Air India opposed this provision. They cited several problems, such as the possibility of fraudulent tickets sales and the inability to meet passenger indentification or other governmental requirements, that might arise if free or reduced-rate travel passes were freely transferable.

The purpose of § 223.4 was not to force or even encourage airlines to permit free travel passes to be transferred. The purpose was merely to remove any CAB-imposed restrictions on such transfers. Airlines concerned about the problems listed above may impose restrictions of their own, or prohibit the transfer of these passes entirely. Section 223.4 has been revised to make this clear. The Board therefore considers the fears of these commenters about this section to be without foundation.

It is not true, as Air India contended, that § 223.4 represents a change in Board policy in this area. As stated in EDR–452, the Board has allowed the transfer of free travel passes in the context of the "for goods or services" exemption in § 223.22(d) (formerly § 223.2(k)) for several years. Indeed, the first indication that the Board would not prohibit such transactions came in response to a letter from Air India. (The August 9, 1980 letter from the Board's Associate General Counsel, Rules & Legislation to counsel for Air India as summarized in Order 81–1–107 at p. 5.) Section 223.4 merely broadens that permission to cover passes issued under other free and reduced-rate exemptions. None of the commenters cited any actual problems that have been caused by this prior permission. In light of that, there seems to be no reason to limit it to passes received under § 223.22(d).

The Air Transport Association (ATA) and Trans World Airlines (TWA) did not object to the permission to transfer passes, but were concerned about the Board's characterization of those passes in § 223.22(d) as compensation or fringe benefits. In an earlier ruling on this issue (ER–1296, 47 FR 30236, July 13, 1982), the Board had stated that free passes given to airline employees in return for services or as a fringe benefit could be passed on or directed to an unrelated third person. ATA stated that free and reduced-rate transportation is provided to employees gratuitously and not as compensation for services or as fringe benefits. It urged the Board to remove the reference to fringe benefits in § 223.22(d).

The Board's purpose in issuing ER–1269 was to remove regulatory impediments to the transfer of airline employee passes. It was not the Board's intention to take any position on the tax-related issue of whether these passes are gifts or taxable fringe benefits. In light of the adoption of § 223.4, however, the amendments of ER–1269 are no longer necessary to accomplish the Board's original purpose. They are therefore being eliminated as ATA requested. This action will not affect an airline employee's ability to transfer a free travel pass or to direct that pass to an unrelated third person. Airline employees may receive free and reduced-rate transportation under § 223.22(a) and, if the granting airline permits, give that pass to another person under § 223.4.

Specific Exemptions

As explained in EDR–452, the "sunset" of domestic tariffs makes the concept of free and reduced-rate transportation meaningless with respect to interstate and overseas air transportation. Airlines are now free to offer such transportation to any group for any price, or for free. Foreign air transportation, however, remains subject to the tariff requirement of section 403 of the Act. Thus, the Board's rule must continue to list those groups eligible for free or reduced-rate foreign air transportation. They are set forth in Subpart C of Part 223.

Section 223.22(e) allows airlines to provide free or reduced-rate transportation to persons engaged in promoting transportation when such transportation is undertaken for a promotional purpose. When it adopted this provision, the Board stated that government officials involved in promoting transportation would be eligible for free and reduced rates under it. ER–1181, at 8, 45 FR 46797, July 11, 1980. Some questions were raised about this issue in that rulemaking, so the Board, in EDR–452, specifically requested comments on it. TWA stated that it favored the inclusion of government officials under the promotional travel exemption. In TWA's view, it was more consistent with deregulation to allow the carriers to decide whether to offer free or reduced-rate air travel to government officials that promote transportation. No contrary comments were received. The Board is therefore adopting § 223.22(e) as proposed without an exclusion of government officials. This should not, of course, be taken as overriding any internal government rules that forbid such officials from accepting free trips.

Section 223.22(j) allows airlines to provide free or reduced-rate transportation to persons in an aviation-related occupation when the transportation is provided for the purpose of technical in-flight observation. In EDR–452 the Board explained that this provision would permit Department of Defense air traffic

controllers to participate in air carrier familarization flights in the same manner as their FAA counterparts. Several DOD controllers wrote letters favoring this provision and no comments were received opposing it. Section 223.22(j) is therefore adopted as proposed.

Section 223.22(f) allows airlines to provide free or reduced-rate transportation to persons being transported on an inaugural flight. An inaugural flight is a flight on an aircraft type that is being introduced by a carrier for the first time on a route. Qantas Airways asked that this provision be expanded to include delivery flights. It defined a delivery flight as "a flight from a point in the United States where it has taken delivery of a newly manufactured aircraft to a point or points in the carrier's route system between the United States and the country of the carrier's principal place of business."

The Board agrees with Qantas that "inaugural" and "delivery" flights may be treated similarly for the purposes of free and reduced-rate transportation. The benefit of allowing a carrier to promote its services on a special occasion is present in both cases. Section 223.22(f) has been revised accordingly. This delivery flight exemption is only an exemption from section 403 of the Act to provide free foreign air transportation. It does not permit a foreign air carrier to carry persons between points in the United States. For that, a foreign carrier would still have to obtain permission under section 1108(b) of the Act and § 375.70 of the Board's rules. In addition, only free, and not reduced-rate, travel will be allowed on delivery flights, to prevent a foreign carrier from providing commercial service on a route in foreign air transportation for which it lacks authority. The issue of free transportation on delivery flights may be reviewed in an upcoming review of Part 375 of the Board's rules.

Although it was not raised by commenters in this rulemaking, it has been asked, in other proceedings, whether air transportation can be given to charities to be used in their fund-raising efforts. This is clearly permitted under the rule adopted here. Carriers can give free travel passes to a charity under § 223.22(i). The charity can then use them for its own personnel, or raffle or give them to contributors under § 223.4. The same principle applies to TV radio shows that wish to offer free travel prizes. A carrier can give a free travel pass to a broadcast station in return for promotional considerations under § 223.22(d). The station can then use the pass itself or give it to a game show participant, viewer, or listener under § 223.4.

Reporting Requirements

The Board stated in EDR-452 that it intended to eliminate most of the reporting and recordkeeping requirements in the current Part 223. D. D. Taylor and Patrick Connelly objected to the elimination of the reporting requirement of current § 223.6. This section requires airlines to file three copies of their rules on free and reduced-rate transportation with the Board. They argued that the Board should continue to require this filing, to prevent abuses in the granting of free and reduced-rate transportation privileges and to give the public access to carrier rules in this area.

The Board agrees that access by it and the public to carrier rules on the granting of free and reduced-rate travel benefits remains important. The Board, through the tariff system and more recently by its rules requiring notice of the conditions of carriage (14 CFR Part 253), has ensured that the public has access to carrier rules on the provision of air transportation where payment is required. It seems equally important to continue to require airlines to make available similar rules with respect to free transportation.

Maintenance of, and Board access to, carrier rules in this area will also help prevent abuses in the provision of free and reduced-rate foreign air transportation. For the same reason, the Board is retaining the requirement formerly in § 223.7 that carriers keep a list of affiliates. Employees of non-airline companies are eligible for free and reduced-rate foreign air transportation if that company is an affiliate of an airline. § 223.22(a). Maintenance and Board access to this list will help to ensure that free travel benefits go only to eligible employees.

The provisions described above do not require airlines to file their rules or list of affiliates with the Board, as is currently required. It will be sufficient for them to maintain these items at their principal offices and to send them to the Board, upon request, or to anyone else upon the payment of a reasonable fee.

Mr. Connelly also asked that the Board retain § 223.5. This section required airlines to maintain a record of all free and reduced-rate passes it issued. It was eliminated, however, by ER-1219, 46 FR 25418, May 6, 1981, more than a year before the commencement of this proceeding. It is therefore beyond the scope of this rulemaking and, for the reasons stated in ER-1219 and its companion rule, ER-1214, 46 FR 25414, May 6, 1981, will not be revived here.

Other Issues

Proposed § 223.3 would require carriers to provide free transportation in certain circumstances. This differs from other sections in Part 223 which merely permit carriers to provide free travel. Section 223.3 consolidated several mandatory free transportation provisions that had previously been scattered throughout Part 223. IATA noted that these provisions had applied only to certificated (i.e., U.S.) air carriers. No change was intended in the coverage of the mandatory free transportation requirement by EDR-452. Section 223.3 has therefore been revised here so that it applies only to U.S. air carriers.

Section 223.21(b) of the Board's rule allows airlines to offer reduced fares to ministers, retirees, the elderly, and the handicapped and their attendants on a space-available basis. The limitation to a space-available basis was imposed by section 403(b)(1) of the Act. The Board by Order 79-8-49, August 8, 1979, however, eliminated this limitation. Section 223.21(b) has been revised to reflect this change.

Section 375.35 of the Board's rules also authorizes foreign air carriers to provide free transportation in certain circumstances. The Board is adding a cross-reference to this provision at the end of § 223.21(a). This will aid those who find it helpful to have references to all Board rules on free transportation in one CFR part.

Proposed § 223.25 would have authorized the Board to withdraw free or reduced-rate travel exemptions without a hearing. It is not adopted here because the issues raised by that provision are being considered in Docket 39794. There, the Board proposed to authorize the withdrawal from foreign air carriers of the exemption to carry travel agents free or at reduced rates.

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. It primarily codifies and reorganizes existing requirements and exemptions for certificated air carriers and foreign air carriers.

List of Subjects in 14 CFR Part 223

Air rates and charges, Handicapped, Travel agents.

Accordingly, the Board revises 14 CFR Part 223, *Free and Reduced-Rate*

Transportation, by reissuing it to read as follows:

PART 223—FREE AND REDUCED-RATE TRANSPORTATION

Subpart A—General Provisions

Subpart B—Domestic Travel

Subpart C—International Travel

Authority: Secs. 204, 403, 404, 405(j), 407, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 758, 760, 766, 771, 49 U.S.C. 1325, 1373, 1374, 1375, 1377, 1386, sec. 2 of the Postal Reorganization Act, 84 Stat. 767, 39 U.S.C. 5007.

Note: The reporting requirements contained in §§ 223.6 and 223.25 and the application requirement in § 223.23 have been approved by the Office of Management and Budget under number 3024-0002.

Subpart A—General Provisions

§ 223.1 Definitions.

As used in this part, unless the context otherwise requires:

An "affiliate" of a carrier means a person:

(a) Who controls that carrier, or is controlled by that carrier or by another person who controls or is controlled by that carrier; and

(b) Whose principal business in purpose or in fact is:

(1) The holding of stock in one or more carriers;

(2) Transportation by air or the sale of tickets therefor;

(3) The operation of one or more airports, one or more of which are used by that carrier or by another carrier who controls or is controlled by that carrier or that is under common control with that carrier by another person; or

(4) Activities related to the transportation by air conducted by that carrier or by another carrier that controls or is controlled by that carrier or which is under common control with that carrier by another person.

"Air carrier" means the holder of a certificate of public convenience and necessity issued by the Board under section 401 of the Act authorizing the carriage of persons.

"Attendant" means any person required by a handicapped person in order to travel, whether or not that person's services are required while the handicapped passenger is in an aircraft.

"Carrier" means:

(a) An air carrier;

(b) An all-cargo air carrier operating under section 401 or section 418 of the Act;

(c) A foreign air carrier;

(d) An intrastate carrier;

(e) An air taxi (including a commuter air carrier) operating under Parts 294 or 298 of this chapter; and

(f) Any person operating as a common carrier by air, or in the carriage of mail by air, or conducting transportation by air, in a foreign country.

"Control," as used in this section, means the beneficial ownership of more than 40 percent of outstanding capital stock unless, ownership of more than 40 percent of outstanding capital stock unless, in a specific case, the Board determines under section 408 of the Act that control does not exist. Control may be direct or by or through one or more intermediate subsidiaries likewise controlled or controlling through beneficial ownership of more than 40 percent of outstanding voting capital stock.

"Delivery flight" means a flight from a point in the United States where a carrier has taken delivery of a newly manufactured aircraft to any point or points on its route system.

"Foreign air carrier" means the holder of a permit issued by the Board under section 402 of the Act authorizing the carriage of persons.

"Free transportation" means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by that carrier) in air transportation without compensation therefor.

"Handicapped passenger" means any person who has a physical or mental impairment (other than drug addiction or alcoholism), that substantially limits one or more major life activities.

"Inaugural flight" means a flight on an aircraft type being introduced by a carrier for the first time on a route, even if that aircraft type has been used by that carrier on other routes or on that route by other carriers.

"Pass" means a written authorization, other than actual ticket stock, issued by a carrier for free or reduced-rate transportation of persons or property.

"Reduced-rate transportation" means the carriage by an air carrier or foreign air carrier of any person or property (other than property owned by such carrier) in air transportation for a compensation less than that specified in the tariffs of that carrier on file with the Board and otherwise applicable to such carriage.

"Retired" means:

(a) With respect to carrier directors, officers, and employees, persons receiving retirement benefits from any carrier;

(b) With respect to the general public, persons not regularly working at a full-time paying job, and not intending to do so in the future.

§ 223.2 Exemption from section 401 of the Act.

(a) Any all-cargo carrier is exempted from section 401 of the Act to the extent necessary to carry, for purposes of in-flight observation, technical representatives of companies that have been engaged in the manufacture, development, or testing of aircraft or aircraft equipment.

(b) Every carrier providing transportation under this section shall also comply with the applicable regulations of the Federal Aviation Administration such as regulations pertaining to admission of persons to the aircraft flight deck.

§ 223.3 Mandatory free transportation.

Every air carrier shall carry, without charge, on any aircraft that it operates, the following persons:

(a) Security guards who have been assigned to the duty of guarding such aircraft against unlawful seizure, sabotage or other unlawful interference, upon the exhibition of such credentials as may be prescribed by the Administrator of the Federal Aviation Administration;

(b) Safety inspectors of the National Transportation Safety Board or of the Federal Aviation Administration who have been assigned to the duty of inspecting during flight such aircraft or its equipment, route facilities, operational procedures, or airman competency upon the exhibition of credentials or a certificate from the agency involved in authorizing such transportation; and

(c) Postal employees on duty in charge of the mails or traveling to or from such duty, upon the exhibition of the credentials issued by the Postmaster General.

§ 223.4 Transferability of passes.

Any pass authorizing free or reduced-rate transportation issued by a carrier may be made transferable to the extent specified by the granting carrier.

§ 223.5 Responsibility of agencies.

The Federal Aviation Administration, National Transportation Safety Board, National Weather Service, and the Postal Service shall be responsible for the following:

(a) The issuance of any credentials or certificates to their personnel eligible for free or reduced-rate transportation under this part; and

(b) The promulgation of any internal rules that are necessary to obtain compliance by such personnel with this part.

§ 223.6 Carrier's rules.

(a) Each air carrier and foreign air carrier shall maintain at its principal office either a copy or all instructions to its employees and of all company rules governing its practice in connection with the issuance and interchange of free and reduced-rate transportation passes or a statement describing those practices.

(b) The rules or statement required by this section shall, at a minimum, include the following:

(1) The titles of its officials upon whose authorizations passes may be issued;

(2) The titles of other officials who are authorized by these officials to countersign passes on their behalf, and the extent of the authority granted to them; and

(3) The titles of persons who are authorized to request passes from other carriers.

(c) The rules, instructions, or statement required by this section shall be furnished to the Board upon request or to a member of the public upon payment of a reasonable charge for this service.

Subpart B—Domestic Travel

§ 223.11 Free and reduced-rate transportation permitted.

Air carriers may charge any rate or fare for interstate and overseas air transportation.

Subpart C—International Travel

§ 223.21 Free and reduced-rate transportation authorized by statute or regulation.

(a) Any air carrier or foreign air carrier may provide free or reduced-rate foreign air transportation to any classes of persons specifically named in section 403(b) of the Act or free transportation to those named in § 375.35 of this chapter.

(b) Air carriers and foreign air carriers may offer reduced fares for foreign air transportation to ministers of religion, the elderly, retired, and handicapped passengers, and to attendants required by handicapped passengers, but shall file tariffs for such fares. Carriers may establish reasonable tariff rules to assist in identifying those who qualify for reduced fares.

§ 223.22 Other persons to whom free and reduced-rate transportation may be furnished.

Air carriers and foreign air carriers are exempted from sections 403 and 404(b) of the Act and Part 221 of this chapter to the extent necessary to provide free or reduced-rate foreign air transportation, including passes, to the following:

(a) Directors, officers, employees, and retirees and members of their immediate families, of any carrier or of any affiliate of such carrier, subject to the requirements of § 223.25.

(b) Persons to whom the carrier is required to furnish such transportation by law or government directive or by a contract or agreement between the carrier and the government of any country served by the carrier. The Board may, without prior notice, direct the carrier to file a tariff covering such transportation if it finds that the law or government directive in question requires the provision of such transportation. This transportation may be provided only if:

(1) The contract or agreement is filed with the Board, and it is not disapproved by the Board; and

(2) The law or government directive does not require the furnishing of such transportation to the general public or any segment thereof.

(c) Technical representatives of companies that have been engaged in the manufacture, development or testing of a particular type of aircraft or aircraft equipment, when the transportation is provided for the purposes of in-flight observation, and subject to applicable regulations of the Federal Aviation Administration such as regulations pertaining to admission of persons to the aircraft flight deck.

(d) Any person in return for goods or services provided by such person whether the transportation is used by that person or any designee of such person;

(e) Persons engaged in promoting transportation and their immediate families, when such transportation is undertaken for a promotional purpose;

(f) Persons being transported on an inaugural flight or delivery flight of the carrier except that, in the case of delivery flights, this exemption extends only to free, and not reduced-rate, transportation;

(g) Any law-enforcement official, including any person who has the duty of guarding government officials traveling on official business against unlawful interference;

(h) As compensation to persons that file a complaint or claim against the carrier;

(i) Charitable organizations; and

(j) Any person in an aviation-related occupation when the transportation is provided for the purpose of technical in-flight observation.

§ 223.23 Applications for authority to carry other persons.

(a) Any air carrier or foreign air carrier desiring special authorization to provide free or reduced-rate foreign air transportation to persons to whom the carrier would not otherwise be authorized to furnish such transportation under the previous provisions of this part may apply to the Board, by letter or other writing, for such authorization.

(b) The application shall include the following information:

(1) The identity of the persons to whom the transportation is to be furnished;

(2) The points between which the transportation is to be furnished;

(3) The approximate time of departure; and

(4) The carrier's reasons for desiring to furnish such transportation.

(c) No transportation for which approval is required shall be furnished by the carrier until that approval is received by the carrier.

§ 223.24 Transportation of empty mail bags.

Any carrier authorized to engage in foreign air transportation may transport in foreign air transportation empty air mail bags from any country to the country of origin of such bags, free of charge, on a voluntary space-available basis.

§ 223.25 List of affiliates.

(a) Each carrier shall maintain at its principal office a list containing all of that carrier's affiliates, showing the exact relationship of each affiliate to the carrier.

(b) No pass may be issued under § 223.22(a) to a director, officer, employee, or members of their immediate family, of any affiliate, unless that affiliate is on the list required by paragraph (a) of this section.

(c) The list required by paragraph (a) of this section shall be furnished to the Board upon request.

Phyllis T. Kaylor,

Secretary.

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1051, 1052, 1105, 1109, 1110, and 1607

Amendment of Procedures for Petitions, for Developing Standards, and for Oral Presentations

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: In order to conform to the statutory provisions of the Consumer Product Safety Amendments of 1981, the Consumer Product Safety Commission is amending its procedures for petitions, for developing product safety standards, and for oral presentations.

DATE: The amendments will be effective on January 27, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Lemberg, Assistant General Counsel, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Amendments of 1981 (1981 Amendments) modified regulatory procedures existing within three laws administered by the Consumer Product Safety Commission. Pub. L. 97-35, Stat. 703 *et seq.* These three laws are the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA) and the Flammable Fabrics Act (FFA). 15 U.S.C. 2058, 1262, and 1193, as amended.

To conform its regulations to the statutory changes, the Commission proposed in June 1983 to amend its rulemaking procedures for the CPSA at 16 CFR Parts 1105, 1109 and 1110, and to revoke its procedures for rulemaking under the FFA, 16 CFR Part 1607. 48 FR 27763 (June 17, 1983). (Since rulemaking under the FHSA has not been specifically addressed in FHSA regulations, no amendment of FHSA regulations is needed.)

The Commission received no public comments on its June 1983 proposed amendments. Except for some editorial changes, the proposed amendments are therefore issued in final form below. For the convenience of readers, the remainder of this preamble will repeat the explanations of the amendments that accompanied the proposals.

Part 1105

Before enactment of the 1981 Amendments, section 7 of the CPSA (15 U.S.C. 2056) established procedures under which the Commission developed proposed consumer product safety standards. These procedures provided, among other matters, that outside persons or organizations (offerors) could offer to develop recommended standards for the Commission to consider and for possible issuance as the Commission's proposed standards; or, outside persons and organizations could submit already existing standards for consideration and possible proposal by the Commission. In addition, if the Commission determined that consumer product safety standards recommended by outsiders would not adequately protect the public from an unreasonable risk of injury, the Commission could develop its own proposed standards. The Commission could also develop its own proposed standard if it found it would be more expeditious than inviting offerors. Regulations implementing section 7 of the CPSA were issued at Part 1105.

However, the 1981 Amendments repealed the parts of section 7 of the CPSA that applied to offeror-submitted or Commission-developed consumer product safety standards. Therefore, it is now necessary to revoke those provisions of Part 1105 dealing with development of proposed consumer product safety standards. In place of these provisions, the 1981 Amendments provide that all consumer product safety rules of the Commission (i.e., consumer product safety standards or bans of hazardous products for which no safety standard is feasible) shall be issued under procedures set forth in section 9 of the CPSA (15 U.S.C. 2058).

The new procedures require that rulemaking begin by issuing an advance notice of proposed rulemaking describing the risk of injury and inviting industry efforts to develop voluntary standards that address the risk. If it appears likely that a voluntary industry standard could adequately address the risk and that conformance would be substantial, the Commission must terminate its mandatory rulemaking proceeeding. (See section 9 of the CPSA, 15 U.S.C 2058 for additional provisions, as well as section 3(f) of the FHSA (15 U.S.C. 1262(f)) and section 4(g) of the FFA (15 U.S.C. 1193(g)) for the administrative procedures for those Acts.)

A provision of section 7 of the CPSA under which the Commission may agree to contribute to the cost of a person who participates with the Commission in the development of a consumer product safety standard, was retained by the 1981 Amendments (section 7(c), formerly designate as section 7(d)(1), (15 U.S.C. 2056)). Accordingly, the proposed amended Part 1105, newly entitled, Contributions to Costs of Participants in Development of Consumer Product Safety Standards, retains provisions dealing with costs of participants.

Part 1109

This part provides rules for oral presentations by members of the public concerning proposed consumer product safety standards under the CPSA (Section 9(d)(2), 15 U.S.C. 2058(d)(2)). Since the Commission is also required to provide the opportunity for oral presentations under the FFA (Section 4(d), 15 U.S.C. 1193(d)), and since the opportunity for oral presentations is optional for rulemaking under the Administrative Procedure Act, 5 U.S.C. 553(c), the Commission is proposing to amend this Part, as set forth below, to provide the same rules for oral presentations by the public during any rulemaking proceedings. (This part will be recodified as 1052.) In addition, these rules will apply to informal proceedings under the authority of section 27(a) of the CPSA (15 U.S.C. 2076(a)). In those situations where the opportunity for an oral presentation is not required by statute, the Commission will determine whether to provide the opportunity on a case-by-case basis.

Part 1110

Former section 10 of the CPSA (15 U.S.C. 2059) contained provisions for petitioning the CPSC to initiate rulemaking proceedings for consumer product safety standards or for rules to ban hazardous products for which standards were not feasible. Commission regulations under Part 1110 implemented section 10. However, the 1981 Amendments repealed section 10 of the CPSA; accordingly, Part 1110 is being amended to revoke those petitioning procedures specifically applicable to secton 10.

Repeal of section 10 of the CPSA does not, however, repeal the right to petition the Commission concerning rulemaking proceedings. Any person may petition the Commission in accordance with the Administrative Procedure Act (5 U.S.C. 553(e)). Provisions of Part 1110 that provide general guidance on filing petitions to issue, amend or revoke Commission regulations under all of the Acts it administers are therefore retained. However, since these

regulations are now of general applicability rather than being applicable only to CPSA rules, they are being redesignated as Part 1051.

Part 1607

Flammability standards for fabrics, related materials or products have been issued under the FFA in accordance with procedures described in Part 1607. Since the 1981 Amendments substantially change these procedures, Part 1607 is being revoked and section 4 of the Flammable Fabrics Act, as amended, 15 U.S.C. 1193, shall control.

Impact on Small Business

The regulations issued below recodify, revoke, and revise, in accordance with statutory amendments, several rules of practice and procedure. When the Commission proposed these regulations, it stated that final rules based on them would impose no new obligation on any person or firm. Therefore, in accordance with section 603 of the Regulatory Flexibility Act (15 U.S.C. 603), the Commission certified that the rules will not have a significant economic impact on a substantial number of small entities.

Environmental Considerations

The regulations issued below do not fall within the category of Commission actions described in 16 CFR 1021.5(b) as having the potential of producing environmental effects. For this reason, and because these are rules of practice and procedure that are highly unlikely to produce an environmental effect, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

16 CFR Parts 1051, 1052, 1105, 1109, and 1110

Administrative practice and procedure, Consumer protection.

16 CFR Part 1607

Administrative practice and procedure, Clothing, Consumer protection, Flammable materials, Textiles.

Conclusion

Under authority of the Consumer Product Safety Act as amended in 1981 (Pub. L. 97-35, 95 Stat. 703 *et seq.*), the Administrative Procedure Act (5 U.S.C. 553), Chapter II of Title 16 of the Code of Federal Regulations is amended as follows:

1. Part 1105 is revised to read as follows:

PART 1105—CONTRIBUTIONS TO COSTS OF PARTICIPANTS IN DEVELOPMENT OF CONSUMER PRODUCT SAFETY STANDARDS

Sec.

Authority: Sec. 7(c), Pub. L. 97-35, 95 Stat. 704 (15 U.S.C. 2056(c)).

§ 1105.1 Purpose.

The purpose of this part is to describe the factors the Commission considers when determining whether or not to contribute to the cost of an individual, a group of individuals, a public or private organization or association, partnership or corporation (hereinafter "participant") who participates with the Commission in developing standards. The provisions of this part do not apply to and do not affect the Commission's ability and authority to contract with persons or groups outside the Commission to aid the Commission in developing proposed standards.

§ 1105.2 Factors.

The Commission may agree to contribute to the cost of a participant who participates with the Commission in developing a standard in any case in which the Commission determines:

(a) That a contribution is likely to result in a more satisfactory standard than would be developed without a contribution; and

(b) That the participant to whom a contribution is made is financially responsible.

§ 1105.3 A more satisfactory standard.

In considering whether a contribution is likely to result in a more satisfactory standard, the Commission shall consider:

(a) The need for representation of one or more particular interests, expertise, or points of view in the development proceeding; and

(b) The extent to which particular interests, points of view, or expertise can reasonably be expected to be represented if the Commission does not provide any financial contribution.

§ 1105.4 Eligibility.

In order to be eligible to receive a financial contribution, a participant must request in advance a specific contribution with an explanation as to why the contribution is likely to result in a more satisfactory standard than would be developed without a contribution. The request for a contribution shall contain, to the fullest extent possible and appropriate, the following information:

(a) A description of the point of view, interest and/or expertise that the participant intends to bring to the proceeding;

(b) The reason(s) that representation of the participant's interest, point of view, or expertise can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(c) An explanation of the economic interest, if any, that the participant has (and individuals or groups comprising the participant have) in any Commission determination related to the proceeding;

(d) A discussion, with supporting documentation, of the reason(s) a participant is unable to participate effectively in the proceeding without a financial contribution;

(e) A description of the participant's employment or organization, as appropriate; and

(f) A specific and itemized estimate of the costs for which the contribution is sought.

§ 1105.5 Applications.

Applications must be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, within the time specified by the Commission in its **Federal Register** notice beginning the development proceeding.

§ 1105.6 Criteria.

The Commission may authorize a financial contribution only for participants who meet all of the following criteria:

(a) The participant represents particular interest, expertise or point of view that can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding;

(b) The economic interest of the participant in any Commission determination related to the proceeding is small in comparison to the participant's costs of effective participation in the proceeding. If the participant consists of more than one individual or group, the economic interest of each of the individuals or

groups comprising the participant shall also be considered, if practicable and appropriate; and

(c) The participant does not have sufficient financial resources available for effective participation in the proceeding, in the absence of a financial contribution.

§ 1105.7 Limits on compensation.

The Commission may establish a limit on the total amount of financial compensation to be made to all participants in a particular proceeding and may establish a limit on the total amount of compensation to be made to any one participant in a particular proceeding.

§ 1105.8 Costs must be authorized and incurred.

The Commission shall compensate participants only for costs that have been authorized and only for such costs actually incurred for participation in a proceeding.

§ 1105.9 Itemized vouchers.

The participant shall be paid upon submission of an itemized voucher listing each item of expense. Each item of expense exceeding $15 must be substantiated by a copy of a receipt, invoice, or appropriate document evidencing the fact that the cost was incurred.

§ 1105.10 Reasonable costs.

The Commission shall compensate participants only for costs that it determines are reasonable. As guidelines in these determinations, the Commission shall consider market rates and rates normally paid by the Commission for comparable goods and services, as appropriate.

§ 1105.11 Compensable costs.

The Commission may compensate participants for any or all of the following costs:

(a) Salaries for participants or employees of participants;

(b) Fees for consultants, experts, contractural services, and attorneys that are incurred by participants;

(c) Transportation costs;

(d) Travel-related costs such as lodging, meals, tipping, telephone calls; and

(e) All other reasonable costs incurred, such as document reproduction, postage, baby-sitting, and the like.

§ 1105.12 Advance contributions.

The Commission may make its contribution in advance upon specific request, and the contribution may be made without regard to section 3648 of the Revised States of the United States (31 U.S.C. 529).

§ 1105.13 Noncompensable costs.

The items of cost toward which the Commission will not contribute include:

(a) Costs for the acquisition of any interest in land or buildings;

(b) Costs for the payment of items in excess of the participant's actual cost; and

(c) Costs determined not to be allowable under generally accepted accounting principles and practices or Part 1–15, Federal Procurement Regulations (41 CFR Part 1–15).

§ 1105.14 Audit and examination.

The Commission and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers and records of a participant receiving compensation under this section. The Commission may establish additional guidelines for accounting, recordkeeping, and other administrative procedures with which participants must comply as a condition of receiving a contribution.

2. Part 1109 is redesignated as Part 1052 and revised to read as follows:

PART 1052—PROCEDURAL REGULATIONS FOR INFORMAL ORAL PRESENTATIONS IN PROCEEDINGS BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

Sec.

Authority: 15 U.S.C. 1193(d), 15 U.S.C. 2058(d)(2), 15 U.S.C. 2076(a), and 5 U.S.C. 553(c).

§ 1052.1 Scope and purpose.

(a) Section 9(d)(2) of the Consumer Product Safety Act, 15 U.S.C. 2058(d)(2), and section 4(d) of the Flammable Fabrics Act, 15 U.S.C. 1193(d), provide that certain rules under those statutes shall be promulgated pursuant to section 4 of the Administrative Procedure Act, 5 U.S.C. 553, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views or arguments in addition to the opportunity to make written submissions. Several rulemaking provisions of the statutes administered by the Commission are subject only to the rulemaking procedures of the Administrative Procedure Act. Section 4(c) of the Administrative Procedure Act provides that the opportunity for oral presentations may or may not be granted in rulemaking under that section. In addition, section 27(a) of the Consumer Product Safety Act, 15 U.S.C. 2076(a), authorizes informal proceedings that can be conducted in non-rulemaking investigatory situations.

(b) This Part sets forth rules of procedure for the oral presentation of data, views or arguments in the informal rulemaking or investigatory situations described in subsection (a) of this section. In situations where the opportunity for an oral presentation is not required by statute, the Commission will determine whether to provide the opportunity on a case-by-case basis.

§ 1052.2 Notice of Opportunity for Oral Presentation.

The Commission will publish in the **Federal Register** notice of opportunity for an oral presentation in each instance. The notice shall be sufficiently in advance of the oral presentation to allow interested persons to participate. If the oral presentation involves a proposed rule, the notice of opportunity may be in the notice proposing the rule or in a later, separate **Federal Register** notice.

§ 1052.3 Conduct of oral presentation.

(a) The purpose of the oral presentation is to afford interested persons an opportunity to participate in person in the Commission's rulemaking or other proceedings and to help inform the Commission of relevant data, views and arguments.

(b) The oral presentation, which shall be taped or transcribed, shall be an informal, non-adversarial legislative-type proceeding at which there will be no formal pleadings or adverse parties.

(c) The proceedings for the oral presentation shall be conducted impartially, thoroughly, and expeditiously to allow interested persons an opportunity for oral presentation of data, views or arguments.

§ 1052.4 Presiding officer: appointment, duties, powers.

(a) For oral presentations, the presiding officer shall either be the Chairman of the Commission or a presiding officer shall be appointed by the Chairman with the concurrence of the Commission.

(b) The presiding officer shall chair the proceedings, shall make appropriate provision for testimony, comments and questions, and shall be responsible for the orderly conduct of the proceedings. The presiding officer shall have all the powers necessary or appropriate to contribute to the equitable and efficient

conduct of the oral proceedings including the following:

(1) The right to apportion the time of persons making presentations in an equitable manner in order to complete the presentations within the time period allotted for the proceedings.

(2) The right to terminate or shorten the presentation of any party when, in the view of the presiding officer, such presentation is repetitive or is not relevant to the purpose of the proceedings.

(3) The right to confine the presentations to the issues specified in the notice of oral proceeding or, where no issues are specified, to matters pertinent to the proposed rule or other proceeding.

(4) The right to require a single representative to present the views of two or more persons or groups who have the same or similar interests. The presiding officer shall have the authority to identify groups or persons with the same or similar interests in the proceedings.

(c) The presiding officer and Commission representatives shall have the right to question persons making an oral presentation as to their testimony and any other relevant matter.

3. Part 1110 is redesignated as Part 1051 and revised to read as follows:

PART 1051—PROCEDURE FOR PETITIONING FOR RULEMAKING

Sec.

Authority: 5 U.S.C. 553(e), 5 U.S.C. 555(e).

§ 1051.1 Scope.

(a) This part establishes procedures for the submission and disposition of petitions for the issuance, amendment or revocation of rules under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) or other statutes administered by the Consumer Product Safety Commission.

(b) Persons filing petitions for rulemaking shall follow as closely as possible the requirements and are encouraged to follow as closely as possible the recommendations for filing petitions under section 1051.5.

(c) Petitions regarding products regulated under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 *et seq.*) are governed by existing Commission procedures at 16 CFR 1500.82, 16 CFR 1500.201, and 21 CFR 2.65. Petitions regarding the exemption of products regulated under the Poison Prevention Packaging Act of 1970 (PPPA) (15 U.S.C. 1471 *et seq.*) are governed by existing Commission procedures at 16 CFR 1702. In addition, however, persons filing such petitions shall follow the requirements and are encouraged to follow the recommendations for filing petitions as set forth in § 1051.5.

§ 1051.2 General.

(a) Any person may file with the Commission a petition requesting the Commission to begin a proceeding to issue, amend or revoke a regulation under any of the statutes it administers.

(b) A petition which addresses a risk of injury associated with a product which could be eliminated or reduced to a sufficient extent by action taken under the Federal Hazardous Substances Act, the Poison Prevention Packaging Act of 1970, or the Flammable Fabrics Act may be considered by the Commission under those Acts. However, if the Commission finds by rule, in accordance with section 30(d) of the CPSA, as amended by Pub. L. 94–284, that it is in the public interest to regulate such risk of injury under the CPSA, it may do so. Upon determination by the Office of the General Counsel that a petition should be considered under one of these acts rather than the CPSA, the Office of the Secretary shall docket and process the petition under the appropriate act and inform the petitioner of this determination. Such docketing, however, shall not preclude the Commission from proceeding to regulate the product under the CPSA after making the necessary findings.

§ 1051.3 Place of filing.

A petition should be mailed to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Persons wishing to file a petition in person may do so in the Office of the Secretary, at either, 5401 Westbard Avenue, (third floor) Bethesda, Maryland or 1111 18th Street, NW, (eighth floor), Washington, D.C.

§ 1051.4 Time of filing.

For purposes of computing time periods under this part, a petition shall be considered filed when time-date stamped by the Office of the Secretary. A document is time-date stamped when it is received in the Office of the Secretary.

§ 1051.5 Requirements and recommendations for petitions.

(a) *Requirements.* To be considered a petition under this part, any request to issue, amend or revoke a rule shall meet the requirements of this paragraph (a). A petition shall:

(1) Be written in the English language;

(2) Contain the name and address of the petitioner;

(3) Indicate the product (or products) regulated under the Consumer Product Safety Act or other statute the Commission administers for which a rule is sought or for which there is an existing rule sought to be modified or revoked. (If the petition regards a procedural or other rule not involving a specific product, the type of rule involved must be indicated.)

(4) Set forth facts which establish the claim that the issuance, amendment, or revocation of the rule is necessary (for example, such facts may include personal experience; medical, engineering or injury data; or a research study); and

(5) Contain an explicit request to initiate Commission rulemaking and set forth a brief description of the substance of the proposed rule or amendment or revocation thereof which it is claimed should be issued by the Commission. (A general request for regulatory action which does not reasonably specify the type of action requested shall not be sufficient for purposes of this subsection.)

(b) *Recommendations.* The Commission encourages the submission of as much information as possible related to the petition. Thus, to assist the Commission in its evaluation of a petition, to the extent the information is known and available to the petitioner, the petitioner is encouraged to supply the following information or any other information relating to the petition. The petition will be considered by the Commission even if the petitioner is unable to supply the information recommended in this paragraph (b). However, as applicable, and to the extent possible, the petitioner is encouraged to:

(1) Describe the specific risk(s) of injury to which the petition is addressed, including the degree (severity) and the nature of the risk(s) of injury associated with the product and possible reasons for the existence of the risk of injury (for example, product defect, poor design, faulty workmanship, or intentional or unintentional misuse);

(2) State why a consumer product safety standard would not be feasible if the petition requests the issuance of a rule declaring the product to be a banned hazardous product; and

(3) Supply or reference any known documentation, engineering studies, technical studies, reports of injuries, medical findings, legal analyses, economic analyses and environmental impact analyses relating to the petition.

(c) *Procedural recommendations.* The following are procedural recommendations to help the Commission in its consideration of petitions. The Commission requests, but does not require, that a petition filed under this part:

(1) Be typewritten,

(2) Include the word "petition" in a heading preceding the text,

(3) Specify what section of the statute administered by the Commission authorizes the requested rulemaking,

(4) Include the telephone number of the petitioner and

(5) Be accompanied by at least five (5) copies of the petition.

§ 1051.6 Documents not considered petitions.

(a) A document filed with the Commission which addresses a topic or involves a product outside the jurisdiction of the Commission will not be considered to be a petition. After consultation with the Office of the General Counsel, the Office of the Secretary, if appropriate, will forward to the appropriate agency documents which address products or topics within the jurisdiction of other agencies. The Office of the Secretary shall notify the sender of the document that it has been forwarded to the appropriate agency.

(b) Any other documents filed with the Office of the Secretary that are determined by the Office of the General Counsel not to be petitions shall be evaluated for possible staff action. The Office of the General Counsel shall notify the writer of the manner in which the Commission staff is treating the document. If the writer has indicated an intention to petition the Commission, the Office of the General Counsel shall inform the writer of the procedure to be followed for petitioning.

§ 1051.7 Statement in support of or in opposition to petitions; Duty of petitioners to remain apprised of developments regarding petitions.

(a) Any person may file a statement with the Office of the Secretary in support of or in opposition to a petition prior to Commission action on the petition. Persons submitting statements in opposition to a petition are encouraged to provide copies of such statements to the petitioner.

(b) It is the duty of the petitioner, or any person submitting a statement in support of or in opposition to a petition, to keep himself or herself apprised of developments regarding the petition. Information regarding the status of petitions is available from the Office of the Secretary of the Commission.

(c) The Office of the Secretary shall send to the petitioner a copy of the staff briefing package on his or her petition at the same time the package is transmitted to the Commissioners for decision.

§ 1051.8 Public hearings on petitions.

(a) The Commission may hold a public hearing or may conduct such investigation or proceeding, including a public meeting, as it deems appropriate to determine whether a petition should be granted.

(b) If the Commission decides that a public hearing on a petition, or any portion thereof, would contribute to its determination of whether to grant or deny the petition, it shall publish in the **Federal Register** a notice of a hearing on the petition and invite interested persons to submit their views through an oral or written presentation or both. The hearings shall be informal, nonadversary, legislative-type proceedings in accordance with 16 CFR Part 1052.

§ 1051.9 Factors the Commission considers in granting or denying petitions.

(a) The major factors the Commission considers in deciding whether to grant or deny a petition regarding a product include the following items:

(1) Whether the product involved presents an unreasonable risk of injury.

(2) Whether a rule is reasonably necessary to eliminate or reduce the risk of injury.

(3) Whether failure of the Commission to initiate the rulemaking proceeding requested would unreasonably expose the petitioner or other consumers to the risk of injury which the petitioner alleges is presented by the product.

(4) Whether, in the case of a petition to declare a consumer product a "banned hazardous product" under section 8 of the CPSA, the product is being or will be distributed in commerce and whether a feasible consumer product safety standard would adequately protect the public from the unreasonable risk of injury associated with such product.

(b) In considering these factors, the Commission will treat as an important component of each one the relative priority of the risk of injury associated with the product about which the petition has been filed and the Commission's resources available for rulemaking activities with respect to that risk of injury. The CPSC Policy on Establishing Priorities for Commission Action, 16 CFR 1009.8, sets forth the criteria upon which Commission priorities are based.

§ 1051.10 Granting petitions.

(a) The Commission shall either grant or deny a petition within a reasonable time after it is filed, taking into account the resources available for processing the petition. The Commission may also grant a petition in part or deny it in part. If the Commission grants a petition, it shall begin proceedings to issue, amend or revoke the rule under the appropriate provisions of the statutes under its administration. Beginning a proceeding means taking the first step in the rulemaking process (issuance of an advance notice of proposed rulemaking or a notice of proposed rulemaking, whichever is applicable).

(b) Granting a petition and beginning a proceeding does not necessarily mean that the Commission will issue, amend or revoke the rule as requested in the petition. The Commission must make a final decision as to the issuance, amendment, or revocation of a rule on the basis of all available relevant information developed in the course of the rulemaking proceeding. Should later information indicate that the action is unwarranted or not necessary, the Commission may terminate the proceeding.

§ 1051.11 Denial of petitions.

(a) If the Commission denies a petition it shall promptly notify the petitioner in writing of its reasons for such denial as required by the Administrative Procedure Act, 5 U.S.C. 555(e).

(b) If the Commission denies a petition, the petitioner (or another party) can refile the petition if the party can demonstrate that new or changed circumstances or additional information justify reconsideration by the Commission.

(c) A Commission denial of a petition shall not preclude the Commission from continuing to consider matters raised in the petition.

PART 1607—[REMOVED AND RESERVED]

4. Part 1607 is removed, and reserved.

Dated: December 21, 1983

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-34373 Filed 12-27-83; 8:45 am]

BILLING CODE 6355-01-M

16 CFR Part 1204

Omnidirectional Citizens Band Base Station Antennas; Final Consumer Product Safety Rule and Certification Regulation; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error made as to designation of figure numbers contained in final rule and certification regulation for omnidirectional citizens band base station antennas which was published August 19, 1982 (47 FR 36186).

FOR FURTHER INFORMATION CONTACT: Sheldon D. Butts (301) 492-6800.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 82-22583 appearing at page 36186 in the issue of August 19, 1982:

1. On page 36209 at the top, "Elevation—High Voltage Test Facility—Figure 2" is corrected to read "Elevation—High Voltage Test Facility—Figure 3."

2. On page 36209 at the bottom, "Antenna System Test Setup—Figure 3" is corrected to read, "Antenna System Test Setup—Figure 4."

Dated: December 20, 1983.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-34361 Filed 12-27-83; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income; Burial Spaces and Certain Funds Set Aside for Burial Expenses

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: On August 17, 1982, the Department of Health and Human Services published an interim rule in the Federal Register (47 FR 35948) to amend its definition of resources under the Supplemental Security Income (SSI) program to specify that burial plots and other repositories for the remains of the deceased or prepaid burial contracts are not resources for purposes of determining eligibility for SSI. On September 3, 1982, Pub. L. 97-248 (the Tax Equity and Fiscal Responsibility Act of 1982) was enacted. Section 185 of that law amends section 1613 of the Social Security Act (the Act) to provide for an exclusion from resources of burial spaces and certain funds set aside for burial expenses. New interim rules published December 8, 1982 (47 FR 55212) replaced the rules that were published August 17, 1982.

EFFECTIVE DATE: These regulations are effective December 28, 1984 but the statutory changes which the regulations reflect were effective November 1, 1982.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION: We are amending our rules to reflect the effect that section 185 of Pub. L. 97-248 has on determining an individual's income and resources when the individual provides for his or her burial. These rules were published on an interim basis on December 8, 1982 (47 FR 55212). Comments received since publication are discussed later in the preamble.

Section 185 of Pub. L. 97-248, which was enacted September 3, 1982 and became effective November 1, 1982, amends section 1613 of the Act. This change provides for the exclusion of the value of any burial space held for the purpose of providing a place for the burial of the individual, his or her spouse, and members of the individual's immediate family. The Secretary of Health and Human Services (the Secretary) is authorized to prescribe limits on the size and value of the burial spaces that are excluded. The amendment also provides for the exclusion of up to $1,500 each for an individual and spouse held in separately identifiable burial funds. However, the amount excluded as a burial fund must be reduced by the face value ($1,500 or less) of life insurance policies with cash surrender value which was excluded from resources and any amount held in an irrevocable trust or other irrevocable arrangement available to meet the burial needs of the individual or spouse. Thus, the exclusion of burial funds gives SSI applicants and recipients an alternative to life insurance (with a face value of $1,500 or less) and irrevocable burial plans for providing for their burial expenses without affecting their SSI eligibility. The provision also stipulates that future SSI benefits will be reduced by any amounts of the excluded burial funds used for purposes other than those for which they were set aside. The Secretary is authorized to exclude from income and resources increases in the value of excluded burial funds which result from accrual of interest or from appreciation in the value of burial arrangements.

For the burial space exclusion we have defined the term "immediate family", which was not defined in the statute, to mean an individual's minor and adult children, adopted children, step-children, brothers, sisters, parents, adoptive parents, and the spouses of those individuals.

"Immediate family" is being defined in such a way as to allow for the exclusion of family burial plots, which are customary in rural areas, whereby family members have, for generations, been buried in a family plot but the title to the plot is held by only one member of the family. It is our intent not to require individuals to sell part of their family's plots. In fact, these plots may not be individually marketable, even when they are located in a commercial cemetery. These regulations define "burial spaces" as conventional gravesites, crypts, mausoleums, urns, and other repositories which are customarily and traditionally used for the remains of deceased persons.

Although the new legislation states that the Secretary is authorized to prescribe limits on the size or value of burial spaces, we are not setting limits for the burial space exclusion at this time because we believe the definition of burial spaces is sufficiently restrictive to prevent abuse. Further, we have no empirical data at this time to support a specific size or value as reasonable. Additionally, values of burial spaces vary greatly depending upon the part of the country where the space is located and the type of space involved. The size of burial spaces also varies depending upon the type of burial space involved. We may set a size or value limit at a later date if experience indicates a limit is appropriate.

The term "burial funds" is not defined in the statute. We have defined "burial funds" to mean a revocable burial contract, burial trust, or other burial arrangement or any other separately identifiable fund which is clearly designated as set aside for burial expenses.

Where the amount set aside in a separately identifiable burial fund

(exclusive of interest or appreciated value which occurred beginning November 1, 1982, or the date of first SSI eligibility, whichever is later) exceeds the amount that can be excluded, the excess will be counted toward the statutory resource limit as described in section 1611(a)(1)(B) of the Act ($1,500 for an individual and $2,250 for a couple).

Funds in an irrevocable arrangement which are available for burial are funds which are held in an irrevocable burial contract, an irrevocable burial trust, or an amount in an irrevocable trust which is specifically identified as available for burial expenses. The value of such irrevocable burial arrangements is used to reduce the $1,500 resource exclusion for burial expenses.

Comments on Prior Interim Rule Published August 17, 1982

Since section 185 of Pub. L. 97–248 was effective on November 1, 1982, the prior interim rule on burial plots and prepaid burial contracts was no longer effective after October 31, 1982, because that rule was inconsistent with the new statute. The comments we received on the prior interim rule which was published August 17, 1982 (47 FR 35948) were evaluated in connection with that rule and with the interim rule published on December 8, 1982 (47 FR 55212). However, since those comments are not pertinent to the provisions of section 185 of Pub. L. 97–248, we are not providing responses to those comments in this publication.

Comments Received Following Publication of Interim Rules Published December 8, 1982 (47 FR 55212)

Comment: One commenter suggests that the final regulations be amended to show that when a child to whom income and resources will be deemed has a burial fund, escrow account, contract or such other asset, such fund will be excluded in addition to any such asset that each deemor may have.

Response: We agree that funds set aside for the burial arrangements of an eligible child should be excluded. We also agree that the child's SSI benefits should not be affected by burial funds (up to $1,500) set aside by an ineligible parent or spouse of a parent for his or her own burial arrangements. Therefore, exercising the Secretary's discretion not to deem when it would be inequitable under the circumstances to do so (section 1614(f) of the Act), the value of such burial funds will not be deemed to the child. Section 416.1231(b) of these final regulations has been revised accordingly.

Comment: One commenter suggests that the definition of "immediate family" in § 416.1231(a)(3) be incorporated into § 416.1231(b)(1) regarding the funds set aside for burial.

Response: The statute excludes the value of burial spaces for the individual, his spouse or members of the individual's immediate family. Under the statute, burial funds may be excluded only when set aside for the burial of an eligible individual and his or her spouse. See the comment and response above for the exception when a parental deeming situation is involved.

Comment: One commenter states that the definition of "immediate family" in § 416.1231(a)(3) does not include adoptive brothers and sisters or step-brothers and sisters in the phrase "an individual's brother, sister, parents, adoptive parents and the spouses of those individuals." Are the adoptive and step-brother and sisters of an individual considered immediate family?

Response: The terms "brothers" and "sisters" in the regulations are being used in their broadest sense. It is intended that the terms include adoptive, step and half brothers and sisters and this intent will be spelled out in our operating instructions.

Comment: One commenter suggests that § 416.1231(b) be clarified to show how income and resources will be counted for portions of burial funds in excess of the $1,500 statutory limit for the exclusion of burial expenses as of November 1, 1982 (the day the exclusion became effective), or SSI eligibility if later. If a person has a fund of $1,800 as of November 1, 1982, will the $300 in excess of the statutory limit count as a resource? How will the interest and appreciation on the funds be counted for exclusion purposes for those accounts that start out in excess of $1,500? Will the interest and appreciation on the excess be excluded?

Response: The points raised in this comment have been covered by the regulations either expressly or by implication. Under § 416.1231(b) burial funds not in excess of $1,500 will be excluded resources. Thus, that portion of burial funds in excess of $1,500 will be counted toward the resource limit ($1,500 for an individual, $2,250 for a couple). Under § 416.1124(c)(9) interest earned on excluded burial funds and appreciation in the value of an excluded burial arrangement are excluded from income beginning November 1, 1982, or the date the individual becomes eligible and similarly are excluded from resources under § 416.1231(b)(6). By implication, interest earned on the excess portion of burial funds will be counted as income when received or credited to an individual's account and any appreciation on the excess value of a burial arrangement will be counted as a resource.

Comment: Section 416.1231(b)(6) (now § 416.1231(b)(7)) states that future SSI benefits will be reduced if burial funds are used for some other purpose. A commenter suggests that the rule be expanded to more clearly define exactly what will happen if these funds are used. An individual may lose Medicaid eligibility if the misused funds exceed the amount of the monthly SSI benefit. Therefore, the regulations should allow for the reduction to be spread out in order to avoid a period of Medicaid ineligibility.

Response: We do not believe it is necessary to clarify this rule since the regulation clearly states that future benefits will be reduced by the amount of burial funds used for another purpose. Section 185(b) of Pub. L. 97–248 seems to contemplate such a result by stating that

> If the Secretary finds that any part of the amount excluded * * * was used for purposes other than those for which it was set aside, he *shall* reduce *any future benefits* * * * by an amount equal to such part. (Emphasis added).

This, as the commentor recognized, does not necessarily mean that the individual will become ineligible for SSI or Medicaid due to using excluded burial funds for some other purpose. However, if the amount of burial funds used for some other purpose is greater than the amount of the monthly SSI benefit that would otherwise have been payable, it is likely (unless the individual qualifies for Medicaid under a State's medically needy program) that the individual will become ineligible for Medicaid for some period of time.

Comment: Several commenters suggest that the individual who is allowed these exclusions be advised as to the possible penalties that could be imposed if burial funds are used for some other purpose.

Response: Notices will be issued to persons for whom burial funds are excluded explaining that, if the funds are used for some other purpose, future benefits will be reduced by the amount of funds used for another purpose. The burial fund exclusion, as well as the requirement to report misused burial funds, is explained to a claimant at the application interview. This policy will be spelled out in the operating instructions. The operating instructions will also provide that a notice be sent to a recipient in cases where previously excluded burial funds were used for a

purpose other than the payment of burial expenses.

Comment: Section 416.1231(b)(2) (now § 416.1231(b)(3)) defines "burial funds" to include any separately identifiable funds designated as set aside for burial expenses. This definition causes a problem for States which must, under a Section 1634 agreement under the Social Security Act (under which the Secretary makes Medicaid determinations for certain States based on SSI eligibility criteria), use SSI criteria to determine Medical Assistance Only (MAO) eligibility. Section 416.1231(b)(6) (now § 416.1231(b)(7)) provides a penalty for misuse of such excluded funds through reduction of future SSI checks. Since Medicaid does not issue checks to clients, there appears to be no penalty mechanism for misuse of excluded funds by MAO recipients. This could lead to an abuse situation which will be outside State control. The commenter suggests defining burial funds strictly in terms of revocable burial contracts that provide for the type of burial benefits which the statute is intended to cover.

Response: The statute clearly authorizes exclusion of funds set aside for burial and does not place restrictions on the form in which such funds are held. Thus, we believe that limiting the exclusion to funds held in revocable burial contracts would be inconsistent with the language and intent of the statute. Moreover, the Medicaid program would make adjustments in the cases of aged, blind or disabled persons who were not receiving SSI but were receiving Medicaid. For example, with respect to medically needy individuals, the amount of misused burial fund monies would be added to that recipient's spenddown liability. The result in such a medically needy case would be to offset the individual's benefits by an amount equal to the misused funds.

Comment: One commenter states that the $1,500 limit for a burial fund is too low because it does not cover the cost of a burial.

Response: The $1,500 limit on excluded burial funds is statutory and cannot be increased by regulations.

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Based on the best available information, Federal program costs would be $1 million for fiscal year 1983, $2 million for fiscal year 1984, and $3 million for fiscal year 1985. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements requiring the Office of Management Budget clearance.

Regulatory Flexibility Act

We certify that these regulations do not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disabled, Public assistance programs, Supplemental Security Income (SSI).

Dated: July 21, 1983.

John A. Svahn,

Commissioner of Social Security.

Approved: December 7, 1983.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—[AMENDED]

Subpart K—[Amended]

Subpart K of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart K of Part 416 reads as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631, of the Social Security Act, as amended; sec. 211 of Pub. L. 93-66; 49 Stat. 647, as amended, 86 Stat. 1468, 86 Stat. 1470, 86 Stat. 1471, 86 Stat. 1475, 87 Stat. 154, (42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383).

2. Section 416.1124 is amended by adding paragraph (c) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) *Other unearned income we do not count.* We do not count as unearned income— * * *

(9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become a part of the separately identifiable burial fund. (See § 416.1231 for an explanation of the exclusion of burial assets.) This exclusion from income applies to interest earned on burial funds or appreciation in value of excluded burial arrangements which occur beginning November 1, 1982, or the date you first become eligible for SSI benefits, if later.

Subpart L—[Amended]

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

3. The authority citation for Subpart L of Part 416 reads as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f) and 1631(d) of the Social Security Act, as amended; 49 Stat. 647, as amended; 86 Stat. 1465, 1466, 1468, 1470, 1473; 42 U.S.C. 1302, 1381, 1381a, 1382b, 1382c(f) and 1383(d).

§ 416.1201 [Amended]

4. Section 416.1201(a) is amended by removing the sentences at the end of the existing section which begins "Whether or not they can be liquidated, the following are not resources: (1) * * *" and ends "other final arrangements".

5. Section 416.1210 is amended by adding paragraph (l) to read as follows:

§ 416.1210 Exclusions from resources; general.

In determining the resources of an individual (and spouse, if any) the following items shall be excluded:

* * * * *

(l) Burial spaces and certain funds up to $1,500 for burial expenses as provided in § 416.1231.

6. Section 416.1231 is added to read as follows:

§ 416.1231 Burial spaces and certain funds set aside for burial expenses.

(a) *Burial spaces*—(1) *General.* In determining the resources of an individual, the value of burial spaces for the individual, the individual's spouse or any member of the individual's immediate family will be excluded from resources.

(2) *Burial spaces defined.* For purposes of this section "burial spaces" means conventional gravesites, crypts, mausoleums, urns, and other repositories which are customarily and traditionally used for the remains of deceased persons.

(3) *Immediate family defined.* For purposes of this section "immediate family" means an individual's minor and adult children, including adopted children and step-children; an individual's brothers, sisters, parents, adoptive parents, and the spouses of those individuals. Neither dependency nor living-in-the-same-household will be a factor in determining whether a person is an immediate family member.

(b) *Funds set aside for burial expenses*—(1) *Exclusion.* In determining the resources of an individual (and spouse, if any) there shall be excluded an amount not in excess of $1,500 each of funds specifically set aside for the burial arrangements of the individual or the individual's spouse. This exclusion applies if the inclusion of any portion of such amount would cause the resources of the individual (or spouse, if any) to exceed the limits specified in 416.1205. This exclusion is in addition to the burial space exclusion. Funds set aside for burial expenses must be kept separate from other resources not set aside for burial. If such funds are mixed with other resources not intended for burial, the exclusion will not apply to any portion of the funds. Burial funds mixed with other resources will be treated as nonexcluded resources.

(2) *Exception for parental deeming situations.* If an individual is an eligible child, the burial funds (up to $1,500) that are set aside for the burial arrangements of the eligible child's ineligible parent or parent's spouse will not be counted in determining the resources of such eligible child.

(3) *Burial funds defined.* For purposes of this section "burial funds" means a revocable burial contract, burial trust or other burial arrangement or any other separately identifiable fund which is clearly designated as set aside for the individual's (or spouse's, if any) burial expenses.

(4) Reductions. Each person's (as described in §§ 416.1231(b)(1) and 416.1231(b)(2)) $1500 exclusion must be reduced by:

(i) the face value of insurance policies on the life of an individual owned by the individual or spouse (if any) if the cash surrender value of those policies has been excluded from resources as provided in § 416.1230; and

(ii) amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial expenses.

(5) Irrevocable trust or other irrevocable arrangement. Funds in an irrevocable trust or other irrevocable arrangement which are available for burial are funds which are held in an irrevocable burial contract, an irrevocable burial trust, or an amount in an irrevocable trust which is specifically identified as available for burial expenses.

(6) Increase in value of burial funds. Interest earned on excluded burial funds and appreciation on the value of excluded burial arrangements which occur beginning November 1, 1982, or the date of first SSI eligibility, whichever is later, are excluded from resources if left to accumulate and become part of the separately identifiable burial fund.

(7) Burial funds used for some other purpose. Funds or interest earned on funds and appreciation in the value of burial arrangements which have been excluded from resources because they are burial funds must be used solely for that purpose. If any excluded funds, interest or appreciated value set aside for burial expenses are used for a purpose other than the burial arrangements of the individual or the individual's spouse for whom the funds were set aside, future SSI benefits of the individual (or the individual and eligible spouse) will be reduced by an amount equal to the amount of burial funds, interest or appreciated value used for another purpose.

[FR Doc. 83-34360 Filed 12-27-83; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 241

[Docket No. R-83-1104; FR-1734]

Requirement of Payment in Cash on Supplementary Loan Claims

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts as final the proposed rule which provides for cash payment of insurance benefits on a defaulted supplementary loan insured under section 241 of the National Housing Act when insurance benefits under the insured first mortgage are payable in cash.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jane E. Luton, Multifamily Development Division, Room 6133, Department of Housing and Urban Development, Washington, D.C. 20410, telephone (202) 755-8686. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 8, 1983, the Department published at 48 FR 35891 a proposed rule which would provide for cash payment of insurance benefits on a defaulted supplementary loan insured under section 241 of the National Housing Act when insurance benefits under the insured first mortgage are payable in cash, unless the lender requests payment in debentures. The change would make the method of paying an insurance claim on a defaulted supplementary loan consistent with the method of paying an insurance claim on the insured first mortgage. The public was allowed sixty days to comment on the proposed rule, and two comments were received. Both of the comments received were favorable to the rule without change.

HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments which are being made by this rule fall within the categorical exclusion set forth in paragraph (k) of § 50.20, HUD is not required to prepare any environmental finding for this rule.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

This rule is listed at 48 FR 47439 as item H-29-82 in the Department's Semiannual Agenda of Regulations published on October 17, 1983, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While it deals with the method of payment of claims, it would have no appreciable effect on the amount of such payments.

The Catalog of Federal Domestic Assistance program number is 14.151.

List of Subjects in 24 CFR Part 241

Energy conservation, Mortgage insurance, Solar energy, Projects.

Accordingly, the proposed rule which would amend 24 CRF Part 241, Subpart

B, published on August 8, 1983 (48 FR 35891), is hereby adopted as final without change to read as set forth below:

(Secs. 211, 241, National Housing Act, 12 U.S.C. 1715b, 1715z-6; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: December 19, 1983.

W. Calvert Brand,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

PART 241—[AMENDED]

1. Section 241.251(a) would be amended by inserting "207.259 Insurance benefits" in the list of excepted provision of Part 207, Subpart B, contained therein, so that the list will read as follows:

§ 241.251 Cross-reference.

(a) * * *

Sec.

207.251	Definitions.
207.253a	Termination of insurance contract.
207.259	Insurance benefits.
207.260	Protection of mortgage security.
207.262	No vested right in fund.

* * * * *

2. A new § 241.261 would be added, to read as follows:

§ 241.261 Payment of insurance benefits.

All of the provisions of § 207.259 of this chapter relating to insurance benefits shall apply to multifamily loans insured under this subpart, except that, with respect to loans initially or initially and finally endorsed for insurance on or after July 15, 1978, insurance benefits shall be paid in cash if insurance benefits under the insured project mortgage are payable in cash, unless the mortgagee files a written request for payment in debentures. If such a request is made, payment will be made in debentures with a cash payment to adjust for any difference between the total amount of the insurance payment and the amount of the debentures issued.

[FR Doc. 83-34236 Filed 12-27-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 535

Iranian Assets Control Regulations; Judicial Action Involving Standby Letters of Credit

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Iranian Assets Control Regulations to continue in effect the prohibition on any final judicial judgment or order (A) permanently enjoining, (B) terminating or nullifying, or (C) otherwise permanently disposing of any interest of Iran in any standby letter of credit, performance bond or similar obligation. Without this amendment, that prohibition would expire on December 31, 1983. The extension of the prohibition is needed to facilitate the ongoing implementation of the Iran-United States agreements of January 19, 1981 (the "Algiers Accords") and, especially, to allow the resolution before the Iran-United States Claims Tribunal of the many claims and issues pending before it, including jurisdictional questions, involving standby letters of credit.

EFFECTIVE DATE: December 22, 1983.

FOR FURTHER INFORMATION CONTACT: Raymond W. Konan, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C., tel. (202) 376-0236.

SUPPLEMENTARY INFORMATION: The reasons for the prohibition were set forth with the July 1, 1982 amendment to the Iranian Assets Control Regulations, published in the **Federal Register** on July 7, 1982. See 47 FR 29528. These reasons are still applicable and justify the extension of the prohibition effected here. No new expiry date is being set because it is not possible to determine how long the prohibition will be required. Similarly, the other standby letter of credit provisions, which the subject provision complements, do not have any established expiration dates.

Accordingly, standby letter of credit litigation continues to be governed by § 535.201, as modified by the limited license for judicial proceedings in § 535.504.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date, are inapplicable. Similarly, because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1982, dealing with federal regulations. Since no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are not applicable to this regulation.

List of Subjects in 31 CFR Part 535

Iran, Foreign assets control, Banks, banking.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

31 CFR Part 535 is amended as follows:

§ 535.504 [Amended]

Section 535.504 is amended by removal of paragraph (b)(3)(v).

(Sec. 201-207, 91 Stat. 1626, 50 U.S.C. 1701-1706; E.O. No. 12170, 44 FR 65729; E.O. No. 12205, 45 FR 24099; E.O. No. 12211, 45 FR 26605; E.O. No. 12276, 46 FR 7913, E.O. No. 12278, 46 FR 7917, 46 FR 10095; E.O. No. 12279, 46 FR 7919; E.O. No. 12280, 46 FR 7921; E.O. No. 12281; 46 FR 7923; E.O. No. 12282, 46 FR 7926; and E.O. No. 12294, 46 FR 14111)

Dated: December 22, 1983.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved:

John M. Walker, Jr.,

Assistant Secretary, Enforcement and Operations.

[FR Doc. 83-34400 Filed 12-23-83; 9:29 am]

BILLING CODE 4810-25-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services, Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to Postal Contracting Manual.

SUMMARY: The Postal Service announces that it is amending the Postal Contracting Manual to note that the Postal Service is not classified as a mandatory user of the contracts established by the Federal Supply Service, General Services Administration. Accordingly, procuring offices are not to use Federal Supply Schedules unless it is in the best interest of the Postal Service to do so.

EFFECTIVE DATE: December 21, 1983.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PCM Circular 83-9, dated December 21, 1983.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the

Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

Explanation of these amendments to the Postal Contracting Manual follows:

Explanation of Changes

This circular revises *Postal Contracting Manual*, Section 5, Part 1, Federal Supply Schedule Contracts. The Postal Service is not classified as a mandatory user of the contracts established by the Federal Supply Service, General Services Administration. Effective immediately, procuring offices are not to use Federal Supply Schedules unless it is in the best interest of the Postal Service to do so.

(5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-34365 Filed 12-27-83; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL 2492-6]

Subchapter C—Air Programs; California 1982 Ozone and CO Plan Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: This notice approves all portions of California's 1982 ozone (O_3) and carbon monoxide (CO) State Implementation Plan (SIP) revisions for the San Francisco Bay Area Air Basin and the San Diego Air Basin except the vehicle inspection/maintenance (I/M) elements. This action incorporates the approved revisions into the SIP, thereby revising the control strategy for attaining the O_3 and CO standards in these areas by December 31, 1987. This notice also takes final action removing a condition of approval of the 1979 O_3 and CO SIP revision for the San Francisco Bay Area which required the submittal of resource commitments for the Transportation Control Measures (TCMs).

EFFECTIVE DATE: January 27, 1984.

ADDRESSES: A copy of today's revision to the California SIP is located at:

The Office of the Federal Register, 1100 "L" Street NW., Room 8401, Washington, D.C. 20408

Public Information Reference Unit, EPA Library, 401 M Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David P. Howekamp, Director, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Attn: Wallace Woo (415) 974-7634.

SUPPLEMENTARY INFORMATION: This portion of the notice is divided into five sections. The "BACKGROUND" section briefly summarizes the proposed actions on these plan revisions and discusses EPA's parallel processing rulemaking procedure. The "SUPPLEMENTARY REVISIONS" section discusses EPA's evaluation of any pertinent SIP revisions submitted to EPA after the proposed rulemaking notice. The "PUBLIC COMMENTS" section describes public comment on the proposed rulemaking notice and contains EPA's response on substantive issues. The section on "EPA ACTIONS" details EPA's final actions on the plans. The "REGULATORY PROCESS" section contains procedures for judicial review of this action.

Background

On February 3, 1983 [48 FR 5074] EPA proposed to approve in part and disapprove in part the 1982 O_3 and CO SIP revisions for the State of California. The proposal notice identified eleven areas of the State for which draft SIP plan revisions had been received by EPA. This notice addresses two of those eleven areas: the San Francisco Bay Area Air Basin, and the San Diego Air Basin. Final actions on the other nine areas will be addressed in separate **Federal Register** actions.

For the two areas addressd in this notice, EPA proposed to approve the 1982 SIP revisions, provided the ten elements for an approvable I/M program were submitted prior to final action on the 1982 SIP revisions, and provided the following deficiencies were corrected prior to final rulemaking:

San Francisco Bay Area Air Basin—The CO plan lacked: (1) Adequate documentation to support the attainment demonstration; and (2) documentation of a process for determining Reasonable Further Progress (RFP).

San Diego Air Basin—The CO and O_3 plans lacked: (1) The necessary evidence of adoption of the control measures, (2) documentation for the ozone modeling analysis and (3) an appropriate modeling analysis for CO.

These deficiencies along with other minor deficiencies in the two plans were discussed in detail in Chapters III and VII of the Technical Support Document (TSD) for the 1982 California O_3 and CO SIP revisions.

The TSD also noted outstanding conditions to correct deficiencies in the 1979 O_3 and CO SIP revisions for these two areas. Revised New Source Review (NSR) regulations were required for the San Diego nonattainment area in order to satisfy the requirements of Section 172(b)(6) of the Clean Air Act (CAA). The San Francisco Bay Area and San Diego O_3 plans did not adequately address the required stationary source control regulations for one Volatile Organic Compound (VOC) source category addressed by a Control Techniques Guideline document. In addition, the San Francisco Bay Area Air Basin had an outstanding condition related to the resource commitments for the Transportation Control Measures (TCMs). Since satisfaction of these outstanding conditions is a requirement for overall plan approval they are discussed in the "SUPPLEMENTARY REVISIONS" and "PUBLIC COMMENTS" sections of this notice.

EPA's February 3, 1983 proposed rulemaking for California's 1982 O_3 and CO plan revisions was based on the review of plans which had not been formally submitted as SIP revisions and which are termed here as "draft" plans. By processing the draft 1982 SIP revisions concurrently with State and local level action to adopt and submit the "final" plans, EPA intended to expedite the rulemaking process. EPA's proposed actions were contingent upon the "final" plans being substantively the same as the "draft" plans, except where remedies to deficiencies noted in the proposal notice were included in the final plan.

The February 3, 1983 notice also proposed to retain the disapproval of the I/M portion of the 1979 O_3 and CO nonattainment area plans for six urban areas in California (including San Diego and the San Francisco Bay Area). EPA has published a final rulemaking conditionally approving the 1979 I/M program SIP requirements in a separate rulemaking notice (November 25, 1983, 48 FR 53114). Public comments received on the February 3, 1983 notice which addressed this issue were responded to in that notice.

The February 3, 1983 notice of proposed rulemaking provided for a 45 day comment period ending on March 21, 1983. On March 21, 1983 EPA extended the public comment period an additional 45 days to May 5, 1983 for

plans proposed to be disapproved [see 48 FR 11725]. On April 8, 1983 [48 FR 15273] EPA also extended the comment period to May 5, 1983 for the 1982 California SIP revisions proposed for approval.

Supplementary Revisions

The San Francisco Bay Area Air Basin final 1982 O_3 and CO plan was submitted to EPA by the California Air Resources Board (ARB) on February 4, 1983. The final 1982 San Diego Air Basin O_3 and CO plan was submitted on February 28 and August 12, 1983. The final plans were substantively identical to the draft plans which were reviewed for the February 3, 1983 proposal notice, except for certain changes to correct deficiencies noted in EPA's TSD. The TSD noted both major and minor deficiencies in the 1982 SIP revisions, and the major deficiencies were noted in the proposal notice. In support of this final rulemaking action, EPA has prepared an addendum to the TSD for these two areas which notes changes between the draft and final plans and evaluates these changes relative to the requirements for 1982 O_3 and CO SIP revisions. A copy of the TSD addendum is available at the EPA Region IX office (Docket file NAP-CA-82). EPA's evaluation of the final plans is summarized below:

San Francisco Bay Area Air Basin—The final plan for O_3 and CO was substantively the same as the draft plan, except for additions to address the deficiencies cited by EPA in the TSD, including the two major deficiencies in the CO portion of the plan, i.e., documentation for Demonstration of Attainment and Reasonable Further Progress process. The addition of Tech Memo 46 provides most of the required documentation for the two major deficiency areas, and a commitment is made to report on progress in further developing and implementing the RFP process in the Annual Reports. The addition of Appendix I to the final plan satisfies the outstanding condition related to TCM commitments.

The final plan also included revisions which satisfied the minor deficiencies identified in the TSD which related to (1) the VOC emission inventory, (2) the ozone and CO design values, (3) growth allowances, (4) the allowable VOC emissions calculations, (5) the incremental yearly reductions necessary to demonstrate RFP, (6) a TCM monitoring program, (7) documentation for the CO modeling analysis, (8) documentation for the CO control measures, (9) the contingency provision, (10) the procedure for determining conformity with the SIP, and (11) certain requirements for public and governmental involvement. A detailed evaluation of all of these changes is contained in the TSD addendum.

San Diego Air Basin—The final plan was substantively the same as the draft plan except for changes which satisfied the deficiencies cited by EPA in the TSD. The final plan included revisions which adequately addressed the three major deficiencies identified by EPA which required the following:

1. Necessary evidence of adoption of the control measures.
2. Documentation for the ozone modeling analysis.
3. Appropriate modeling analysis for CO.

The final plan also corrected several minor deficiencies which were noted in the TSD which related to (1) the RFP demonstration, (2) identification of the allowable emissions level for the CO control strategy, (3) TCM monitoring, (4) identification of emissions associated with major federal actions, (5) the contingency plan, (6) the procedure for determining conformity with the SIP, (7) the plan to meet basic transportation needs, and (8) certain requirements for public and government involvement. A detailed evaluation of these changes is contained in the TSD Addendum.

I/M—As noted in the "BACKGROUND" section of this notice, the February 3, 1983 notice proposed to approve the 1982 SIP revisions provided the ten elements for an approvable I/M program were submitted prior to final EPA action. Final adopted regulations addressing the ten elements have not as yet been submitted. However, on October 3, 1983 the ARB did submit draft versions of the ten I/M elements along with a schedule to submit all ten elements as adopted regulations by March 1, 1984. The ten draft elements included: (1) Emission standards; (2) inspection station licensing requirements; (3) emission analyzer specifications and maintenance/calibration requirements; (4) procedures to assure that non-complying vehicles are not operated on the public roads; (5) a public awareness plan; (6) a mechanics training plan; (7) inspection test procedures; (8) record keeping and record submittal requirements; (9) quality control, audit and surveillance procedures; and (10) other official program rules, regulations and procedures which include geographic area designations, and a request for proposal for contract operated referee stations. EPA will take final action on the I/M regulations in the near future.

NSR—As noted above, a revised NSR rule is required to satisfy an outstanding condition of approval for the San Diego Air Basin nonattainment area plan. Revised NSR rules were submitted by the ARB on March 1 and August 6, 1982 and on March 11, 1983. The San Diego County APCD has since adopted further revisions to their NSR rule which are not approvable by EPA. These subsequent revisions have not as yet been submitted to EPA by the ARB, however. EPA will take action on San Diego's NSR rules in a separate **Federal Register** action. Depending on the adequacy of the rules, EPA will either (1) remove the outstanding condition of approval, or (2) disapprove the SIP for failure to satisfy the requirement of Section 172(b)(6) of the CAA.

VOC—The ARB submitted a revised refinery pump and compressor rule for the San Francisco Bay Area Air Basin on February 3, 1983. EPA believes that the revised rule satisfies the outstanding condition of approval and will take action on it in a separate **Federal Register**. On July 19, 1983 the ARB also submitted a revised miscellaneous metal parts and products rule for the San Diego Air Basin. EPA will address the adequacy of the revised rule in a separate **Federal Register** action.

Public Comments

EPA received 21 comments which address one or both of these 1982 SIP revisions. EPA has prepared detailed responses to these comments as part of the support document for this rulemaking. The following is a summary of the comments and EPA's response to substantive issues which relate to EPA's proposed actions on these two plans.

San Francisco Bay Area—Comments were received from the ARB, the Committee for Safe and Sensible San Francisquito Creek Area Routing, the Bay Area Air Quality Management District, the San Francisco Bay Area Planning Program, the City of San Jose, and the Western Oil and Gas Association. Several of the comments made reference to the revisions contained in the final plan which addressed the two major deficiencies in the CO portion of the plan, as well as the minor deficiencies noted in the TSD. As discussed in the SUPPLEMENTAL REVISIONS portion of this notice, EPA agrees that the revisions contained in the final plan satisfy the deficiencies noted in the TSD. One comment indicated that the plan contained deficiencies other than those noted in EPA's TSD including (1) the lack of an adequately specific full-scope data base, (2) the lack of a Southbay clean air transportation plan, and (3) a failure to satisfy certain additional plan

requirements. EPA disagrees since (1) an adequate data base is included in the final plan, (2) the final plan contains commitments to transportation programs, including a specific commitment to reduce transportation emissions in the portion of the CO nonattainment area with the most severe problem, and (3) the final plan adequately addresses the minor deficiencies which were noted in the Additional Requirements section of the TSD. Another comment expressed concern over the nonattainment area boundaries; this concern will be addressed in a separate rulemaking action. Detailed responses to the comments may be found in the Response to Comments portion of the support document.

San Diego Air Basin—Comments were received from the ARB, the San Diego Association of Governments, and the San Diego County Air Pollution Control District. Several of the comments made reference to the revisions contained in the final plan which addressed the three major deficiencies as well as several minor deficiencies. As discussed in the SUPPLEMENTAL REVISIONS portion of this notice, EPA agrees that the revisions contained in the final plan satisfy the deficiencies noted in the TSD. The comments also addressed the four remaining minor deficiencies noted in the TSD which were not specifically addressed by changes in the final plan. These four deficiencies included (1) the population forecasts used in the plan, (2) the lack of § 174 co-lead agency designations, (3) the lack of a summary of public comments, and (4) the need to address the effects of pollutant transport from the South Coast Air Basin. The comments received adequately address these four deficiencies since (1) it was demonstrated that the population forecasts used were appropriate, (2) the co-lead agency designations were the same as those already referenced in the 1979 plan, (3) there were no public comments on the plan, and (4) the ARB reaffirmed the need for continued study of the pollutant transport problems in California. EPA does recommend that future plan updates assess the effect of the South Coast plan control measures on the high ozone concentrations in coastal areas of San Diego County. A detailed discussion of these issues is included in the Response to Comments portion of the support document.

I/M—EPA received comments on its proposal to require submittal of the ten elements for implementation of an I/M program prior to approval of the 1982 plans from the ARB, the Committee for Safe and Sensible San Francisquito Creek Area Routing, the San Francisco Bay Area Planning Program, and Raymond Moon. The comments suggested a range of possible actions including (1) plan approval with subsequent submittal of the ten elements according to the I/M implementation schedule, (2) conditional approval of the plan requiring the subsequent submittal of the ten elements by a specific date, and (3) plan disapproval until EPA is provided with the detailed information necessary to evaluate the I/M program's implementation and effectiveness. As discussed in the SUPPLEMENTAL REVISIONS portion of this notice, EPA is not taking final action today on the I/M portion of the 1982 SIP revision. EPA will respond to these comments when it does take final action.

EPA Actions

Based on EPA's review of the draft and final 1982 O_3 and CO SIP revisions and consideration of public comments, EPA takes final action approving the following plans (except for the I/M element) under Part D of the CAA and incorporating them into the California SIP under Section 110 of the CAA.

1. San Francisco Bay Area Air Basin O_3 and CO Plan submitted on February 4, 1983.

2. San Diego Air Basin O_3 and CO Plan submitted on February 28 and August 12, 1983.

EPA is deferring action on the I/M portion of these plans. Full plan approval will be addressed when EPA takes action on I/M.

EPA also takes final action to rescind from 40 CFR 52.232 the condition of approval for the San Francisco Bay Area 1979 O_3 and CO plan which required TCM resource commitments.

Regulatory Process

This action is effective January 27, 1984. Under the CAA, any petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 1984. This action may not be challenged later in procedures to enforce its requirements.

The Administrator has certified that SIP actions do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709). The Office of Management and Budget has exempted this rulemaking from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Ozone, Sulfur oxide, Nitrogen oxides, Hydrocarbons, Carbon monoxide, Incorporation by reference.

(Secs. 110, 129 (uncodified), 171–178, and 301 (a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7501 to 7508, and 7601(a)))

Dated: December 12, 1983.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

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

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(135) and (c)(136) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(135) The 1982 Ozone and CO Air Quality Plan for the San Francisco Bay Air Basin was submitted on February 4, 1983 by the Governor's designee.

(136) The 1982 Ozone and CO Air Quality Plan for the San Diego Air Basin was submitted on February 28 and August 12, 1983 by the Governor's designee.

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[FR Doc. 83-33659 Filed 12-27-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 83-561]

Delegations of Authority to the General Counsel

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has delegated authority to its General Counsel to dismiss in hearing proceedings: (1) Interlocutory appeals not authorized by the Commission's Rules and (2) requests for substantive relief which the Commission may not grant because its jurisdiction over the proceedings has terminated. This new delegation of authority will eliminate the need for the consideration of unauthorized pleadings by the Commission *en banc* and the associated delay and administrative burden.

EFFECTIVE DATE: December 28, 1983.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel, [202] 632-7293.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Order

In the Matter of Amendment of § 0.251 of the Commission's Rules and Regulations, Delegations of Authority to the General Counsel; FCC 83-561.

Adopted: November 28, 1983.
Released: November 30, 1983.
By the Commission.

1. The Commission has determined that the General Counsel should be authorized in hearing proceedings to dismiss two types of pleadings not warranting Commission consideration. These are: (1) interlocutory appeals not authorized by the Commission's Rules, and (2) requests for substantive relief which the Commission may not grant because its jurisdiction over the proceeding has terminated.[1] The delegation of this authority to the General Counsel will contribute to the proper functioning of the Commission and to the prompt and orderly conduct of its business.

2. Authority for this amendment is contained in Section 4(i) and (j), 5(c) and 303(r) of the Communications Act of 1934, as amended.[2] Because the amendment relates to matters of procedure and internal organization, the procedural and effective date provisions of Section 4 of the Administrative Procedure Act[3] are inapplicable.

3. Accordingly, it is ordered, That on the date that this Order is published in the **Federal Register**, Section 0.251 of the Commission's Rules and Regulations IS AMENDED as set forth in the Appendix hereto.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

In Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations, Section 0.251(g) is redesignated as 0.251(h) and revised and the following new 0.251(g) is added:

§ 0.251 Authority delegated.

* * * * *

(g) The General Counsel is delegated authority in hearing proceedings to dismiss:

(1) interlocutory appeals to the Commission of actions taken under delegated authority when the appeal is not authorized by the Commission's Rules.

(2) requests for substantive relief by the Commission which the Commission may not grant because its jurisdiction over the proceeding has terminated.

(h) The official record of all actions taken by the General Counsel pursuant to § 0.251 (f) and (g) is contained in the original docket folder, which is maintained by the Secretary in the Dockets Branch.

[FR Doc. 83-34332 Filed 12-27-83; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-373; FCC 83-573]

Assignment of New and Modified Call Letters to AM, FM, and TV Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 73.3550 of the Commission's Rules with respect to the assignment of new and modified call letters to broadcast stations. This action was taken to eliminate burdensome requirements and simplify call letter procedures. It eliminates proscriptions concerning conforming basic call letters, reassignment of relinquished call letters in the same community, and the requirement that an applicant for call letters actually notify all broadcast stations within 35 miles. This action also terminates the Commission consideration of objections to proposed call letters.

DATE: Effective January 20, 1984.

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

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 632-6485.

List of Subjects in 47 CFR Part 73

Radio, Television.

Report and Order

(Proceeding Terminated)

In re matter of revision of § 73.3550 of the Commission's Rules with respect to the Assignment of New and Modified Call Letters to AM, FM, and TV Broadcast Stations. (MM Docket No. 83-373).

Adopted: December 1, 1983.
Released: December 14, 1983.

By the Commission: Chairman Fowler concurring in the result; Commissioner Quello dissenting in part and issuing a statement.

1. The Commission has before it the *Notice of Proposed Rulemaking* in this proceeding (48 FR 20252, published May 5, 1983). In the *Notice*, we proposed significant revisions of processing procedures as well as our underlying policies with respect to the assignment of call letters to broadcast stations.

2. The present call letter rules are the result of our 1973 action codifying existing Commission policies which were scattered throughout various decisions and public notices and, at the same time, addressing processing problems not previously considered. *Assignment of Call Signs*, 41 FCC 2d 481 (1973). In essence, that proceeding provided that a station may, in most situations, request call letters of its choice (except the initial letter) if the desired call letters are available, are in good taste, and are sufficiently dissimilar phonetically and rhythmically from existing call letters of stations in the same service area so that there will be no significant likelihood of public confusion. That proceeding also dealt with such matters as the actual procedure for requesting call letters and the filing of an objection to a proposed set of call letters, requests by a proposed assignee, reassignment of relinquished call letters and conforming basic call letters. In the *Notice*, we indicated that after nearly ten years of experience, the present rules warrant revision or, at the very least, detailed review to determine whether these rules should be retained, modified or eliminated. Included in the *Notice* were proposals to clarify the criteria to be used in resolving a call letter dispute, eliminate the requirement for actual notifications to all broadcast stations within 35 miles, shorten or eliminate the 30-day holding period, and eliminate proscriptions concerning conforming call letters and reassignment of call letters in the same community. This *Notice* also contained a controversial proposal to have call letter objections considered in local forums.

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[1] While cases are pending before a court, parties should continue the pure ministerial reporting of information to the Commission pursuant to Section 1.65 of the Rules. *RKO General, Inc.*, 42 RR 2d 433 (1978). Substantive matters should be confined to communications with the General Counsel as the Commission's legal representative. *Folkways Broadcasting Co., Inc.*, 81 FCC 2d 912, 914 n.7 (1976). *See also White Mountain Broadcasting Co.*, 66 FCC 2d 672, 673-74 (1977) (concurring statement of Commissioner Margita E. White).

[2] 47 U.S.C. §§ 154 (i) and (j), 155(c), and 303(r).

[3] 5 U.S.C. § 553.

Call Letter Disputes in Local Forums

3. All of the comments we received in this proceeding opposed our proposal to have call letter disputes resolved in local forums. The gravamen of these oppositions is that litigation in a local forum premised on unfair competition would be complicated, costly and time-consuming. The local judicial process involves pleadings, hearings, temporary restraining orders, and damages. These comments also referred to the possibility of inconsistent results and the fact that several courts could have jurisdiction in a particular case. In addition, these comments observed that under this proposal, confusing call letters could actually be in use in a particular community before the local forum acts. This would be harmful to the public and unfair to the broadcaster. Furthermore, the broadcaster would no longer be able to receive a final approval before it makes substantial efforts to promote its new call letters. Finally, several comments have asserted that this proposal would contravene Section 303(o) of the Communications Act which requires the Commission to retain "full and unhampered" authority over call letter matters.

4. After careful consideration of these comments, we continue to believe that our adjudication of these disputes represents an unnecessary and inefficient use of our administrative resources. Therefore, we will no longer be the forum to resolve a call letter dispute. First of all, it should be emphasized that none of the comments disputed our contention that an adequate remedy does, in fact, exist in local forums. Rather, these comments have asserted that resolution in local forums would impose additional costs and delays upon broadcasters. While these comments have not documented these expenses and burdens, they have referred to a potential cycle of hearings, pleadings, temporary orders as well as damages and the appeal process. In considering these comments, it is quite possible that in some jurisdictions, the costs, burdens and delays would be greater than those attendant to our processes. However, it should be emphasized that our present procedures are not without burdens and delays for the broadcaster. Our procedures involve notifications, objections, staff decisions, reconsideration of staff decisions, requests for stay, applications for review of the staff decision to the Commission, reconsideration of the Commission decision and judicial appeal. As a consequence, we are not persuaded that comparing the relative burdens and delays of the local forum *vis-a-vis* our procedures should be determinative of this matter. In this connection, it should also be noted that our present procedures resulted from an early concern with protecting stations from other stations using confusingly similar call letters. Today, broadcasting is a mature and healthily competitive industry with significantly less need for any protectionist policies. See *Classical Broadcasting Society of San Antonio, Inc.*, 53 RR 2d 87 (1983). The broadcasting industry is well able to pursue its remedies and assert its rights in the various local forums in the same manner as other industries.[1] This can be done without imposing the present burden on our administrative resources.

5. In *Classical Broadcasting Society of San Antonio, Inc., supra*, we stated that many of our decisions exalted form over substance in determining whether there would be a significant likelihood of public confusion. We feel that an analogy can be made to our present procedures. In this regard, Section 73.1201 of the Rules only requires that a station announce its call letters once an hour. At all other times, a station may identify or promote its station as it sees fit. The promotional identifications (e.g., Q107, DC101) may have little, if any, relationship to the actual call letters. Furthermore, the promotional announcement may, as far as the public is concerned, be the means of identifying a station. Our present precedures do not take this into account or the fact as requested set of call letters could be easily confused with an existing promotional identification (e.g., KIKR with "Kicker Radio"). Our existing policy is to defer such a controversy to a local forum. See *Shamrock Development Corp.*, 32 FCC 2d 82 (1971). This policy has not visited any apparent burden or hardship upon broadcasters, or resulted in public confusion. As a consequence, it makes little sense for us to continue to be a forum to resolve a dispute limited solely to call letters when these call letters, compared to the actual means of identifying a particular station, may have little relevance to the issue of public confusion. The local forum would take all relevant factors into consideration and, thus, would be the most accurate forum to resolve the issue of public confusion.

6. In a similar vein, we do not feel that the other arguments advanced against this proposal would warrant the opposite result. It is probable that in most disputes, several courts could have jurisdiction over a particular dispute. However, such questions of jurisdiction, venue and conflict of laws are common to many other types of disputes and would not appear to present any unusual problems for broadcasters. We also do not feel that there is any significant problem with respect to the possibility of inconsistent decisions throughout the various jurisdictions. Each dispute involves unique sets of call letters, involving one or more of three broadcast services in various communities throughout the United States. Moreover, we believe that a local forum would also be more attuned to what constitutes a potential for public confusion in its local community. The comments have also observed that the procedure outlined in the *Notice* could result in confusing call letters actually being in use while the issue is litigated in local court. In practice, we do not think this would be a pervasive problem. First off all, in the absence of prior Commission approval, a broadcaster would be extremely reluctant to select and use confusingly similar call letters since it may have to respond ultimately in damages to the aggrieved broadcaster and incur the additional expense of selecting new call letters. In any event, as stated in the *Notice*, less than 10% of the objections to requested call letters are sustained. Inasmuch as approximately 10% of all call letter request receive an objection, the potential for this type of confusion appears to be *de minimis*. Finally, Section 303 of the Communications Act does not require the Commission to continue to resolve call letter disputes between broadcasters. This Section merely grants the Commission authority to "designate call letters to all stations." It does not restrict our authority to implement this section or determine the most appropriate forum to resolve call letter disputes.

Notification and 30-Day Holding Period

7. As indicated in the preceding paragraphs, the Commission will no longer be the forum to resolve call letter disputes. Consequently, the notification requirement and a 30-day holding period are no longer necessary and § 73.3550(e)(1) and (g) of the Rules will, therefore, be eliminated.

Conforming Basic Call Letters

8. In the *Notice* we proposed modification of § 73.3550(l) of the Rules which presently permits conforming the basic call letters of commonly owned stations assigned to the "same or adjoining" communities. While most of

[1] In order to facilitate a resolution in the local forum, it is our view that a licensee possesses a sufficient interest in its call letters during the term of its license to pursue, without our objection, a service mark under Sections 2 and 3 of the Trademark Act (15 U.S.C. 1052 and 1053).

the comments were favorable, Arbitron Ratings Company filed comments opposing this proposal. Arbitron's concern appears to focus on public confusion in identifying a particular station if we were to permit commonly owned stations in the same service to use the same basic call sign. This concern is not well founded. As proposed, this rule will not permit two commonly owned stations in the same service (e.g., FM) to have the same basic call sign. Instead, this modification merely permits a licensee of an AM, FM and/or television station to use the same basic call sign (with required "–FM" and "–TV" suffixes) regardless of the location of the stations. Accordingly, for the reasons outlined in paragraph 11 of the *Notice*, we are eliminating the requirement that the stations be assigned to the same or adjoining communities.

Reassignment of Relinquished Call Letters

9. The comments we received concerning our proposal to have relinquished call letters assigned on a "first-come-first-served" basis were favorable. Presently, § 73.3550(k) of the Rules provides for the Commission to announce the availability of relinquished call letters. All requests received within a subsequent 15-day period are considered on an equal footing, with the call letters being awarded to the applicant having the longest continuous record of broadcast service. The purpose of this provision was to avoid the purported problem of trafficking in call letters. Specifically, trafficking involves a licensee relinquishing call letters and another licensee wishing to acquire them, by prearrangement, controlling the "availability" date by the appropriate timing of their respective requests. We previously viewed this practice as being unfair to other parties having a legitimate interest in the relinquished call letters and bordering on an abuse of process. Upon reflection, we do not believe that such private agreements between licensees harms the public interest to the extent of justifying the ongoing administrative burden this rule places upon our processing staff. Therefore, we are eliminating the 15-day procedure and will process all call letter requests on a "first-come-first-served" basis. In the event we receive requests for the same call letters on the same day, we would only then select the applicant with the longest continuous period of broadcast service.

10. On the other hand, we did receive comments in opposition to our proposal to eliminate § 73.3550(q) of the Rules, which proscribes reassignment of call letters in the same community within 180 days except to the same licensee or its successor-in-interest. The purpose of the rule is to avoid the erroneous impression among listeners and viewers that the same principals are involved in the new operation. We remain skeptical whether this rule furthers a tangible public interest objective. The opposition comments have focused upon possible distortions in audience ratings. These comments assert that the public often associates a station's call letters with the station well after a station changes its call letters. In the event another station commences using the relinquished call letters, the public would be confused as to what station they are actually listening, and distortions in audience ratings would result. This argument is speculative and our experiences in somewhat similar circumstances have not resulted in instances of public confusion. In this connection, the rule, as presently written, permits a station in an adjoining or nearby community to immediately acquire the relinquished call letters. This rule also permits a licensee who is disposing of one facility and acquiring another facility in the same community to transfer its call letters to the new facility. We are unaware of instances of resulting public confusion. By the same token, there does not appear to be public confusion or audience ratings distortion when an AM/FM combination, with the same basic call letters, changes the call letters of one station. In these situations, the absence of public confusion may result from the efforts of the station to promote its new call letters and the fact the public may very well be more discerning in its ability to identify a station than is often perceived.[2] In any event, as indicated earlier, we are unconvinced that the purported problem justifies retaining the rule and § 73.3550(q) of the Rules will be eliminated.

"Suitable Clearance" and "Good Taste"

11. We did not receive any opposition to our proposal to eliminate § 73.3550(s) of the Rules, which proscribes the assignment of call letters using the initials of the President, a living former President, the United States of America or any of its agencies or departments, unless "suitable clearance" is obtained. We continue to believe that the public interest is not served by a rule which requires the applicant to undertake a burdensome effort to obtain "suitable clearance" and requires the Commission to determine whether these efforts are, in fact, sufficient. If a station attempts to use such call letters in a manner intended to suggest a relationship with a President or a federal agency, there are adequate remedies outside the context of call letter processing. Therefore, § 73.3550(s) will also be eliminated.

12. We are eliminating the "good taste" language presently set forth in § 73.3550(j) of the Rules. We agree with both the National Radio Broadcasters Association and the National Association of Broadcasters that the Commission should not be an arbiter in this area. Good taste is a concept for which standards have traditionally been set and enforced by the local communities. We will therefore rely upon the broadcasters' responsiveness to, among other things, their communities' wishes and federal law dealing with the broadcast of obscene, indecent and, profane material [3] to control the selection and use of call letters.

13. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need for and Purpose of the Rules.

1. We have concluded that requiring applicants to notify all broadcast stations within 35 miles and comply with other rules and procedures of questionable public interest value unnecessarily burdens the applicant and delays the processing of these requests.

II. Summary of issues raised by public comments in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.

A. *Issues Raised.* 1. There were comments asserting that extra costs attendant to litigating a call letter dispute in a local forum would be an undue burden on broadcasters.

2. There were also comments that the Commission did not consider the alternative of retaining jurisdiction over such disputes.

B. *Assessment.* 1. We have carefully considered these comments in order to determine if there will be a significant financial and administrative impact on a substantial number of small businesses. The comments did not detail or document the relative costs of pursuing a remedy in a local forum *vis-a-vis* the Commission. In this regard, it should be

[2] We must concede that the absence of public confusion in these situations may stem, in part, from the fact that we do not require a station to commence use of new call letters during a rating period or even during the time shortly before a rating period. Therefore, there would be a hiatus between the time a station commences use of the new call letters and the time a station is identified during the next rating period.

[3] 18 U.S.C. 1464 (1976); *See F.C.C. v. Pacifica Foundation*, 438 U.S. 726 (1978).

noted that as outlined in paragraph 4, *supra*, the Commission procedures can entail significant costs and delays for the broadcaster. Nevertheless, in some jurisdictions, the costs and delays of pursuing a remedy in the local forum could very well be greater. However, with respect to these situations, it should be reiterated that broadcasting is a mature and financially viable industry able to pursue its remedies in local forums.

III. Significant Alternatives Considered and Rejected.

1. The alternative rejected was to remain the forum to resolve call letter disputes. In addition to the fact that we consider this to be an unnecessary and inefficient use of our administrative resources, we feel that the local forum will provide the most complete forum for relief. As discussed in paragraph 5, *supra*, call letters may or may not be the primary means by which a station is identified or perceived in a particular community. Inasmuch as we do not consider promotional acronyms in resolving call letter disputes, our resolution is limited and may not, in actuality, reflect the correct result with respect to the issue of public confusion in a particular community. Local forums could take these other uses into consideration and, thus, be the most effective forums in making such determinations.

14. Authority for adoption of the rules contained herein is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

15. Accordingly, it is ordered, that § 73.3550 of the Commission's Rules is amended as set forth in Appendix A, effective January 20, 1984.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Section 73.3550 of the Commission's Rules is revised to read as follows:

§ 73.3550 Requests for new or modified call sign assignments.

(a) Requests for new or modified call sign assignments for broadcast stations shall be made by letter to the Secretary, FCC, Washington, D.C. 20554. An original and one copy of the letter shall be submitted and shall be accompanied by the filing fee, if required, specified in § 1.1111. Incomplete or otherwise defective filings will be returned by the FCC, and any filing fee submitted in connection therewith will be forfeited 45 days from the date the application is returned should the applicant fail to submit an acceptable call sign application for the same station within that period. As many as five call sign choices, listed in descending order of preference, may be included in a single request. A call sign may not be reserved.

(b) No request for a new call sign assignment will be accepted from an applicant for a new station until the FCC has granted a construction permit. Failure by the permittee of a new station to request the assignment of a specific call sign within 30 days of grant of the construction permit will result in the FCC, on its own motion, assigning an appropriate call sign.

(c) An applicant for transfer or assignment of an outstanding construction permit or license may, in accordance with this Section, request a new call sign assignment at the time the application for transfer or assignment is filed, or at any time thereafter. In the absence of written consent of the proposed transferor or assignor, no change in call sign assignment will be made effective until such application is granted by the FCC and the transaction consummated.

(d) Where an application is granted by the FCC for transfer or assignment of the construction permit or license of a station whose existing call sign conforms to that of a commonly owned station not part of the transaction, the assignee shall, within 30 days after consummation, request a different call sign in accordance with the provisions of this Section. Should a suitable application not be received within that period of time, the FCC will, on its own motion, select an appropriate call sign and effect the change in call sign assignment.

(e) Call signs beginning with the letter "K" will not be assigned to stations located east of the Mississippi River, nor will call signs beginning with the letter "W" be assigned to stations located west of the Mississippi River.

(f) Only four-letter call signs (plus FM or TV suffixes, if used) will be assigned. However, subject to the other provisions of this Section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call sign assignment (plus FM or TV suffixes, if used).

(g) Subject to the foregoing limitations, applicants may request call signs of their choice if the combination is available. Objections to the assignment of requested call signs will not be entertained at the FCC. However, this does not hamper any party from asserting such rights as it may have under private law in some other forum. Should it be determined by an appropriate forum that a station should not utilize a particular call sign, the initial assignment of a call sign will not serve as a bar to the making of a different assignment.

(h) Call signs are assigned on a "first-come-first-served" basis. Receipt by the FCC of a request for an available call sign blocks the acceptance of competing requests until the first received request is processed to completion. In the case of requests for the same call sign being received on the same date at the FCC, the assignment (if otherwise grantable) will be made to the station having the longest continuous record of broadcasting operation under substantially unchanged ownership and control. However, involuntary and *pro forma* assignments and transfers will not be taken into account in determining priority.

(i) Stations in different broadcast services which are under common control may request that their call signs be conformed by the assignment of the same basic call sign. For the purposes of this paragraph, 50% or greater common ownership shall constitute a *prima facie* showing of common control.

(j) The provisions of this section shall not apply to International broadcast stations, to stations authorized under Part 74 of the rules, nor to FM or TV stations seeking to modify an existing call sign only to the extent of adding or deleting an "–FM" or "–TV" suffix. The latter additions and deletions may be effective upon notification to the Commission.

(k) Unless subject to a pending transfer or assignment application, a change in call sign assignment will be made effective on the date specified in the telegram authorizing the change. In this regard, the applicant may include with its application a request for a specific effective date to take place within 45 days of the submission of its application for a call sign. Postponement of the effective date will be granted only in response to a timely request and for only the most compelling reasons.

(l) Four-letter combinations commencing with "W" or "K" which are assigned as call signs to ships or to other radio services are not available for assignment to broadcast stations, with or without the "–FM" or "–TV" suffix.

(m) Users of nonlicensed, low-power devices operating under Part 15 of the FCC rules may use whatever identification is currently desired, so long as propriety is observed and no confusion results with a station for which the FCC issues a license.

Appendix B

Parties submitting comments in MM Docket No. 83-373

American Broadcasting Companies, Inc.
Arbitron Ratings Company
CBS, Inc.
Cosmos Broadcasting Corporation
Cox Communications, Inc.
Ralph S. Levine
National Association of Broadcasters
National Broadcasting Company, Inc.
National Radio Broadcasters Association
Susquehanna Broadcasting Co.
Westinghouse Broadcasting and Cable, Inc.

Reply Comments

Providence Journal Company
December 1, 1983.

Statement of FCC Commissioner James H. Quello, Dissenting in Part

In re: Report and Order revising § 73.3550 of the Commission's Rules with respect to the assignment of call letters to broadcast stations.

The Commission should continue its policy of routinely reviewing call letter requests in order to ensure that the government does not issue a call sign that is either offensive to listeners or viewers or abusive toward any segment of the audience. The Commission has the responsibility under the Communications Act to designate call signs "as public convenience, interest, or necessity requires," [1] and the Commission requires regular and frequent broadcast of this identifying symbol.[2] In my view, the Commission's clear and unavoidably affirmative role in the selection and broadcast of call signs mandates a determination by the Commission that every assignment of call letters will serve the public interest.

The majority opinion notes that the criminal law prohibition on broadcast of obscene, indecent, or profane language [3] would apply to the selection of call signs, but this strict criminal standard is not appropriate for determining whether a symbol is suitable for government issue. For example, there is no indication under existing law that ethnic slurs would be covered by the statutory prohibition, but I think it is evident that the use of such a word in the official identification of a broadcast licensee would be improper.

The majority's decision does not address how a request for an objectionable call sign would be processed nor what the Commission's role would be should a call sign be challenged as violating the criminal law. I am not sure whether in such a case we Commissioners should be the judges or the licensee's co-defendants. We certainly shall not be disinterested spectators to the proceeding because only the Commission can order the effective relief of changing the offending call sign.

I believe my colleagues have improperly ignored this Commission's controlling role regarding call sign selection and broadcast, and thus they have misplaced their well-intentioned concerns about free speech for licensees. This is an unnecessary agency action, and I only hope that it will not damage the Commission's ability to eliminate the real restrictions which still limit licensees' editorial freedom.

[FR Doc. 83-34344 Filed 12-27-83; 8:45 am]
BILLING CODE 6712-01-M

[1] 47 U.S.C. 303 (1976).
[2] 47 U.S.C. 303 (p) (1976); 47 CFR 73.1201 (1983).
[3] 18 U.S.C. 1464 (1976).

47 CFR Part 97

[PR Docket No. 83-337]

Issuance of Ten Year Amateur Radio Licenses

AGENCY: Federal Communications Commission.

ACTION: Issuance of licenses.

SUMMARY: The Commission has commenced issuing new, modified and renewal amateur radio station and operator licenses for ten year terms. The longer-term licenses were authorized in rule amendments previously adopted in this proceeding. Issuance of ten year licenses was delayed so that necessary changes could be made in licensing programs. The Public Notice is necessary so that licensees will know that we are now issuing ten year licenses. The effect of this Public Notice is the creation of an informed public and a reduction in the number of telephone inquiries concerning license terms.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Special Services Division (202) 632-4964.

SUPPLEMENTARY INFORMATION: The Report and Order in this matter was published on October 28, 1983 at 48 FR 49861.

The Commission has commenced issuing new, modified and renewal amateur radio station and operator licenses for ten year terms. The longer-term licenses were authorized in rule amendments adopted by the Commission on October 6, 1983. Before the rules were changed, an amateur license was issued for a five year period. Issuance of ten year licenses was delayed so that necessary changes could be made in licensing programs. (PR Dkt. 83-337).

There will be a two year grace period for expired ten year station and operator licenses.

The Commission emphasizes that the ten year license term is not a blanket extension of existing station and operator licenses. An amateur license that specifies less than a ten year term will show a ten year term on the face of the license when it is either modified or renewed.

William J. Tricarico

Secretary, Federal Communications Commission.

[FR Doc. 83-34333 Filed 12-27-83; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 393

[BMCS Docket Nos. MC-97 and MC-82-1; Amdt. No. 81-15]

Four-Way Flashers on Slow-Moving Vehicles and Parts and Accessories Necessary for Safe Operation; Rear-Vision Mirrors

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This final rule combines two rulemaking actions. One rulemaking action allows the use of four-way flashers on those slow-moving vehicles being operated in interstate or foreign commerce if permitted by State or local regulations. Use of the flashers will assist in warning other highway users of the presence of a potential traffic hazard. The second rulemaking action changes the wording of the rear-vision mirror requirement for commercial motor vehicles being operated in interstate or foreign commerce. It has become necessary to clearly indicate what replacement mirrors are permitted on those vehicles manufactured before January 1, 1981. The rewording establishes that these replacement mirrors are required to meet Federal Motor Vehicle Safety Standard (FMVSS) No. 111 in effect at the time of vehicle manufacture.

EFFECTIVE DATE: January 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426-9767; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1. *Four-Way Flashers on Slow-Moving Vehicles.* A notice of proposed rulemaking (NPRM) was published in the **Federal Register** (45 FR 81621) on December 11, 1980, soliciting comments on the possibility of allowing the use of four-way flashers on those slow-moving vehicles being operated in interstate or foreign commerce. The Federal Motor Carrier Safety Regulations (FMCSR) currently specify that four-way flashers are to be used whenever a motor vehicle is stopped (other than necessary traffic stops) upon the traveled portion or shoulder of a highway. The flashers may be used at other times while the vehicle is stopped (49 CFR 392.22). The requirements preclude the use of four-way flashers on slow-moving vehicles to warn other drivers of the presence of a potential traffic hazard. The NPRM, developed in response to two petitions submitted to the FHWA, proposed allowing the use of four-way flashers on slow-moving vehicles.

Twenty-four of the twenty-six commenters to the docket were in favor of the proposed rule. Five State/local agencies, five associations, thirteen business representatives, and the National Committee on Uniform Traffic Laws and Ordinances support the use of flashers as a warning to motorists of potentially hazardous situations on the roadway. The State of Michigan feels that such use will assist motorists in discovering slow moving vehicles in the traffic ahead and will reduce the possibility of rear-end collisions. The Amercian Trucking Association, Inc. feels that the flashers act as warning for truck drivers, allowing them to react earlier to slower-moving traffic. The Private Truck Council of America, Inc. feels the use of flashers on trucks assists in controlling the traffic near the slow-moving vehicle.

Three commenters personally involved in over-the-road transportation indicated that they have seen the benefit of four-way flasher use in that early warning is provided to truck drivers of slower-moving vehicles on the roadway ahead, and the flashing lights are very effective when visibility is poor.

Two State agencies submitted comments opposing the proposed rule. The Department of California Highway Patrol (CHP) commented that it has a policy of limiting the number of flashing lights permitted on California's highways. At present, California motorists are allowed to flash warning lights when approaching, overtaking, or passing an accident or hazard on the roadway. The CHP expressed concern that there is little information on the negative effects of using four-way flashers on the highways. The CHP recommends that further study be done in this area. The Utah Department of Transportation feels that motorists are not familiar with the use of flashers on slower-moving vehicles and truck drivers will tend to use the flashers at any speed, confusing other highway users.

Two FHWA research studies[1, 2] have found that using four-way flashers on slower-moving vehicles is effective in reducing the hazard to the overtaking vehicle. Drivers slow down sooner and approach the slower-moving vehicle more carefully. From these studies and the comments made to the docket, the FHWA has determined that there is a safety benefit in permitting slower-moving vehicles the use of four-way flashers. It is not the intent of the FHWA to preempt existing State requirements concerning four-way flasher use. Drivers operating in interstate or foreign commerce may use the flashers if permitted to do so by State or local regulation.

A new § 392.18 is being added to Subpart B, Driving of Vehicles, and the language in § 393.25(f) has been changed accordingly. In addition, the language in § 392.22(a) has been changed to provide the name of four-way flashers as they are identified in 49 CFR 571.108, Table 1, Required Motor Vehicle Lighting Equipment.

2. Rear-Vision Mirrors. An NPRM concerning rear-vision mirrors on commercial motor vehicles was published in the **Federal Register** (45 FR 67107) on October 9, 1980. The NPRM proposed to change the wording of 49 CFR 393.80 to clearly indicate what mirror replacements are allowed on those vehicles manufactured prior to January 1, 1981.

The present wording could be interpreted that any replacement mirror must meet the requirements of FMVSS No. 111 (49 CFR 571.111) in effect at the time of replacement. The FHWA agrees with the Truck Safety Equipment Institute that such an interpretation poses a substantial economic burden to the affected industries and differs from the actual intent of 49 CFR 393.80. The FHWA's intention is that these mirrors meet the standard in effect as of the date of manufacture of the vehicle.

The ten commenters to the docket file are uniformly in support of changing the wording of the requirement. The majority of commenters are manufacturers of truck and rear-vision equipment. The rewording will eliminate potential confusion in the event that FMVSS No. 111 is modified in the future.

The wording of the NPRM has been modified in the final rule. Two dates have been removed because they are no longer necessary for compliance. The NPRM provided that replacement mirrors meet the size requirements of FMVSS No. 111 in effect on October 1, 1979. The wording of the final rule has been changed so that these mirrors meet FMVSS No. 111 at the time of vehicle manufacture. The rewording provides a rule that is clearer for compliance purposes.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation.

The economic impact anticipated as a result of this rulemaking action will be minimal. It is further anticipated that any impact will be a cost savings to the motor carrier industry. Accordingly, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, it is hereby certified that this action does not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, Parts 392 and 393 as set forth below.

List of Subjects in 49 CFR Parts 392 and 393

Highways and roads, Motor Carriers-driving practices, Motor vehicle equipment, Motor vehicle safety.

PART 392—DRIVING OF MOTOR VEHICLES

1. A new § 392.18 is added to Subpart B, Driving of Vehicles, to read as follows:

§ 392.18 Slow moving vehicles; hazard warning signal flashers.

A driver of a slow-moving motor vehicle may activate the vehicular hazard warning signal flashers to warn other drivers of the presence of a potential traffic hazard if permitted to do so by State or local regulations.

[1] Evaluation of Techniques for Warning of Slow-Moving Vehicles Ahead. FHWA-RD-79-79. Available from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. Accession No. PB 80114582. Executive Summary is also available. Accession No. PB 80141649.

[2] Knoblauch, Richard L. "Safety Aspects of Using Vehicle Hazard Warning Lights", June, 1980, Federal Highway Administration. Available at the Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590.

2. Section 392.22 is amended by revising the heading and first sentence of paragraph (a) of this section to read as follows:

§ 392.22 Emergency signals: stopped vehicles.

(a) *Hazard warning signal flashers.* Whenever a motor vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than necessary traffic stops, the driver of the stopped vehicle shall immediately activate the vehicular hazard warning signal flashers and continue the flashing until the driver places the warning devices required by paragraph (b) of this section.

* * * * *

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

3. Section 393.25 is amended by revising the last sentence of paragraph (f) to read as follows:

§ 393.25 Requirements for lamps other than head lamps.

* * * * *

(f) * * * This paragraph shall not be construed to prohibit the use of vehicular hazard warning signal flashers as required by § 392.22 or permitted by § 392.18.

* * * * *

4. Section 393.80 is revised to read as follows:

§ 393.80 Rear-vision mirrors.

(a) Every bus, truck, and truck tractor shall be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle. All such regulated rear-vision mirrors and their replacements shall meet, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.

(b) *Exceptions.* (1) Mirrors installed on a vehicle manufactured prior to January 1, 1981, may be continued in service, provided that if the mirrors are replaced they shall be replaced with mirrors meeting, as a minimum, the requirements of FMVSS No. 111 (49 CFR 571.111) in force at the time the vehicle was manufactured.

(2) Only one outside mirror shall be required, which shall be on the driver's side, on trucks which are so constructed that the driver has a view to the rear by means of an interior mirror.

(3) In driveway-towaway operations, the driven vehicle shall have at least one mirror furnishing a clear view to the rear. (49 U.S.C. 3102; 49 CFR 1.48.)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: December 20, 1983.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 83-34346 Filed 12-27-83; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 48, No. 250
Wednesday, December 28, 1983

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Docket No. R-0498]

Regulation K, International Banking Operations; International Lending Supervision

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would require banking institutions to establish special reserves against the risks presented in certain international assets. In particular, it is intended to require banking institutions to recognize uniformly the risk and diminished value of international assets which have not been serviced over a protracted period of time. This proposal would implement one aspect of the joint program of the Federal banking agencies (Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation) to strengthen the supervisory and regulatory framework relating to foreign lending by U.S. banks, incorporated in section 905(a) of the International Lending Supervision Act of 1983.

It is important that this provision of law be implemented expeditiously so that banking institutions, in the process of preparing financial statements, will have timely information on the reserves to be required by the agencies pursuant to section 905(a). Accordingly, it is the intention of the agencies that final regulations be adopted no later than January 31, 1984.

Further regulations implementing other provisions of the International Lending Supervision Act of 1983 will be issued separately.

DATE: Written comments must be submitted on or before January 11, 1984.

ADDRESS: All comments, which should refer to Docket No. R-0498, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to room B-2223, 20th and Constitution Ave., N.W., Washington, D.C. between the hours of 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Nancy P. Jacklin, Assistant General Counsel (202/452-3428); Kathleen O'Day, Senior Counsel, Legal Division (202/452-3786); or Michael G. Martinson, Projects Manager, International Activities, Division of Banking Supervision and Regulation (202/452-3621).

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this proposal is to establish uniform requirements for banking institutions to provide against the risks presented in certain international assets by establishing a special reserve for such assets out of current income.

Background

As part of the review of their procedures for supervising "transfer risk" in U.S. banking institutions (the possibility that an asset cannot be serviced in the currency of payment because of a lack of foreign exchange needed for payment in the country of the obligor), the Federal banking agencies have examined the methods used by banking institutions to account for credits to governments or others in countries with severe and protracted external payments problems. In the opinion of the agencies, present bank procedures do not always reflect the reduced quality of these credits and do not account for them uniformly.

Under current procedures, banks are required to review their assets, domestic and foreign, to determine whether they should be written down or whether additional provisions should be made to the allowance for possible loan losses. This traditional commercial credit process has not worked well for assets that have been adversely affected due to transfer risk. For example, private sector borrowers may be capable of honoring debt service obligations, but may be prevented from doing so by governmental restrictions on the availability and uses of foreign exchange.

Transfer risk problems can seriously impair the liquidity and earning power of an asset. Indeed, to the extent interest has not been paid, that, by itself diminishes the value of the underlying asset. The Federal banking agencies believe that when assets have not performed according to their terms over a protracted period of time due to a country's inability to generate or unwillingness to provide the necessary foreign exchange, the net carrying value of the affected assets should be reduced in a banking institution's financial statement through charges to earnings and balance sheet provisions.

Section 905(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98-181) ("the Act") provides that the appropriate Federal banking agency—the Board of Governors of the Federal Reserve System in the case of State member banks, bank holding companies, nonbank subsidiaries of a bank holding company, Edge Corporations, and Agreement Corporations—shall require banking institutions to establish and maintain a special reserve whenever, in the agency's judgment, (1) the quality of the banking institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, as indicated by such factors, among others, as:

(i) A failure by such public or private borrowers to make full interest payments on external indebtedness;

(ii) A failure to comply with the terms of any restructured indebtedness; or

(iii) A failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program; or

(2) No definite prospect exists for the orderly restoration of debt service.

The Act requires that such reserves be charged against current income and not be considered as part of capital and surplus or allowances for possible loan losses. The Federal banking agencies are required to promulgate regulations necessary to implement this section on or before March 29, 1984.

Proposal

The agencies propose to require banking institutions to establish "Allocated Transfer Risk Reserves"

(ATRR) against assets that are found to be impaired by the transfer risk problems described above. In the alternative, a banking institution would have the option to write down all or part of the assets that are subject to the special reserves and, consequently, reduce the amount of ATRR balances that would otherwise be required. If that option is selected, the allowance for possible loan losses must be replenished out of current earnings by the amount written down.

International assets subject to the reserve may include loans or other extensions of credit, debt securities, deposit arrangements, or similar claims. A representative listing of the types of assets which may be reservable is contained in the agencies' joint "Instructions for Preparing Country Exposure Report" (Form FFIEC No. 009, provided to banking institutions and available to the public upon request to any of the Federal banking agencies). International assets are those included in banking institutions' Country Exposure Reports and may be liabilities of foreign governments or their agencies and instrumentalities of foreign corporations, banks or individuals.

A determination that severe transfer risk problems exist would be based on the Federal banking agencies' application of the general criteria contained in section 905(a) of the International Lending Supervision Act. Applying such criteria, the Federal banking agencies will jointly determine which international assets will be subject to the reserve and the amount and timing of the reserve for specified assets. As prescribed by section 905, each agency will implement these determinations with respect to the banking institutions for which it is the appropriate Federal banking agency.

Banking institutions will be notified of the percentage amount of reserve required for specified assets. The first year's required reserve normally will be 10 percent of the principal amount of the asset but it may be lower or higher. In view of the fact that some countries already have exhibited debt service problems over a number of years, the initial reserves established upon implementation may be substantially higher than 10 percent. Additional reserves may be required in subsequent years, generally in increments of 15 percent of the principal amount of the asset. The specific amount and timing of the reserve would vary by country and may also vary by the type of asset. The percentage reserve for specified assets would be uniform for all banking institutions.

Banking institutions must establish the reserve out of current income. The ATRR cannot be considered part of capital and surplus or allowances for possible loan losses. If the agencies determine that the transfer risk problems affecting an asset have decreased to the extent that the reserve is no longer necessary, banking institutions will be notified that the reserve may be reduced.

As required by section 905, the rules for the establishment and maintenance of the ATRR by banking institutions would apply for all federal regulatory, supervisory, and disclosure purposes, including disclosure under the federal banking and securities laws.

Comments are specifically requested on: (1) The percentage norms for the reserve; (2) the factors to be used in determining the amount of reserves; and (3) the appropriate treatment of new loans where comparable outstanding loans are subject to reserves required by this regulation. The Federal banking agencies also are considering the extent to and manner in which to apply this and other provisions of the Act to U.S. branches and agencies, and commercial lending company subsidiaries, of foreign banks. Comments are invited on these questions.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) the Board of Governors of the Federal Reserve System has certified that the proposed regulation, if adopted, will not have a significant economic impact on a substantial number of small entities since small banks generally do not hold international assets which would be affected by this regulation.

Executive Order 12291

The Board of Governors of the Federal Reserve System has determined that the proposed regulation does not constitute a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Part 211

Banks, banking, Federal Reserve System, Foreign banking, Investments, Reporting requirements, Export trading companies, Allocated transfer risk reserve.

Pursuant to its authority under sections 9, 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 221 *et seq.*, 601-604a, and 611 *et seq.*), section 5 of the Bank Holding Company Act (12 U.S.C. section 1844), and sections 905 and 910 of the International Lending Supervision Act of 1983 (Pub. L. 98-181, Title IX), the Board proposes to amend 12 CFR Part 211 as follows:

1. By adding a new Subpart D as follows:

PART 211—INTERNATIONAL BANKING OPERATIONS

Subpart D—International Lending Supervision

Sec.

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); and the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98-181, 97 Stat. 1153).

Subpart D—International Lending Supervision

§ 211.41 Authority, purpose and scope.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System under the authority of the International Lending Supervision Act of 1983 (Pub. L. 98-181, Title IX 97 Stat. 1153) ("International Lending Supervision Act"); the Federal Reserve Act (12 U.S.C. 221 *et seq.*) ("FRA"), and the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*) ("BHC Act").

(b) *Purpose and scope.* This part is issued in furtherance of the purposes of the International Lending Supervision Act, the FRA, and BHC Act. It applies to State banks that are members of the Federal Reserve System ("State member banks"); corporations organized under section 25(a) of the FRA (12 U.S.C. 611-631) ("Edge Corporations"); corporations operating subject to an agreement with the Board under section 25 of the FRA (12 U.S.C. 601-604a) ("Agreement Corporations"); and bank holding companies (as defined in section 2 of the BHC Act 12 U.S.C. 1841(a)) and their subsidiaries other than bank subsidiaries, but not including a bank holding company that is a foreign banking organization as that term is defined in 12 CFR 211.23(a)(2).

§ 211.42 Definitions.

For purposes of this subpart the following definitions shall apply:

(a) "Banking institution" means State member bank; bank holding company; subsidiary of a bank holding company other than a bank and its subsidiaries; Edge Corporation; and Agreement Corporation.

(b) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(c) "International assets" means those assets included in banking institutions' "Country Exposure Report Forms" (FFIEC No. 009) as such forms may be revised from time to time.

(d) "Subsidiary" means any organization 25 percent or more of whose voting shares is directly or indirectly owned, controlled or held with power to vote by a banking institution, or which is otherwise controlled or capable of being controlled by a banking institution.

§ 211.43 Requirements.

(a) *Establishment of reserve.* A banking institution shall establish an Allocated Transfer Risk Reserve (ATRR) for specified international asset when required by the Board after the Federal banking agencies determine that such a reserve is necessary.

(b) *Amount of reserves.* (1) *Initial provisions.* The initial year's provision for the ATRR shall be ten percent of the principal amount of the specified international assets, or such greater or lesser percentage, required by the Board after determination by the Federal banking agencies.

(2) *Subsequent provisions.* Additional provision for the ATRR in subsequent years shall be 15 percent of the principal amount of the specified international assets, or such greater or lesser percentage, required by the Board after determination by the Federal banking agencies.

§ 211.44 Procedures.

(a) At least annually, the federal banking agencies shall jointly determine which international assets should be subject to the ATRR and the amount and timing of the ATRR for specified assets based on the standards in section 211.45. Applying the same standards, they shall also determine whether an ATRR no longer is required for specified assets and may be reduced under section 211.46.

(b) Banking institutions holding assets subject to the ATRR will be notified by the Board of the amount and timing of the ATRR to be established for each such asset and whether the ATRR for a specified asset may be reduced.

§ 211.45 Standards for requiring an allocated transfer risk reserve (ATRR).

(a) *Assets requiring an ATRR.* In determining whether an ATRR is warranted for particular international assets the following criteria shall be applied:

(1) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on external indebtedness as indicated by such factors, among others, as:

(i) Whether an obligor has failed to make full interest payments on external indebtedness;

(ii) Whether an obligor has failed to comply with the terms of any restructured indebtedness; or

(iii) Whether a foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(2) Whether no definite prospects exist for the orderly restoration of debt service.

(b) *Amount of ATRR.* The amount of ATRR shall be determined based upon the length of time the asset quality has been impaired, recent actions taken to restore debt service capability, future prospects for restored asset quality, or such other factors as the Federal banking agencies may consider relevant to the quality of the asset.

§ 211.46 Accounting treatment of allocated transfer risk reserve (ATRR).

(a) The ATRR shall be established by a charge to current income.

(b) The ATRR is to be accounted for separately from the General Allowance for Possible Loan Losses, and is to be deducted from "gross loans" to arrive at "net loans."

(c) The ATRR shall not be included in the banking institution's capital or surplus.

(d) No ATRR provisions are required if the banking institution writes down the assets in the requisite amount but in that event, the General Allowance for Possible Loan Losses must be replenished out of current earnings by the amount written down.

(e) The ATRR may be reduced by a banking institution when notified by the Board.

§§ 211.601 and 211.602 [Amended]

2. By transferring §§ 211.601 and 211.602 which are currently located at the end of Subpart B, to the end of new Subpart D.

Board of Governors of the Federal Reserve System, December 22, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-34390 Filed 12-27-83; 8:45]

BILLING CODE 6210-01-M

POSTAL SERVICE

39 CFR Part 111

Handling Custom Designed Express Mail Shipments Lacking Address Information Outside the Pouch

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule is intended to change certain mailing practices which are causing unnecessary delays to some Custom Designed Express Mail shipments. An Express Mail shipment is normally intended for a single addressee. Hence, the practice has developed among some mailers of placing their Custom Designed Express Mail articles in an Express Mail pouch without either enclosing them in any other wrapper or including delivery address information inside the pouch or on the articles themselves. This practice has resulted in a growing tendency by postal employees to regard the Express Mail pouch itself as the sealed wrapper, which may be opened only in response to a search warrant or in a dead mail branch for the sole purpose of identifying a delivery address, whereas the items of Express Mail sealed against inspection are limited to the contents of an Express Mail pouch. The net result has been that Express Mail pouches which have lost their outside address information are generally not opened by postal employees at the time the address information is found to be missing, but are forwarded to a dead mail branch for opening, which causes delay to the mail. To alleviate this problem, postal regulations are proposed to be changed to clarify that postal employees are authorized to open any Express Mail pouch lacking a delivery address in order to find such an address inside the pouch. here no address can be found without disturbing the wrappers of the contents, the pouch and its contents must be immediately sent to the dead mail branch to be opened completely, including any wrappers if necessary, to find a delivery address.

DATE: Comments must be received on or before January 27, 1984.

ADDRESS: Written comments should be mailed or delivered to the Director,

Office of Mail Classification, Rates and Classification Department, Room 8430, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Ed McClure, (202) 245–4530.

SUPPLEMENTARY INFORMATON: This proposed change is required to clarify that the concept of matter sealed against inspection applies to Express Mail items contained in an Express Mail pouch but not the pouch itself. This means that the pouch used for transporting Express Mail articles may be opened by postal employees for official purposes. It clarifies that postal employees are required to open Express Mail pouches when this is necessary to identify address information. If address information is not found without disturbing internal wrappers, an Express Mail pouch will be sent to a dead mail branch without a retention period for the purpose of finding a delivery address.

Accordingly, mailers are advised to prepare articles intended for Custom Designed Express Mail shipment with wrappers or envelopes *before* enclosing them in the Express Mail pouch. Mailers should also include destination address information in the pouch, either on a card or sheet of paper placed inside the pouch, or preferably on wrappers of individual pieces so that any postal employee who finds a Custom Designed Express Mail pouch lacking address information on the outside may promptly open the pouch and immediately find the address to which the mail should be delivered.

If this rule is adopted, the failure to wrap the contents of an Express Mail pouch or to insert a delivery address inside the pouch may have the following consequences where no address information appears on the outside:

1. The contents of the pouch, such as correspondence, which are generally intended and entitled to be kept private, may be exposed to view when it becomes necessary for a postal employee to open the pouch to attempt to find a delivery address.

2. Delivery of the shipment may be delayed or may become impossible if the pouch has to be sent to a dead mail branch and no delivery address can be found.

The proposed rule will amend the following sections of the Domestic Mail Manual to clarify handling procedures for Custom Designed Express Mail shipments and to correct two errors in existing regulations which may have caused misunderstanding.

Section 115.21c will be amended to correct a printing error by changing "115." to "115.6".

Section 115.31h will be amended to change the erroneous reference "331.1" of the DMM to "424.1 of the *Postal Operations Manual* [POM]".

New section 159.323 will be added to clarify that an Express Mail pouch lacking address information on the outside must be opened promptly to identify a delivery address which may be inside.

New section 159.521h will be added to require that an Express Mail pouch without a delivery address inside will be forwarded to a dead mail branch without holding it for a retention period.

Section 262 will be amended to advise mailers to:

(1) Wrap the contents of a Custom Designed Express Mail pouch so that the wrapper, rather than the pouch, provides privacy; and

(2) Include address information inside the pouch, preferably on the envelopes or wrappers of the contents.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Comestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 115—MAIL SECURITY

1. In 115.2, revise .21c to read as follows:

115.2 Opening, Reading, and Searching of Sealed Mail Generally Prohibited

.21 General

* * * * *

c. A person executing a search warrant in accordance with 115.6.

2. In 115.3, revise .31h to read as follows:

115.3 Permissible Detention of Mail

.31 Sealed Mail Generally Not Detained. No postal employee may detain mail sealed against inspection (other than dead mail) except:

* * * * *

h. A postal employee, during the period required to seek and obtain instructions under 153.7, concerning mail whose delivery is in dispute, or under 424.1 of the Postal Operations Manual (POM), concerning legal process, other than a search warrant duly issued under Rule 41 of the Federal Rules of Criminal Procedure, purporting to require the surrender of mail matter.

PART 159—UNDELIVERABLE MAIL

3. In 159.3, revise the title of .32 and add new .323 to read as follows:

159.3 Address Correction Service and Return

* * * * *

.32 Registered, C.O.D., and Express Mail

* * * * *

.323 Any postal employee who cannot dispatch, distribute, or deliver an Express Mail pouch because there is no delivery address on the outside of the pouch must promptly open the pouch in order to find a delivery address on the outside of any envelope, wrapper, or other article inside the pouch. Postal employees must not open the wrappers or envelopes or break the seals of any Express Mail articles inside the pouch. If address information is found, the pouch must be closed securely and promptly tagged and forwarded to the delivery address. If no address information is found inside the pouch, the pouch must be handled in accordance with 159.521h.

4. In 159.5, add new .521h to read as follows:

159.5 Dead Mail

* * * * *

.52 Treatment at Last Office of Address

.521 Disposition

* * * * *

h. When an Express Mail pouch must be opened to identify a delivery address (see 159.323), but no address is found without disturbing wrappers of the contents, the pouch and its contents must be immediately sent to the dead mail branch without a retention period. Express Mail outside pieces with defaced lables which cannot be read must also be immediately sent to the dead mail branch.

PART 262—EXPRESS MAIL CUSTOM DESIGNED SERVICE

5. Revise 262 to read as follows:

262 Express Mail Custom Designed Service

262.1 Except as provided in 261.2 (for outside pieces) and 223.24 (for pick-up from post office box addresses), all Custom Designed Service mail must be tendered in Express Mail pouches which

are closed and which have the required receipt forms securely attached.

262.2 The mailer should wrap the individual contents of a Custom Designed Express Mail pouch so as to provide both the intended privacy and a space for appropriate address information. In addition to the address on the outside of the pouch, the mailer should also include address information either on a card or sheet of paper placed inside the pouch or preferably on the wrapper of each individual piece. This internal address is important because if the outside address of a pouch is lost, a postal employee who opens the pouch may be unable to determine to whom the pouch should be delivered (see 159.323).

262.3 Failure to provide an internal wrapper and address may have the following consequences if a Custom Designed Express Mail shipment is found lacking address information on the outside:

a. Any contents of the pouch which are intended and entitled to be kept private may be exposed to view if it is necessary for a postal employee to open the pouch to attempt to identify a delivery address.

b. Delivery of the shipment will be delayed or prevented if it is sent to a dead mail branch for examination and for disposal along with other undeliverable and nonreturnable mail if a delivery address is not found.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401(2))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 83-34300 Filed 12-27-83; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL 2497-1]

Hazardous Waste Management Facilities; Availability of Information

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: The Environmental Protection Agency hereby notices the availability of a final contractor report, *Test Protocols for Determining the "Free Liquid" Content of Hazardous Waste*, for public comment. The Agency is preparing a final rule to identify the test protocol to be used to implement the rule restricting "free liquids" in hazardous waste landfills. The report summarizes the results of laboratory tests on a number of test protocols, including the paint filter test that the Agency proposed in the **Federal Register** on February 25, 1982. The Agency requests comments on this report, and serveral related specific issues.

DATES: Comments on the report must be submitted on or before January 27, 1984.

ADDRESS: Comments should be addressed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382-4672. Comments should identify the regulatory docket and report title as follows:

"Section 3004, *Test Protocol for Determining the "Free Liquid" Content of Hazardous Waste*".

A copy of the report is available for reading in the EPA Library and the Subtitle C Docket Room (Room S-212A), both located at the above address, during the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday excluding holidays. Copies of the report are also available for reading at the EPA Regional Libraries.

FOR FURTHER INFORMATION CONTACT: For a single copy of the report contact the RCRA Hotline at (800) 424-9346 (toll free) or at (202) 382-3000. For additional information contact Paul Cassidy at (202) 382-4682.

SUPPLEMENTARY INFORMATION: The Agency promulgated interim status standards on May 19, 1980, in 40 CFR 265.314 (45 FR 33249-50) that prohibit the disposal of containerized liquid waste or waste containing free liquids in a hazardous waste landfill. This prohibition went into effect on November 19, 1981. These standards also require that bulk liquids must not be placed in a hazardous waste landfill unless (1) the landfill is equipped with a liner which is chemically and physically resistant to the liquid, and a functioning leachate collection and removal system with a capacity to remove all the leachate produced, or (2) prior to disposal, the bulk liquids are treated so that free liquids are no longer present when the waste is placed in the landfill. The date of compliance for this requirement was also Novmeber 19, 1981. In the May 19, 1980 regulations the Agency also defined free liquid as "liquids which readily separate from the solid portion of a waste under ambient temperature and pressure" (40 CFR 260.10). In the May 19, 1980 preamble (45 FR 33214) the Agency suggested and described the use of an "inclined plane" test as a means to determine (in those cases where it is not obvious) if a waste contains "free liquids."

On February 25, 1982 (47 FR 8311-13), the Agency proposed a paint filter test that could be used to determine the presence of free liquids. Prior to this date, the Agency initiated a study to evaluate all the various test protocols that could be used to determine the existence of free liquids in sludges, semi-solids, slurries, and other waste types. The study identified a wide range of possible test protocols (75 in number) that could be used. This number was trimmed down to 19 as potentially useful for determining the presence of free liquids in wastes, and was then further reduced to six for laboratory testing. The six protocols include an inclined plane test, a lab press, a filtration test, a graduated cylinder test, a sieve series, and a paint filter test.

The report being made available today, *Test Protocols for Determining the "Free Liquid" Content of Hazardous Waste*, contains the summary and evaluation of the laboratory test results of these six test protocols. Five non-hazardous waste materials were used to evaluate the test protocols. The five materials were selected because their physical properties are representative of the physical properties of typical hazardous waste sludges. The five waste materials were: drilling mud, air pollution control sludge, paper sludge, separator sludge, and paint sludge. The report also includes an evaluation of the suitability of various absorbent materials to transform a liquid waste or waste with free liquids into a waste that no longer contains free flowing liquids.

The Agency specifically requests comments on the accuracy and completeness of the information presented in the report, especially regarding the paint filter test parts of the report. EPA encourages commenters to suggest remedies or alternatives should any inaccuracy or incompleteness be identified. The Agency is particularly interested in specific comments on the following issues addressed in the report. (1) Whether five minutes is an adequate test period for determining the presence of absence of free liquids in a waste. (2) Should a standard watchglass be used in the test and would the use of a standard watchglass present any problems? (3) Should the funnel used in the paint filter test be fluted to facilitate moisture flow?

Under Executive Order 12291, EPA must judge whether a regulation or rule, including any implementation guidance, is "Major" and therefore subject to the

requirement of a Regulatory Impact Analysis. This notification is not a rule.

This notification simply announces to the public the availability of a contractor report that summarizes the latest information on the testing of free liquids and seeks public comment on the report.

Dated: December 2, 1983.

Jack W. McGraw,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 83-34357 Filed 12-27-83; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 48, No. 250
Wednesday, December 28, 1983

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.

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Filed under subpart Q of the board's procedural regulations (See, 14 CFR 302.1701 et. seq.)
Week ended December 16, 1983.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board 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.

Date filed	Docket No.	Description
Dec. 13, 1983	41874	South Pacific Island Airways, Inc., c/o Stephen A. Alterman, 1050 Seventeenth Street NW., 12th Floor, Washington, D.C. 20036. Application of South Pacific Island Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations authorizing it to provide scheduled, large aircraft service between any point in the United States and Port Moresby, Papua New Guinea. Conforming Applications, Motions to Modify Scope and Answers may be filed by January 10, 1984.
Dec. 14, 1983	41876	Southern Air Transport, Inc., c/o James H. Bastian, P.O. Box 52-4093, Miami International Airport, Miami, Florida 33152. Application of Southern Air Transport, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity so as to authorize it to engage in foreign air transportation of property and mail between a point or points in the United States and a point or points in Venezuela.
Dec. 15, 1983	41882	Royale Airlines, Inc., c/o Theodore I. Seamon, Seamon, Wasko & Ozment, 1211 Connecticut Avenue NW., Suite 300, Washington, D.C. 20036. Application of Royale Airlines, Inc. pursuant to Section 410(d)(1) of the Act and Subpart Q of the Board's Procedural Regulations seeks permanent authority to engage in interstate and overseas scheduled air transportation of persons, property, and mail between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by January 13, 1984.
Dec. 16, 1983	41868	C.A.L. Cargo Air Lines Ltd., c/o Melbin Rishe, Fried, Frank, Harris, Shriver & Kampelman, 600 New Hampshire Avenue NW., Suite 1000, Washington, D.C. 20037. Application of C.A.L. Cargo Air Lines Ltd. pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations requests issuance of a foreign air carrier permit authorizing it to engage in foreign air transportation of cargo between Cologne, Federal Republic of Germany and New York, New York. Answers may be filed by January 13, 1984.
Dec. 13, 1983	32629	Saudi Arabian Airlines Corporation, c/o William A. Nelson, Shea & Gould, 1627 K Street NW., Suite 1000, Washington, D.C. 20006. Amendment No. 1 to the Application of Saudi Arabian Airlines Corporation for renewal of its foreign air carrier permit in accordance with the directives of Order 83-11-41, supplements its response to the Request for Evidence. Answers may be filed by January 10, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 83-34382 Filed 12-27-83; 8:45 am]
BILLING CODE 6320-01-M

[Order 83-12-107]

Fitness Determination of Pichel Air Service, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 83-12-107, Order to Show Cause.

SUMMARY: The Board is proposing to find that Pichel Air Service, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than January 11, 1984, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: James F. Ransom, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-12-107 is available from the Distribution Section,

Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-12-107 to that address.

By the Civil Aeronautics Board: December 20, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-34381 Filed 12-27-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 83-12-98]

Fitness Determination of Reeves Aviation, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 83-12-98, Order to Show Cause.

SUMMARY: The Board is proposing to find that Reeves Aviation, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATE: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than January 9, 1984, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5088.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-12-98 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-12-98 to that address.

By the Civil Aeronautics Board: December 19, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-34379 Filed 12-27-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 83-12-97]

Fitness Determination of Resort Airlines, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 83-12-97, Order to Show Cause.

SUMMARY: The Board is proposing to find that Resort Airlines, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards. The complete text of this order is available, as noted below.

DATE: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than January 9, 1984, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5002.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-12-97 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-12-97 to that address.

By the Civil Aeronautics Board: December 19, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-34380 Filed 12-27-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

President's Private Sector Survey on Cost Control; Meeting

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice of Open Meeting of the Subcommittee and of the Executive Committee of the President's Private Sector Survey on Cost Control (PPSSCC).

SUMMARY: The Executive Committee of the President's Private Sector Survey on Cost Control was established by Executive Order 12369, as amended. The Subcommittee was established by the Executive Committee to review the reports prepared by the Survey's Task Forces and formulate recommendations to the President.

Time and Place:

Subcommittee—January 10, 1984 at 2 p.m.;

Excutive Committee—January 10, 1984 at 9 p.m.

Both meetings will be held at the Washington Marriott, 22nd and M Streets, N.W., Washington, D.C.

Agenda:

The following draft reports will be discussed by the Subcommittee:

1. Research and Development
2. Financial Management in the Federal Government
3. Wage Setting Laws: Impact on the Federal Government
4. Anomalies in the Federal Work Environment
5. Federal Retirement Systems
6. Information Gap in the Federal Government
7. The Cost of Congressional Encroachment
8. Federal Health Care Costs
9. Federally Susidized Programs
10. Opportunities Beyond PPSSCC

The Executive Committee will consider "A Summary Report to the President."

Copies of the reports will be available in advance of the meeting at the Department's Central Reference and Records Inspection Facility, Room 6628 Hoover Building, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230. Please call Ms. Phyllis D. Lambry or Ms. Geraldine P. LeBoo on (202) 377-3271 for information concerning fees and procedures for obtaining copies by mail.

Public Participation: The January 10 meeting will be open to the public. Seating will be on a first-come, first-served basis, up to the safe capacity of the meeting room.

The public may file written statements for consideration by the Subcommittee any time before, at, or after the meeting. It is strongly recommended that statements be filed after the draft reports are made public, but before the Subcommittee meeting is held, to ensure that the comments are considered by the Subcommittee before adoption of a report. The comments should be filed at the Department of Commerce's Central

Reference and Records Inspection Facility, address and phone number as above. Because of the lengthy number of recommendations in the reports to be discussed, the meeting agenda will not include time for oral statements from public attendees. Statements the public wishes to make in response to the open meeting are welcome, and will be handled in the same manner as comments on the draft reports. All public statements received will be available for public review.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Colson, Committee Control Officer for the Executive Committee of the President's Private Sector Survey on Cost Control, telephone (202) 466–5170.

Dated: December 22, 1983.

Edward F. Michals,

Information Management Division, Office of the Secretary.

[FR Doc. 83-34472 Filed 12-27-83; 8:45 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P-5376-001 et al.]

Applications Filed With the Commission

December 21, 1983.

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: License.

b. Project No.: 5376-001.

c. Date Filed: May 2, 1983.

d. Applicant: Boise Cascade Corporation.

e. Name of Project: Horseshoe Bend Hydoelectric.

f. Location: On the Payette River near the City of Horseshoe Bend in Boise County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Harry S. Adams, Manager, Hydroelectric Resources, Boise Cascade Corporation, P.O. Box 50, One Jefferson Square, Boise, Idaho 83728.

i. Comment Date: February 27, 1984.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 410-foot-long concrete gravity diversion dam with crest elevation 2603 feet: (2) an intake structure with six 10-foot-high, 10-foot-wide timber gates; (3) a 17,300-foot-long power canal with a forebay at the downstream end; (4) a gated penstock headworks; (5) two 170-foot-long buried penstocks, one 12 feet in diameter and one 16 feet in diameter; (6) a 90-foot-long, 55-foot-wide reinforced concrete powerhouse containing two turbine generators with rated capacities of 3.6 and 5.9 MW and an average annual energy production of 52.2 GWh; (7) a 1,400-foot-long tailrace with a normal tailwater surface elevation of 2,556 feet; (8) a transformer substation at the powerhouse site; and (9) a 700-foot-long, 69-kV transmission line connecting to an Idaho Power Company (IPC) distribution line. A 15-foot-wide section of the diversion dam spillway 1.5 feet lower than the remaining crest and a portage trail on the east bank would be constructed to provide for boat and raft passage over or around the dam. The Applicant estimates that project construction would cost $22.1 million in 1982 dollars.

k. Purpose of Project: The Applicant expects to sell project output to IPC.

l. This notice also consists of the following standard paragraphs: A3, A9, B and C.

2a. Type of Application: Preliminary Permit.

b. Project No: 7883–000.

c. Date Filed: November 28, 1983.

d. Applicant: Power House Systems.

e. Name of Project: Weston.

f. Location: Upper Ammonoosuc River, town of Groveton, Coos County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. William Allin, Power House Systems, Water Street, Lancaster, New Hampshire 03584.

i. Comment Date: February 24, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing 225-foot-long, 11.5-foot-high timber crib dam; (2) an existing waste gate at the north dam abutment and two outlet gates at the south dam abutment; (3) a 30-acre reservoir with no usable storage capacity at elevation 867.1 feet M.S.L. with flashboards installed; (4) a new powerhouse located at the north dam abutment with two turbine-generators with a total rated capacity of 450 kW; (5) a transmission line; and (6) appurtenant facilities. The proposed project would generate up to 2,000,000 kWh annually. The project dam is owned by the James River Company.

k. Purpose of Project: Energy produced at the project would be sold to Public Service Company of New Hamsphire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would perform surveys and geologic investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State and local government agencies concerning the potential environmental effects of the project, and prepare an application for an FERC license, including an environmental report. Applicant estimates the cost of the work under the permit would be $50,000.

3a. Type of Application: Preliminary Permit.

b. Project No: 7669–000.

c. Date Filed: October 3, 1983.

d. Applicant: John L. Symons.

e. Name of Project: Coldwater Creek Hydroelectric.

f. Location: On Coldwater Creek, partially within Inyo National Forest and Bureau of Land Management land in Mono County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. John L. Symons, 2800 Audrey Lane, Bishop, California 93514.

i. Comment Date: February 27, 1984.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high diversion structue at elevation 7,700 feet; (2) a 12-inch-diameter, 30,650-foot-long penstock; (3) a powerhouse at elevation 4,340 feet containing a generating unit with a rated capacity of 350 kW; and (4) a 250-foot-long transmission line tying into a Southern California Edison line. The Applicant estimates a 2,800,000 kWh average annual energy production.

A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $26,500.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

4a. Type of Application: Minor License (1.5 MW or Less).

b. Project No.: 7324–000.

c. Date Filed: May 31, 1983.

d. Applicant: Mr. William Onweiler.

e. Name of Project: Dead Horse Creek.

f. Location: On Dead Horse Creek in Valley County, Idaho near the town of McCall.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Carl L. Myers, 750 Warm Springs Avenue, Boise, Idaho 83702

i. Comment Date: February 27, 1984.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high diversion-intake structure at an elevation of 5,780 feet; (2) a 12-inch-diameter, 7,500-foot-long penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 360 kW operating under a head of 740 feet; and (4) 4.4 miles of upgraded existing transmission line. The average annual energy output would be 1,300,000 kWh.

The estimated cost of the project is $397,305.50, in 1982 dollars.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5a. Type of Application: Preliminary Permit.

b. Project No.: 7750-000.

c. Date Filed: October 24, 1983.

d. Applicant: Muskingum River Hydro Associates.

e. Name of Project: Stockport Lock & Dam #6.

f. Location: On the Muskingum River in Morgan County, Stockport, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: David Coombe, Synergics, Inc., 410 Severn Ave., Suite 409, Annapolis, Maryland 21403.

i. Comment Date: February 27, 1984.

j. Description of Project: The proposed project would be located at Stockport Lock & Dam #6 which is owned by the Ohio Department of Natural Resources and would consist of: (1) An existing 482-foot-long, 13-foot-high rockfill dam; (2) an existing 160-foot-long, 36-foot-wide lock; (3) an existing reservoir at 640 feet M.S.L. with negligible storage and surface areas; (4) a proposed powerhouse with an installed capacity of 7.5 MW; (5) a proposed 200-foot-long transmission line; and (6) appurtenant facilities. The estimated average annual energy produced would be 28,800 MWh.

k. Purpose of Project: Project energy may be sold to Tennessee Valley Authority or private industry.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the work under the permit would be $36,000.

6a. Type of Application: Preliminary Permit.

b. Project No: 7845-000.

c. Date Filed: November 14, 1983.

d. Applicant: HydroEngineering Associates.

e. Name of Project: Fishtrap.

f. Location: Levisa Fork of the Big Sandy River, Pike County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: E. D. Tice, P.E., P.O. Box 24, Pauline, South Carolina 29374.

i. Comment Date: February 24, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Fishtrap Dam and Reservoir and would consist of a powerhouse with one or more turbine-generator units having a total rated capacity of 1,080 kW and a ½-mile-long transmission line. The project would be capable of generating up to 5,440,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be sold to Kentucky Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary if issued, does not authorize construction. A permit, if issued, gives the permittee, during the term of the permit, the right of priority of application for license. The Applicant seeks issuance of a preliminary permit for a period of 18 months. The work to be performed under this preliminary permit would consist of gathering necessary data, completing surveys and evironmental studies, obtaining necessary Federal, State and local permits including coordinaiton with the Corps of Engineers, and preparing necessary documentation for the Commission's licensing requirements. Applicant estimates that the cost of work to be performed under the permit would not exceed $20,000.

7a. Type of Application: Major License (5 MW or Less).

b. Project No: 7174-000.

c. Date Filed: March 23, 1983.

d. Applicant: Mr. Truman Price.

e. Name of Project: Cottrell Hydroelectric Project.

f. Location: On McCloskey Creek, tributary of the Washougal River, near the town of Washougal, in Skamania County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Robert A. Olson, ELI Corporation, 21 Green Street, Concord, New Hampshire 03301.

i. Comment Date: February 23, 1984.

j. Description of Project: The proposed project would consist of: (1) Restoration of an existing 12-foot-high rock crib dam at elevation 1862 feet; (2) an 18-foot-high, 190-foot-long earth filled diversion structure 200 feet upstream from the rock crib dam forming; (3) a reservoir with a surface area of 5 acres and a capacity of 30 acre-feet at elevation 1,876 feet; (4) a 9,660-foot-long, 24-inch-diameter steel penstock; (5) a powerhouse with 3 generating units with a total installed capacity of 4,400 kW; (6) a 25-foot by 30-foot caretaker house adjacent to the powerhouse; (7) a 20,340-foot-long, 13-kV underground transmission line; (8) a 4,600-foot-long access road; and (9) a reconstructed 240-foot-long suspension foot bridge. The average annual energy production would be 10,000,000 kWh. Construction cost of the project is estimated to be $3,155,700.

k. Purpose of Project: Project power will be sold to local utility companies.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1

8a. Type of Application: Preliminary Permit.

b. Project No: 7842-000.

c. Date Filed: November 14, 1983.

d. Applicant: Fred G. Williams & Alan L. Eden.

e. Name of Project: Anamosa Dam.

f. Location: On the Wapsipinicon River, in Jones County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Fred G. Williams, Route 1, Monticello, Iowa 52310.

i. Comment Date: February 24, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing reservoir; (2) an existing concrete dam, which was constructed in 1937; (3) an existing 70-foot-long, concrete forebay; (4) an existing concrete and masonry powerhouse, which would contain 1 generating unit rated at 400 kW; (5) a proposed 4,160-volt transmission line; and (6) apurtenant facilities. The Applicant estimates the average annual energy output would be 2,100 kWh.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design

alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $25,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

9a. Type of Application: License (Minor).

b. Project No: 5339–001.

c. Date Filed: October 27, 1983.

d. Applicant: Western Power, Inc.

e. Name of Project: Goblin Mountain.

f. Location: On Quartz Creek, near Index, in Snohomish County, Washington, and occupying U.S. lands within Mt. Baker—Snoqualmie National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Thomas R. Childs, Western Power, Inc., P.O. Box 5663, Bellingham, Washington 98227.

i. Comment Date: February 23, 1984.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 45-foot-long concrete diversion dam at elevation 2,885 feet; (2) a 3,900-foot-long, 36-inch-diameter concrete pipeline; (3) an 850-foot-long, 36-inch-diameter steel penstock; (4) a powerhouse containing one generating unit rated at 1.5 MW; (5) a 50-foot-long tailrace; (6) a 1.3-mile-long transmission line; and (7) a 1.2-mile-long access road. The average annual energy generation is estimated to be 6.2 million kWh. The license application was filed pursuant to an issued preliminary permit and the cost of the project is estimated to be $2,216,000.

k. Purpose of Project: The power produced would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

10a. Type of Application: License (5MW or Less).

b. Project No: 5357–001.

c. Date Filed: July 5, 1983.

d. Applicant: North Board of Control of the Owyhee Project Irrigation District.

e. Name of Project: Mitchell Butte Power Plant.

f. Location: On Owyhee River and east bank of Owyhee Reservoir, near Aldrian, in Malheur County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Gene Stunz, Counsel for North Board of Control, Box 1565, Nyssa, Oregon 97913.

i. Comment Date: February 24, 1984.

j. Description of Project: The project will utilize the existing Bureau of Reclamation (USBR) Owyhee Dam and North Canal irrigation conveyance system and will be located on the Mitchell Butte Lateral at mile 9.7. The proposed project would consist of: (1) A 10-foot-long concrete inlet structure, 37 feet upstream of the existing siphon intake; (2) a 525-foot-long, 36-inch-diameter concrete penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 1500 kW; (4) a 20-foot-long tailrace; (5) a switchyard; and (6) a 3-mile-long, 69-kV transmission line connecting to an existing USBR transmission line. The Applicant estimates that the average annual energy production would be 5.4 million kWh. The cost to construct the project, in 1982 dollars, would be $2,000,000.

l. Purpose of Project: The project power will be sold to the Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

11a. Type of Application: Amendment of License.

b. Project No: 2934–005.

c. Date Filed: August 29, 1983.

d. Applicant: New York State Electric & Gas Corporation.

e. Name of Project: Upper Mechanicville Project.

f. Location: On the Hudson River in Saragota County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Kathy Small, New York State Electric & Gas Corporation, 4500 Vestal Parkway East, Binghamton, New York 13902.

i. Comment Date: January 27, 1984.

j. Description of Project: The project as licensed consists of: (1) The existing New York State Department of Transportation owned Upper Mechanicville dam 19 feet high and 700 feet long with 2.5-foot-high flashboards; (2) a reservoir with a surface area of 2,600 acres, a storage capacity of 9,425 acre-feet and normal water surface elevation of 68.82 feet m.s.l.; (3) an intake channel with two reinforced concrete guide walls and three 35-foot-diameter cofferdam walls constructed of sheet pilings; (4) a powerhouse containing two generating units with a total capacity of 16.8 MW; (5) a tailrace 1,200 feet long and 120 feet wide with a bi-level bottom; (6) a 34.5-kV transmission line 1.10 miles long; and (7) appurtenant facilities. The estimated annual generation of the project is 76,800,000 kWh.

The Applicant proposes to amend the license by: (1) Replacing the 2.5-foot-high flashboards with 6-foot-high crest gates. The reservoir would be maintained at the presently authorized elevation (with flashboards). The project would be operated as already licensed with no other changes.

k. Purpose of Project: All project power would be used to meet the Applicant's system needs.

l. This notice also consists of the following standard paragraphs: B, C and D1.

12a. Type of Application: Preliminary Permit.

b. Project No: 7647–000.

c. Date Filed: September 23, 1983.

d. Applicant: Brookport Associates.

e. Name of Project: Brookport Project.

f. Location: On the Ohio River, in Massac County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, Brookport Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: February 27, 1984.

j. Description of Project: The Applicant would utilize the existing Locks and Dam No. 52 administered by the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed powerhouse containing generating units with a total rated capacity of 34.5 MW; (2) proposed intake structures; (3) a proposed 69 kV transmission line; and (4) appurtenant facilities. The estimated average energy output for the project would be 302 GWh.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

13a. Type of Application: Preliminary Permit.

b. Project No: 7810–000.

c. Date Filed: November 7, 1983.

d. Applicant: Belton Associates.

e. Name of Project: Thomas W. Heal.

f. Location: On the Leon River, near the City of Belton, in Bell County Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, Brookport Associates, 4832 Colony Circle, Salt Lake City, Utah 84117

i. Comment Date: February 24, 1984.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers Belton Dam and Lake and would consist of: (1) A new penstock 550 feet long and 10 feet in diameter; (2) a new reinforced concrete powerhouse, 50 feet square, containing 4 turbine/generator units rated at 4 MW each; (3) a new tailrace measuring 100 by 12 feet; (4) a new 64-kV transmission line 2500 feet long; and (5) appurtenant electrical and mechanical facilities.

The estimated average annual generation of 26,920,000 kWh will be sold to local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit*—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $125,000.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

14a. Type of Application: Preliminary Permit.

b. Project No.: 7847–000.

c. Date Filed: November 14, 1983.

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Benton.

f. Location: Near the Town of Benton, on the Elkhart River, in Elkhart County, Indiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Charles S. Hayes, Michiana Hydro-Electric Power Corporation, 1634 East Jefferson Blvd., South Bend, Indiana 46617.

i. Comment Date: February 23, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing Benton Dam, 5 feet high and 130 feet long; (2) approximately three miles of existing Elkhart River Hydraulic Canal; (3) a rehabilitated powerhouse measuring 21 by 24 feet and containing one new turbine/generator unit rated at 300 kW under a hydraulic head of 19 feet; (4) an existing substation; (5) a new transmission line rated at 5 kV and 100 feet long; and (6) appurtenant electrical and mechanical facilities.

The estimated average annual generation of 1,971,000 kWh would be sold to the Northern Indiana Public Service Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit*—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibilty studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $11,500.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

15a. Type of Application: Exemption from Licensing (5MW or Less).

b. Project No.: 7454–002.

c. Date Filed: October 19, 1983.

d. Applicant: El Dorado Irrigation District.

e. Name of Project: Weber Dam Project.

f. Location: El Dorado County, California; Weber Creek-North Fork.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. §§ 2705 and 2708, *as amended.*

h. Contact Person: Mr. A. A. Lind, Acting District Engineer, El Dorado Irrigation District, 2890 Mosquito Road, P.O. Box 1608, Placerville, CA 95667.

i. Comment Date: February 6, 1984.

j. Description of Project: The proposed project would consist of: (1) A new 30-inch-diameter, 100-foot-long penstock, joining an existing 24-inch-diameter outlet pipe from the existing 89-foot-high Weber Dam on the north fork of Weber Creek at an elevation of 2,275 feet; (2) a powerhouse with a total installed capacity of 200 kW under an operating head of 71 feet; (3) a 7,000-foot-long, 21-kV transmission line connecting with an existing 21-kV transmission line of Pacific Gas and Electric Company (PG&E). The project would also utilize the excess water released into Weber Creek from Applicant's proposed SOFAR Project No. 2761. The estimated 0.72 million kWh produced annually by the proposed project would be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

16a. Type of Application: Major License (Less Than 5 MW).

b. Project No: 4515–003.

c. Date Filed: April 28, 1983.

d. Applicant: E. R. Jacobson.

e. Name of Project: Jacobson Hydro No. 1.

f. Location: On the Colorado River, in Mesa County, two miles north of Palisade, Colorado.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a) –825(r).

h. Contact Person: Mr. E. R. Jacobson, P.O. Box 2162, Grand Junction Colorado, 81502.

i. Comment Date: February 23, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing concrete, wood and iron diversion dam, 6.5 feet wide and 350 feet long; (2) new four-foot flashboards to top the dam, resulting in less than one acre of impoundment surface area; (3) existing spillway gates, headworks and lifting mechanisms; (4) a new concrete-lined canal approximately 2250 feet long; (5) a new, open-flume, wood-frame powerhouse constructed on the foundation of an old irrigation system pumping station; (6) new intake, trashrack, stoplog and slide gate structures; (7) five new vertical shaft turbine/generator units rated at 132 kW, 132 kW, 400 kW, 700 kW and 1136 kW for a total rated capacity of 2500 kW; (8) a new 13.2-kV transmission line 1100 feet long; and (9) appurtenant electrical and mechanical facilities.

k. Purpose of Project. The average annual generation of 18.27 million kWh would be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

17a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7754-000.

c. Date Filed: October 25, 1983.

d. Applicant: Thomas K. and Jody L. Budde.

e. Name of Project: Barney Creek Micro-hydroelectric Project.

f. Location: On Barney Creek, in Park County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a) -825(r).

h. Contact Person: Mr. Roger S. Kirk, Hydrodynamics, Inc., P.O. Box 1143, Bozeman, Montana 59715.

i. Comment Date: February 2, 1984.

j. Description of Project: The proposed project would consist of: (1) A proposed powerhouse containing 1 generating unit rated at 75 kW; (2) a proposed 4-foot high, 20-foot long, concrete diversion structure; (3) a proposed 5,300-foot long, 6-inch to 8-inch diameter pipeline: (4) a proposed 7,200 volt transmission line; and (5) appurtenant facilities. The estimated average annual output for the project would be 350 MWh.

k. Purpose of Project: The Applicant proposes to sell the generated power to Park Electric Co-operative, Inc.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

18a. Type of Application: Preliminary Permit.

b. Project No: 7848-000.

c. Date Filed: November 14, 1983.

d. Applicant: Michiana Hydro-Electric Power Corporation.

e. Name of Project: Bainter Town.

f. Location: On the Elkhart River, near Bainter Town, in Elkhart County, Indiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§791(a)—825(r).

h. Contact Person: Mr. Charles S. Hayes, Michiana Hydro-Electric Power Corporation, 1634 East Jefferson Blvd., South Bend, Indiana 46617.

i. Comment Date: February 23, 1984.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing dam 4 feet high and 130 feet long; (2) an existing one mile section of the Elkhalt River Hydraulic Canal; (3) a refurbished powerhouse measuring approximately 24 feet square and containing one new turbine/generator unit rated at 200 kw when operating under a hydraulic head of 9 feet; (4) a new 5-kV transmission line 140 feet long; and (5) appurtenant electrical and mechanical facilities.

The estimated average annual generation of 1,314,000 kWh would be sold to the Northern Indiana Public Service Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit*—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $11,500.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

19a. Type of Application: Preliminary Permit.

b. Project No: 7812-000.

c. Date Filed: November 7, 1983.

d. Applicant: Black River Associates.

e. Name of Project: James Black.

f. Location: On the Black River, near the City of Piedmont, in Reynolds and Wayne Counties, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: Mr. Joel Kirk Rector, Black River Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: February 21, 1984.

j. Description of Project: The proposed project would utilize the existing Clearwater Dam and Lake under the jurisdiction of the U.S. Army Corps of Engineers and would consist of: (1) A new penstock, 300 feet long and 20 feet in diameter connected to an existing 23-foot diameter conduit; (2) a new reinforced concrete powerhouse 50 foot square containing one turbine/generator unit rated at 5,270 kW operating under a head of 90 feet; (3) new outlet works; (4) a new 12.5-kV transmission line 200 feet long; and (5) appurtenant electrical and mechanical facilities. The estimated average annual generation of 21,070,000 will be sold to local municipalities.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit*—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $125,000.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permitee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

20a. Type of Application: Preliminary Permit.

b. Project No. 7752-000.

c. Date Filed: October 24, 1983.

d. Applicant: Daniels Hydro Associates.

e. Name of Project: Daniels Hydroelectric Power Project.

f. Location: On the Patapsco River, in Baltimore and Howard Counties, near Daniels, Maryland.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: David M. Coombe, Synergics, Inc., 410 Severn Ave., Suite 409, Annapolis, Maryland 21403.

i. Comment Date: February 21, 1984.

j. Decription of Project: The project would consist of: (a) An existing reinforced concrete dam, 300 feet long and 20 feet high; (2) a reservoir with negligible storage capacity and reservoir area of 3 acres at normal maximum reservoir water surface elevation of 238 feet above m.s.l.; (3) four existing intake gates, each 4 feet by 5 feet; (4) an existing power canal approximately 50 feet long, 25 feet wide, and 3.5 feet deep; (5) a proposed powerhouse 20 feet by 20 feet that will house one turbine/generator unit with an installed capacity of 250 kW; (6) a proposed tailrace; (7) a proposed 13,200-volt transmission line approximately 50 feet long; and (8) appurtenant facilities. Applicant estimates that the average annual energy generation would be 1,000,000 kWh. The dam and other existing project facilities are owned by the Maryland Department of Natural Resources.

k. Purpose of Project: The Applicant anticipates that project energy would be sold to the Baltimore Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would prepare studies of the hydraulic construction, economic, enviromental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $96,000.

21a. Type of Application: 5 MW Exemption.

b. Project No.: 6411–001.

c. Date Filed: October 19, 1983.

d. Applicant: James Thompson & Co., Inc.

e. Name of Project: James Thompson.

f. Location: On the Hoosic River in the Village of Valley Falls and in the Towns of Pittstown and Schaghticoke, Rensselear County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. §§2705 and 2708 *as amended*), and Part I of the Federal Power Act.

h. Contact Person: F. Michael Tucker, 800–19 New Loudon Road, Latham, New York 12110.

i. Comment Date: January 26, 1984.

j. Description of Project: The proposed run-of-river project would utilize existing facilities consisting of: (1) A 218–foot-long 18.5–foot-high concrete-gravity overflow-type dam having spillway crest elevation 293.4 feet U.S.G.S. and surmounted by 30–inch-high flashboards; (2) a reservoir having a surface area of 70 acres and a gross storage capacity of 280 acre-feet at normal pool elevation 295.9 feet U.S.G.S.; (3) a canal on the left (south) bank; and (4) appurtenant facilities.

Applicant proposes to: (1) Rehabilitate the dam and canal; (2) construct a powerhouse containing a generating unit having a rated capacity of 2,500–kW operated under a 16–foot net head and at a flow of 2,200 cfs; and (3) construct a short 4.8–kV transmission line.

k. Purpose of Project: Project energy would be sold to a nearby public utility. Applicant estimates that the average annual energy output would be 8,618,000 kwh.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

a. Type of Application: Exemption from Licensing (5MW or less).

b. Project No: 6408–001.

c. Date Filed: November 1, 1982.

d. Applicant: Hydro-Cor.

e. Name of Project: Tenas Creek Power Project.

f. Location: In Mt. Baker-Snoqualmie National Forest, on Tenas Creek, near Darrington, in Skagit County, Washington.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. §§ 2705 and 2708 as amended).

h. Contact Person: Mr. Jay R. Bingham, President, Hydro-Cor, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date: January 30, 1984.

j. Competing Application: Project No. 6361, Date Filed: May 21, 1982.

k. Description of Project: the proposed project would consist of: (1) A concrete diversion structure at elevation 2400 feet; (2) a 7000-foot-long, 36-inch-diameter penstock; (3) a powerhouse containing a single generator with a rated capacity of 5 MW and an average annual energy production of 19.08 GWh at elevation 1710 feet; and (4) a 10-mile-long transmission line.

l. This notice also consists of the following standard paragraph: A2, A9, B, C, and D3a.

a. Type of Application: Preliminary Permit.

b. Project No: 7814–000.

c. Date Filed: November 7, 1983.

d. Applicant: Clear Falls Utilities.

e. Name of Project: Cedar Falls Dam Project.

f. Location: On the Cedar River in Black Hawk County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C §§ 791(a)-825(r).

h. Contact Person: Dean Crowe, General Manager, Cedar Falls Utilities, 612 East 12th Street, Cedar Falls, Iowa 50613.

i. Comment Date: February 16, 1984.

j. Description of Project: The proposed would consist of: (1) An existing concrete dam approximately 10-foot-high and 248-foot-long; (2) a small reservoir with neligible storage capacity of less than 100-acre-feet; (3) a new steel penstock; (4) a new powerhouse located on the south bank of the river; (5) a new tailrace; (6) transmission lines; and (7) appurtenant facilities. The applicant estimates the capacity of the project would be 1.5 MW with an average annual generation of 4.5 GWh. All power generated would be sold to the Cedar Falls Municipal Electric Utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months. During this time the significant legal, institutional, engineering, environmental, marketing, econcomic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $5,000.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determined the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

24a. Type of Application: Exemption from Licensing (Small Conduit).

b. Project No. 7684–000.

c. Date Filed: October 3, 1983.

d. Applicant: James and Irene Leishman.

e. Name of Project: Leishman Irrigation System.

f. Location: near the town of Thorp, in Kittitas County, Washington.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. §§ 2705 and 2708 *as amended*).

h. Contact Person: James V. Leishman, Rt. No. 1, Box 180, Thorp, Washington 98946.

i. Comment Date: January 26, 1984.

j. Description of Project: The proposed project would use irrigation runoff and would consist of: (1) A 1,100-foot-long, 12-inch-diameter PVC pipeline; (2) a powerhouse containing two generating units with rated capacities of 25 kW and 7.5 kW and a combined annual energy prodution of 60 MWh; and (3) a discharge conduit.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

25a. Type of Application: Exemption from Licensing (5 MW or Less).

b. Project No: 7294–000.

c. Date Filed: May 18, 1983.

d. Applicant: Delmer Wagner.

e. Name of Project: North Fork.

f. Location: In Rogue River National Forest, on North Fork Rogue River, near Prospect, in Jackson County, Oregon.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 USC §§ 2705 and 2708 as amended).

h. Contact Person: Al Peters, Energy Planning Associates, 3182 SE Timberlake Drive, Hillsboro, OR 97123.

i. Comment Date: January 26, 1984.

j. Description of Project: The proposed project would consist of: (1) An intake structure at elevation 3200 feet; (2) a 4,000-foot-long, 72-inch-diameter concrete power tunnel; (3) a 6,000-foot-long, 72-inch-diameter steel penstock; (4) a powerhouse containing two generators having rated capacities of 1,150 kW and 2,000 kW and a combined annual power generation of 18.5 GWh at elevation 3000 feet; and (5) a 2,100-foot-long transmission line to an existing line.

k. This notice also consists of the following standard paragraphs: Al, A9, B, C & D3a.

26a. Type of Application: Preliminary Permit.

b. Project No: 7744–000.

c. Date Filed: October 19, 1983.

d. Applicant: Chasm Hydro, Inc.

e. Name of Project: Forge Dam.

f. Location: On the Chateaugay River in Clinton and Franklin Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. John H. Dowd, Chasm Hydro, Inc., Box 319, Chateaugay, New York 12920.

i. Comment Date: February 16, 1984.

j. Description of Project: The proposed project would utilize the existing facilities owned by the Town of Belmont, New York, consisting of: (1) A 155-foot-long and 20-foot-high concrete reinforced masonry, buttress-type dam with a 90-foot-long wingwall at the right (east) side and a 77.5-foot-long wingwall at the left (west) side; (2) two screened and steel-gated 6-foot-square intake structures at the dam's right side; (3) a reservoir (Chateaugay Lake) having a surface area of 3,300 acres and a storage capacity of 82,500 acre-feet at normal maximum pool elevation 1,310 feet m.s.l.; (4) an 8-foot-diameter, 6-foot-long, steel penstock; and (5) appurtenant facilities.

Applicant proposes to construct: (1) A powerhouse containing generating units having a total rated capacity of 250 kW; (2) a 600-foot-long transmission line; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,300,000 kWh. Applicant would sell the project energy to New York State Electric & Gas Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope and Cost of Studies under Permit: Applicant seeks issuance of preliminary permit for a period of 12 months, during which time it would perform surveys and geological investigation, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State, and local government agencies concerning the potential environmental effects of the project, and prepare an application for a license, including an environmental report. Applicant estimates the cost of the work under the permit would be $20,000.

m. Purpose of Preliminary Permit: A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmetal feasibility of the proposed project, the market for power, and all other information necesary for inclusion in an application for a license.

27a. Type of Application: License (Under 5 MW).

b. Project No: 7277–000

c. Date Filed: May 16, 1983.

d. Applicant: The Collinsville Company.

e. Name of Project: The Collinsville Project.

f. Location: On the Farmington River in Hartford County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Thomas M. Perry, President, The Collinsville Company, P. O. Box #2, Collinsville, Connecticut 06022.

i. Comment Date: February 16, 1984.

j. Description of Project: The proposed project would consist of the Upper Collins Dam Development and about 1.2 miles downstream, the Lower Collins Dam Development:

The Upper Collins Dam Development would consist of: (1) An existing 300-foot-long and 22-foot-high gravity stone dam with new 3-foot-high flashboards; (2) a reservoir with negligible storage capacity; (3) at the western side of the dam an existing intake channel about 200 feet long leading to a powerhouse with a new 500-kW turbine-generator unit, and a tailrace; (4) at the western side of the dam, an existing intake forebay leading to a 800-foot-long canal system; (5) six old mill buildings along the canal system, each housing a turbine-generator unit with a total capacity of 1,270 kW; (6) an existing 23-kV transmission line; and (7) other appurtenances.

The Lower Collings Dam Development would consist of: (8) An existing 350-foot-long and 27-foot-high reinforced concrete dam with new 5-foot-high flashboards; (9) a reservior with negligible storage capacity; (10) an existing intake channel about 650 feet long at the eastern side of the dam; (11) an existing powerhouse with 3 new turbine-generator units with a total capacity of 1,200 kW; (12) a tailrace; (13) an existing 23-kV transmission line; and (14) other appurtenances.

Applicant would provide fish passage facilities at both developments. The total capacity of the project would be 2,970 kW and would generate about 9,700,000 kWh annually. Existing facilities are owned by the Applicant and the Connecticut Department of Environmental Protection.

k. Purpose of Project: Project energy would be sold to the Commecticut Light and Power.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

28a. Type of Application: Preliminary Permit.

b. Project No: 7691–000.

c. Date Filed: October 5, 1983.

d. Applicant: Des Moines Associates, #500 CFS Center, 324 South State Street, Salt Lake City, Utah 84111.

e. Name of Project: Saylorville.

f. Location: On the Des Moines River, in Polk County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Joel Kirk Rector, Des Moines Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' Saylorville Dam and Reservoir and would consist of: (1) An intake channel, 180 feet long with a 40-foot wide bottom and 3:1 side slopes; (2) a 40-foot square reinforced concrete intake structure with four 36-foot high removable trashracks; (3) a 17-foot diameter tunnel 1,185 feet long passing through the dam's left abutment and lined with reinforced concrete; (4) a welded steel penstock 36 feet long bifurcating into 12-foot sections; (5) a 60-by 82-foot powerhouse containing two tubular turbine/generator units each rated at 3,250 kW at a head of 30 feet; (6) a 60-foot wide tailrace channel; (7) a

switchyard raising the voltage to 69-kV; (8) a 69-kV transmission line 0.4 miles long and (9) appurtenant facilities. The average annual generation of 26.5 million kWh would be sold to the Iowa Power and Light Company or the Iowa Electric Power and Light Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit*—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $125,000.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

29 a. Type of Application: Application for License (under 5 MW).

b. Project No: 3755–002.

c. Date Filed: October 3, 1983.

d. Applicant: City of Bountiful Utah.

e. Name of Project: Echo Water Power Project.

f. Location: Weber River in Summit County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)—825(r).

h. Contract Person: Kevin W. Garlick, Project Supervisor, City of Bountiful Light and Power, 198 South 200 West, Bountiful, Utal 84010.

i. Comment Date: February 13, 1983.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation's Echo Dam and Reservoir and would consist of: (1) Two new steel penstocks, one 72 inches and one 60 inches in diameter, connecting to the existing outlet works near the left dam abutment; (2) a new powerhouse containing 3 turbine-generator units, two rated at 1,750 kW each and one rated at 1,000 kW, having a total rated capacity of 4,500 kW; (3) a tailrace returning flow to the river a short distance downstream of the spillway stilling basin; (4) new 46 kV transmission lines; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 15,460,000 kWh. Project energy would be utilized by the City of Bountiful. This application for license was filed during the term of the Applicants preliminary permit for Project No. 3755.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

30a. Type of Application: Preliminary Permit.

b. Project No: 7708–000.

c. Date Filed: October 11, 1983.

d. Applicant: Pecos River Power.

e. Name of Project: Sumner Water Power Project.

f. Location: Pecos River in DeBaca County, New Mexico.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. David N. Raffel, Pecos River Power, Post Office Box 12608, El Paso, Texas 79912.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation's Sumner Dam and Reservoir and would consist of: (1) A new steel penstock utilizing the existing outlet works near the right dam abutment; (2) a new powerhouse containing turbine-generator units having a total rated capacity of 1,000 kW; (3) a tailrace returning flow to the river a short distance downstream of the existing spillway stilling basin; (4) a new transmission line connecting to nearby lines; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 3,000,000 kWh. Project energy would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit*—Applicant has requested a 18-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the USBR and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $85,000.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

31a. Type of Application: License (Under 5 MW).

b. Project No: 7216–000.

c. Date Filed: April 12, 1983.

d. Applicant: New Hampshire Water Resources Board and Sewalls Falls Hydroelectric Development Associates.

e. Name of Project: Sewalls Falls.

f. Location: On the Merrimack River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r). This notice supersedes the notice for Project No. 7216–000 issued on November 4, 1983.

h. Contact Person: State of New Hampshire, Water Resources Board, 37 Pleasant Street, Concord, New Hampshire, 03301, Attn: Mr. Delbert F. Downing, Chairman.

i. Comment Date: February 16, 1984.

j. Description of Project: The project will consist of: (1) A proposed 410-foot-long, 24-foot-high spillway dam, to be located approximately 1,500 feet downstream of the existing Sewalls Falls Dam; (2) a proposed reservoir with a surface area of 400 acres and a storage capacity of 5,990 acre-feet at a normal maximum water surface elevation of 241.86 feet NGVD, (The existing Sewalls Falls Dam was constructed with a crest elevation of 240.86 feet and historically operated with one foot flashboards, resulting in a pool elevation of 241.86 feet. However, serious deterioration of the dam has taken place and two tiers of the existing, timber crib spillway have been washed away resulting in a lowered reservoir water surface elevation); (3) a proposed powerhouse which will contain three generating units with a combined total installed capacity of 4.95 MW; and (4) appurtenant facilities.

The Applicant proposes to design the new spillway dam crest, which will be constructed to elevation 241.86 feet NGVD, with provisions for the installation of one foot of flashboards. The construction of this new spillway dam downstream of the existing Sewalls Falls Dam warrants that approximately four to five feet of the existing Sewalls Falls Dam crest be removed to alleviate a hydraulic obstruction, in order to maintain the full discharge capability of the new spillway dam.

32a. Type of Application: Preliminary Permit.

b. Project No: 7664–000.

c. Date Filed: October 3, 1983.

d. Applicant: East Bench Irrigation District.

e. Name of Project: Clark Canyon Dam.

f. Location: Beaverhead River, Beaverhead County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contract Person: Richard H. Kennedy, Manager, East Bench Irrigation District, 1100 Highway 41, Dillon, Montana 59725.

i. Comment Date: February 17, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Clark Canyon Dam. The proposed project would consist of: (1) A proposed power generating facility with an installed capacity of 5.3 MW; (2) a 15-mile-long 69-kV transmission line to connect with the existing power grid; and (3) appurtenant facilities. Applicant states that optimum turbine sizing and penstock, powerhouse and transmission line details will be made during the permit term. The estimated average annual generation is 15 GWh.

k. Purpose of Project: Project power would be sold to the Western Montana Electric Generating and Transmission Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $6,000.

n. Purpose of Preliminary Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

33a. Type of Application: Preliminary Permit.

b. Project No. 7767–000.

c. Date Filed: October 25, 1983.

d. Applicant: Kittanning Associates.

e. Name of Project: Allegheny Lock and Dam No. 7.

f. Location: On the Allegheny River in Armstrong County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. Joel Kirk Rector, Kittanning Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Allegheny Lock and Dam No. 7 and would consist of: (1) A new powerhouse containing an installed generating capacity of approximately 19 MW; and (2) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 99,338 NWh.

k. Purpose of Project: The Applicant intends to sell the power produced at the site to local municipalities.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months. During this time the significant legal, institutional, engineering, environmental, marketing, economic and financial aspects of the project will be defined, investigated, and assessed to support an investment decision. The report of the proposed study will address whether or not a commitment to implementation is warranted, and, if findings are positive, the Applicant intends to submit a license application. The Applicant's estimated total cost for performing these studies is $125,000.

n. Purpose of Preliminary Permit: A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

34a. Type of Application: Preliminary Permit.

b. Project No. 7240–001.

c. Dated Filed: September 7, 1983.

d. Applicant: North Fork Power.

e. Name of Project: St. Anthony Canal Water Power Project.

f. Location: Henry's Fork, Snake River, Fremont, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. Dell Raybould, Rt. 2, Box 293, Rexburg, Idaho 83440.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would consist of: (1) An existing diversion dam, approximately 800 feet in length, with two spillway openings of 250 feet and 100 feet, respectively; (2) an existing 30-foot-wide diversion canal which is proposed to be widened to 80 feet; (3) a proposed power plant with 4 generating units of 200 kW capacity each; (4) a proposed 400-foot-long power transmission line to the existing power grid; and (5) appurtenant facilities. The existing diversion dam is owned jointly by the St. Anthony Union Canal Company and the Twin Groves Canal Company. Applicant estimates the average annual energy production to be 5.5 GWh.

k. Purpose of Project: Applicant proposed to sell the power generated to Utah Power and Light Company, Inc.

l. This notice also consists of the following standard paragraphs: A5, A7, B, C and D2.

m. Proposed Scope of Studies under Permit: Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $10,000.

n. Purpose of Preliminary Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

35a. Type of Application: Preliminary Permit.

b. Project No: 7626–000.

c. Date Filed: September 16, 1983.

d. Applicant: Hydro Management, Inc.

e. Name of Project: Piper Creek.

f. Location: Piper Creek, Lake County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. W. H. Edelman III, President, Hydro Management, Inc., Route 1, Box 169, Ronan, Montana 59864.

i. Comment Date: February 21, 1984.

j. Description of Project: The project would consist of: (1) A 22-foot-long, 3-foot-high diversion structure; (2) a 16-foot-long, 14-inch-diameter penstock; (3) a powerhouse with a total installed capacity of 624 kW; (4) a 7,800-foot-long, 14.4-kV transmission line from the powerhouse to an existing 14.4-kV transmission line owned by Missoula Electric Cooperative, Incorporated; and (5) appurtenant facilities. The Applicant estimates that the average annual energy production would be 3.8 million kWh.

k. Purpose of Project: Applicant proposes to market the project output to the Missoula Electric Cooperative of the Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $6,000.

n. Purpose of Preliminary Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

36a. Type of Application: Preliminary Permit.

b. Project No: 7627–000.

c. Date Filed: September 16, 1983.

d. Applicant: Hydro Management, Inc.

e. Name of Project: Ashley Creek.

f. Location: Ashley Creek, Flathead County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. W. H. Edelman III, President, Hydro Management, Inc., Route 1, Box 169, Ronan, Montana 59864.

i. Comment Date: February 13, 1984.

j. Description of Project: The project would consist of: (1) A 22-foot-long, 3-foot-high diversion structure on Ashley Creek; (2) a 5,000-foot-long, 16-inch-diameter penstock; (3) a powerhouse with a total rated capacity of 352 kW; (4) a 1,000-foot-long, 14.4-kV transmission line from the powerhouse to an existing 14.4-kV transmission line owned by the Flathead Electric Cooperative, Incorporated; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2.13 million kWh.

k. Purpose of Project: Applicant proposes to market the project output to the Flathead Electric Cooperative of the Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $4,000.

n. Purpose of Preliminary Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

37a. Type of Application: Preliminary.

b. Project No: 7628–000.

c. Date Filed: September 16, 1983.

d. Applicant: Hydro Management, Inc.

e. Name of Project: Squeezer Creek.

f. Location: Squeezer Creek, Lake County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h.Contact Person: Mr. W.H. Edelman III, President, Hydro Management, Inc., Route 1, Box 169, Ronan, Montana 59864.

i. Comment Date: February 21, 1984.

j. Description of Project: The project would consist of: (1) A 3-foot-high, 22-foot-long diversion dam; (2) a 16-inch-diameter, 7,000 foot-long penstock; (3) a 13,000 foot-long transmission line; (4) a powerhouse containing generating unit with a rated capacity of 604 kW; and (5) appurtenant facilities. Applicant estimates that the average annual energy output would be 3,650 MWh.

k. Purpose of Project: Applicant proposes to market the project output to the Missoula Electric Cooperative of the Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with prepartion of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $6,000.

n. Purpose of Preliminary Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

38a. Type of Application: Preliminary Permit.

b. Project No: 7683–000.

c. Date Filed: October 3, 1983.

d. Applicant: Tooele County.

e. Name of Project: Soldier Canyon.

f. Location: Soldier Canyon, Tooele County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. Charles Stromberg, Chairman, Tooele County Commision, Tooele County Courthouse, Tooele, Utah 84074.

i. Comment Date: February 16, 1984.

j. Description of Project: The proposed project would consist of: (1) A proposed concrete spring water collection box; (2) a proposed 16-inch-diameter penstock, about 3½ mils in length; (3) a proposed powerplant with an installed capacity of 433 kW; (4) a proposed one-mile-long 1,200 volt transmission line connect with the existing power grid; and (5) appurtenant facilities.

Portions of the penstock and the transmission line would cross U.S. lands administered by the Bureau of Land Management.

The estimated average annual generation is 3.4 GWh.

k. Purpose of Project: Project generation would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $30,750.

n. Purpose of Preliminary Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

39a. Type of Application: Preliminary Permit.

b. Project No: 7685-000.

c. Date Filed: October 3, 1983.

d. Applicant: Tooele County.

e. Name of Project: Ophir Canyon.

f. Location Ophir Canyon, Tooele County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: Mr. Charles Stromberg, Chairman, Tooele County Commission, Tooele County Courthouse, Tooele, Utah 84074.

i. Comment Date: February 16, 1984.

j. Description of Project: The proposed project would consist of: (1) A proposed concrete spring water collection box; (2) a proposed 16-inch-diameter penstock, about 3 miles in length; (3) a proposed powerplant with an installed capacity of 491 kW; (4) a proposed ¼-mile-long 12,500 volt transmission line to connect with the existing power grid; and (5) appurtenant facilities. The powerplant site is partially on U.S. lands administered by the Bureau of Land Management.

The estimated average annual generation is 3.9 GWh.

k. Purpose of Project: Project generation would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $30,750.

n. Purpose of Preliminary Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

40a. Type of Application: Preliminary Permit.

b. Project No: 7560-000.

c. Date Filed: August 26, 1983.

d. Applicant: City of Austin Electric Utility Department.

e. Name of Project: Longhorn Dam Hydroelectric Project.

f. Location: Colorado River, Travis County, Texas.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: Mr. Edward K. Aghjayan, Director, Electric Utility, City of Austin, P. O. Box 1088, Austin, Texas 78767.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would be located at the existing Longhorn Dam, which is owned by the City of Austin, Texas, and would consist of: (1) An existing reservoir with a surface area of 525 acres and a storage capacity of 6000 acre-feet; (2) an existing 506-foot-long and 13-foot-high reinforced concrete dam; (3) a proposed 200-foot-long, 10-foot-diameter penstock; (4) a proposed powerhouse containing two turbine/generator units operating under a head of 14 feet at an installed capacity of 2528 kW; (5) a proposed 100-foot-long tailrace; (6) a proposed ¼ mile-long transmission line; and (7) appurtenant facilities. The estimated average annual energy production would be 9.2 GWh.

k. Purpose of Project: The Applicant intends to use the power generated at the proposed facility in its existing transmission system.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Corps and other Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $150,000.

n. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

41a. Type of Application: Application for Relicense (5 MW or Less).

b. Project No.: 1979-002.

c. Date Filed: March 29, 1971 and supplemented on October 4, 1983.

d. Applicant: Wisconsin Public Service Corporation.

e. Name of Project: Alexander Hydro Project.

f. Location: On the Wisconsin River near Merrill, Lincoln County, Wisconsin.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § § 791(a)-825(r).

h. Contact Person: Mr. E. R. Mathews, Senior Vice President, Power Supply and Engineering Wisconsin Public Service Corporation, P.O. Box 1200, Green Bay, Wisconsin 54305.

i. Comment Date: February 13, 1984.

j. Description of Project: The existing Alexander Hydro Project would consist of: (1) An existing 40-foot-high concrete dam consisting of an overflow section 338 feet long controlled by eleven 26-feet-long by 21-feet-high steel radial gates, an 8-foot-wide trash sluiceway, and a non-overflow concrete gravity section 148 feet long; (2) an existing reservoir having a maximum elevation of 1278.40 (U.S.G.S. datum) with a surface area of approximately 803 acres; (3) a powerhouse with a total installed capacity of 4.2 MW and producing an average annual energy output of 25,070 MWh; and (4) appurtenant facilities. Energy produced at the project would be used in the Applicant's distribution system. The Alexander Hydro Project affects approximately 3.59 acres of U.S. lands.

k. *Competing Applications*—This application was originally filed on

March 29, 1971 and supplemented on October 4, 1983, by the Wisconsin Public Service Corporation. Public notice of the original filing, which has already been given, established the due date for filing competing applications or notice of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the original license application. No competing applications or notices of intent may be filed in response to this notice.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

42a. Type of Application: Preliminary Permit.

b. Project No.: 7790-000.

c. Date Filed: November 1, 1983.

d. Applicant: Ririe Idaho Associates.

e. Name of Project: Ririe Dam Project.

f. Location: On Willow Creek in Bonneville County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § § 791(a)–825(r).

h. Contact Person: Mr. Tom Forbes, P.O. Box 421, Mercer Island, Washington 98040.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation's Ririe Dam and Lake, and would consist of: (1) The existing headworks to be modified; (2) a new 200-foot-long penstock; (3) a new powerhouse with an installed estimated capacity between 2.5 MW and 5 MW; (4) transmission lines; and (5) appurtenant facilities. Applicant estimates the average annual generation to be between 10.9 GWh and 14.5 GWh. All power generated would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies Under Permit*—Applicant has requested a 24-month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soil and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies is estimated to be $140,000.

m. *Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

43a. Type of Application: License (Major).

b. Project No: 4282-001.

c. Date Filed: April 11, 1983.

d. Applicant: Mountain Water Resources.

e. Name of Project: Deadhorse Creek.

f. Location: On Deadhorse Creek, a tributary to the N.F. Nooksack River in Whatcom County, Washington, near the town of Glacier, within the Mt. Baker—Snoqualmie National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Contact Person: Mr. William L. Devine, President, W.L.D. Glacier Energy Company, P.O. Box 68, 8040 Mt. Baker Highway, Maple Falls, Washington 98266.

i. Comment Date: February 13, 1984.

j. Description of Project: The proposed project would consist of: (1) A 9-foot-high, 50-foot-wide, gravity weir, diversion-intake structure at elevation 3,580 feet msl; creating (2) a pondage of 2 acre-feet; (3) a 36-inch-diameter, 3,900-foot-long underground low pressure pipeline, to follow the new access road; (4) a 36-inch-diameter, 6,020-foot-long penstock, located above and below the ground; (5) a powerhouse containing a single Pelton turbine and generator unit with an installed capacity of 7,900 kW operating under a head of 2,036 feet at elevation 1,480 feet msl; (6) a 60-foot-long concrete tailrace and open channel conduit; (7) a 3,500-foot-long, 55-kV transmission line extending from the switchyard, adjacent to the powerhouse, to an existing transmission line owned by Puget Power Company; and (8) a 3,900-foot-long access road. The estimated annual energy output would be 31,657,000 kWh. The estimated cost of the project would be $12,845,000.

k. Purpose of Project: Project power would be sold to Puget Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D2.

44a. Type of Application: Preliminary Permit.

b. Project No: 7696-000.

c. Dated Filed: October 6, 1983.

d. Applicant: John R. Anderson & Joseph D. Brostmeyer.

e. Name of Project: Lamprey Falls Project.

f. Location: On the Lamprey River in Rockingham County, New Hamsphire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: John R. Anderson, 64 Blanchard St., Burlington, Massachusetts 01803.

i. Comment Date: February 21, 1984.

j. Description of Project: The proposed project would consist of: (1) The existing fitted stone dam, 26 feet high and 60 feet long; (2) the reservoir having a surface area of 16 acres, a normal water surface elevation of 26 feet U.S.G.S. with negligible storage; (3) an existing gated intake structure; (4) two 6-foot-diameter steel penstocks 100 feet long; (5) an existing powerhouse containing two new generating units with a total capacity of 100 kW; (6) the existing tailrace; (7) the existing 35.4-kV transmission line, 100 feet long; and (8) appurtenant facilities. The dam is owned by the Essex Group Inc.

k. Purpose of Project: All project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time Applicant would investigate the engineering, economic, and environmental aspects of the project. Depending upon the outcome of the studies, the Applicant would decided whether to proceed with an application for license or exemption from licensing. Applicant estimates the cost of the studies under the permit would be $34,500.

45a. Type of Application: Exemption (5MW or Less).

b. Project No: 7315-001.

c. Date Filed: August 5, 1983.

d. Applicant: Carson Hydro.

e. Name of Project: Curry Ditch.

f. Location: On Pine Creek in Baker County, Oregon, near the town of Halfway.

g. Filed Pursuant to: Energy Security Act, 1980 (16 U.S.C. § § 2705 and 2708 as amended).

h. Contact Person: Mr. Paul J. Daniels, Rt. 1, Box 280, Halfway, Oregon 97834.

i. Comment Date: February 6, 1984.

j. Description of Project: The proposed project would consist of: (1) A 3.5-foot-high, 25-foot-long diversion structure; (2) an existing 3.4-foot-deep, 6,000-foot-long ditch, to be enlarged; (3) a 30-inch-diameter, 1,000-foot-long penstock; (4) a powerhouse to contain four generating units with a total installed capacity of 420 kW, operating under a head of 195 feet; and (5) a 1,300-foot-long existing

transmission line to be converted to 12.5 kV. The estimated average annual energy output would be 2,194,700 kWh.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption 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 license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, 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 license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminarly permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption 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 license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the failing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, 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 preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license applicaton must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption appliant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

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 license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 8 C.F.R. §§ 385.210, .211, .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 FULE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Fedeal Energy Regulatory Commission, Room 208 RB at the above 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*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, 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 othe applicable statutes. No other formal requests for comments will be made.

Comments 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 file comments with the Commission within the time set 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.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained 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.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comment will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comment will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-34308 Filed 12-27-83 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180636; PH-FRL 2495-5]

Florida Department of Agriculture and Consumer Services; Receipt of Application for Specific Exemption To Use Cyromazine, an Unregistered Pesticide; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter "Applicant") for a specific exemption to use of cyromazine (N-cyclopropyl-1,3,5-triazine-2,4,6,-triamine) to control the serpentine leafminer (*Liriomyza trifolii*) on chrysanthemums. EPA is soliciting comment before making the decision whether to grant the specific exemption.

DATE: Comments must be received on or before January 12, 1984.

ADDRESS: By mail, submit comments to: Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M ST., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of cyromazine to control serpentine leafminers on chrysanthemums grown in Florida. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant claims that registered insecticides which have been used by chrysanthemum growers to control leafminers, i.e., oxamyl, diazinon, malathion, fluvalinate, chlorpyrifos, resmethrin, methoprene, disulfoton, demeton, oxydemeton-methyl, methomyl, aldicarb, methyl parathion and permethrin, provide only limited control and have not been able to provide sufficient control to produce the quality of product demanded by the customers. The Applicant cited economic loss data from 1978; in 1978 the estimated loss was $615,270 on 391 acres of chrysanthemums.

The Applicant proposes to treat 356 acres of chrysanthemums (cut flowers, potted plants, and cuttings), including greenhouses, shade houses, and field crops. Applications, at a rate of one-sixth to one-third of a pound of product per acre per application, are to be made at 7-day intervals or as necessary to obtain control. Applications will be made up to the day of harvest. The Applicant proposes to use the product Trigard 75WP, manufactured by the Ciba-Geigy Corporation. Applications will be made as a foliar spray by ground application equipment in a minimum of 50 gallons of water. Applications will be made by applicators certified in this category of pest control.

The Applicant is currently using cyromazine on chrysanthemums to control leafminers under a crisis exemption declared on July 29, 1983 by the Applicant.

This notice does not constitute a decision by EPA on the application itself. The chemical cyromazine (N-cyclopropyl-1,3,5-triazine-2,4,6-triamine) is an unregistered pesticide and therefore, the Agency has decided that public notice and opportunity for public comment is called for pursuant to 40 CFR 166.10, as a part of the informal adjudication for specific exemptions. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before January 12, 1984 and should bear the identifying notation "OPP–180636." All written comments filed pursuant to this notice will be available for public inspection in the office at the adddress given above, from 8:00 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture and Consumer Services.

Dated: December 14, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-34091 Filed 12-27-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP 35000/7] PH-FRI 2495-6]

Naled; Completion of Pre-RPAR Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has concluded its pre-RPAR review of naled. The Agency has determined that a Rebuttable Presumption Against Registration (RPAR) review is not warranted for this pesticide at this time and has removed it from its list of suspect pesticides. A copy of the Naled Registration Standard document, summarizing the Agency's review of this pesticide and its rationale for its conclusions, is available for public viewing at the address below.

ADDRESS: The documents are available for viewing from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, from: Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM–2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: William Audia, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and room number: Rm. 711H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–7400).

SUPPLEMENTARY INFORMATION: *The regulatory scheme.* Before it begins formal review of a pesticide under the Rebuttable Presumption Against Registration Process (RPAR), the Agency must first determine whether existing data indicate that a pesticide meets or exceeds one or more of the risk criteria set forth in 40 CFR 162.11. In making this determination, the Agency is guided by section 3(c)(8) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which prevents the Agency from initiating an RPAR unless it is based on a "validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or the environment." If the Agency determines that one or more criteria have been met or exceeded, it will commence the RPAR review. Public comments are then

solicited relevant to the risks and benefits associated with the pesticide's use. If the presumption against registration of the chemical is rebutted, the RPAR would be terminated. If the presumption is not rebutted, the Agency balances the risks against the benefits of use and, should the risks exceed the benefits, proposes regulatory action to reduce the risks. If, however, the pre-RPAR review indicates that none of the § 162.11 risk criteria are met or exceeded, the RPAR process would not be initiated.

Reasons for referral. Naled is a precursor of dichlorvos (DDVP), which was referred as a potential candidate (July 17, 1978) to the RPAR process because of studies indicating that dichlorvos may cause cancer, mutagenic effects, nerve damage and birth defects in laboratory animals. Since naled can be converted to DDVP, it was also referred for RPAR consideration.

Reasons for not initiating RPAR review. The Agency previously determined that a full review of the existing evidence did not support issuance of the RPAR for dichlorvos. The Agency issued a notice of this determination which was published in the **Federal Register** of September 30, 1982 (47 FR 45075).

On June 30, 1983, the Agency issued a Registration Standard for naled as part of the registration standard review program. Based on a review and evaluation of all available data and other relevant information on naled, the Agency has determined that there is no evidence that naled independently would meet or exceed any of the RPAR risk criteria.

Based on the above information, the Agency has determined that the existing evidence does not support issuance of an RPAR for naled.

Dated: November 30, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-34090 Filed 12-27-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP 35000/6; FRL 2496-6]

Six Chemicals; Completion of Pre-RPAR Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has concluded its pre-RPAR review of the methanearsonate group of pesticides: Calcium methanearsonate, disodium methanearsonate, dodecylammonium methanearsonate, monoammonium methanearsonate, monosodium methanearsonate and octylammonium methanearsonate. The Agency has determined that Rebuttable Presumption Against Registration (RPAR) reviews are not warranted for these pesticides at this time and has removed them from its list of pesticides referred for special review. A copy of the decision document summarizing the Agency's review of these pesticides and the rationale for its conclusions is available for public viewing at the address below.

ADDRESS: The decision document is available for review from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, at the: Document Control Office, Program Management and Support Division (TS-757C), Office of Pesticde Programs, Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, Va.

FOR FURTHER INFORMATION CONTACT: By mail: Paul Parsons, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 711K, CM#2, 1921 Jefferson Davis Highway, Arlington, VA., (703-557-7400).

SUPPLEMENTARY INFORMATION:

The Regulatory Scheme

Before it begins formal review of a pesticide under the Rebuttable Presumption Against Registration process, the Agency must first determine whether existing data indicate that a pesticide meets or exceeds one or more of the risk criteria of 40 CFR 162.11. In making this determination, the Agency is guided by section 3(c)(8) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which prevents the Agency from initiating an RPAR unless it is based on a "validated test or other significant evidence raising prudent concerns of unreasonable adverse risk to man or the environment." Public comments relevant to the risks and benefits associated with the pesticide's use are then solicited. If the presumption of risk is rebutted, the RPAR would be terminated. If the presumption of risk is not rebutted, the Agency balances the risk against the benefits of use and, should risk exceed the benefits, proposes regulatory action to reduce the risk. If, however, the pre-RPAR review indicates that none of the § 162.11 risk criteria are met or exceeded, the RPAR process would not be initiated.

Reason for referral. The Agency identified the methanearsonates as potential candidates for RPAR review based on the possibility that they might cause oncogenic and mutagenic effects.

Reasons for not initiating RPAR review. After a review of the data base, EPA has concluded that the existing information did not support the presumptions of oncogenic and mutagenic effects. While the Agency received a new oncogenicity study from Diamond Shamrock Corp. in April 1982, Agency review indicated that the study was so flawed that no meaningful conclusions could be drawn from it.

However, the Agency has concluded that additional data are needed to resolve the oncogenicity issue. Therefore, the Agency intends to request registrants to submit oncogenicity data on methanearsonic acid (MAA) pursuant to section 3(c)(2)(B) of FIFRA. Methanearsonic acid is the test material of choice because it is believed that the methanearsonates as a class of compounds are rapidly hydrolyzed to MAA in the gastric juices of the stomach. The Agency also intends to request exposure data and to request registrants to revise product labeling to require appropriate protective clothing.

Based on the above information, the Agency has determined that the existing evidence does not support issuance of an RPAR for methanearsonate group of pesticides.

Dated: November 30, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Program.

[FR Doc. 83-34228 Filed 12-27-83; 8:45 am]

BILLING CODE 6560-50-M

[PH-FRL 2497-2; FIFRA Docket Nos. 524 and 526]

Filing of Objections (Lindane); Happy Jack, Inc. and Continental Chemiste Corp.

By notice, dated September 30, 1983 (48 FR No. 203, October 19, 1983, at 48512 et seq., correction 48 FR No. 226, November 22, 1983, at 52770), the Administrator gave notice of intent to cancel registrations for certain uses of pesticide products containing lindane and to deny applications for registrations of products containing lindane for those uses.

Pursuant to 40 CFR 164.8, notice is given that objections to the intent to cancel have been filed and assigned the above docket numbers. For a full explanation of the objections and the issues involved, interested persons may examine the files in the Office of the Hearing Clerk, U.S. Environmental Protection Agency, 401 M Street, SW, Washington D.C. between the hours of

7:30 a.m. and 4:00 p.m., Monday through Friday.

For further information contact Bessie Hammiel, Hearing Clerk, (202) 382-4865.

Dated this 19th day of December 1983.

Spencer T. Nissen,

Administrative Law Judge.

[FR Doc. 83-34356 Filed 12-27-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 83-1348 et al.; File No. BP-801224AC]

Broward Public Radio Association, Inc. et al.; Hearing Designation Order

In the matter of Applications of Broward Public Radio Association, Inc., Tamarac, Florida (MM Docket No. *83-1348*; File No. BP-801224AC), Req: 670 kHz, 1 kW, DA-1, U. ICBC Corporation, Miami, Florida (MM Docket No. *83-1349*; File No. BP-810330AF), Req: 670 kHz 2.5 kW, 50 kW-LS, DA-2, U, for construction permit.

Adopted: December 7, 1983.
Released: *December 19, 1983.*

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (1) The above-captioned mutually exclusive applications of Broward Public Radio Association, Inc. and ICBC Corporation for a construction permit for a new AM radio station; (2) a petition to deny the ICBC application filed by Community Service Broadcasters, Inc., licensee of stations WMBM, Miami Beach, and WWWL (FM), Miami; and (3) related pleadings.

2. *Broward.* This application, filed on the 1977 FCC Form 340, indicates that $203,003 will be required to construct the proposed station and operate for three months. Several discrepancies exist between these estimated costs and Broward's application for a grant from the National Telecommunications and Information Administration (NTIA). In the latter, Broward's projected costs are apparently $283,338. Turning to the aplicant's plan of financing, Broward plans to rely upon $11,800 in existing capital, a $50,000 bank loan, a $120,000 grant from NTIA, $73,000 in other government appropriations, $56,640 from the Corporation for Public Broadcasting, and $31,160 in donations from industry and individuals. With the exception of its existing capital and the bank loan, Broward has failed to indicate that it will in fact receive these sources of funding. Because it is not clear what Broward's total costs will be, and because the applicant has shown only $61,800 available to meet costs of at least $203,303, a general financial issue will be specified.

3. Broward has failed to show its proposed normally-protected 10 mV/m nighttime contour as required by Form 340, Section V-A, paragraph 11A. It must supply this information by amendment.

4. Broward seeks pursuant to § 73.1124(a) of the rules to locate its main studio in Fort Lauderdale instead of within its proposed community of license, Tamarac. The applicant has, however, failed to recite any good cause justification for the request.[1] [2] Accordingly, an issue will be specified.

5. *ICBC.* ICBC will require $1,095,000 to construct and operate for three months. The applicant plans to rely upon the profits from its seven existing stations to finance its proposal, but has committed most of those funds to construct station KSJL, a new AM station in San Antonia, Texas (File No. BP-810511AQ). A limited financial issue will be specified.

6. ICBC proposes 2.5 kilowatts nighttime power. Recognizing that § 73.21(a)(2)(ii)(C) limits new class II-B stations on the clear channels to a 1 kW nighttime power, ICBC requests waiver of the rule. The Commisson has adopted a strict standard for waiver requests of this nature, however. Thus waivers will be granted only upon a showing that the higher power proposed is necessary to provide principal city service and will not impede our allocation objectives. ICBC has not established compliance with this test. Therefore, an appropriate issue will be specified.

7. Depsite the power proposed, ICBC's proposal fails to cover any of Miami's business district at night with the required 25 mV/m signal. ICBC has requested a waiver of Section 73.24(j) of the Rules, justifying its request by claiming that its proposed site, approximately 20 miles from Miami, was the best available in terms of cost and location. This explanation is insufficient to justify the waiver sought. An appropriate issue will be specified.

8. Finally, ICBC's local notice of the filing of its application did not include a description of its proposed antenna system. Accordingly, we will require it to republish local notice and to certify that it has done so to the presidng Administrative Law Judge within 30 days of the release of this Order.

9. *Community's petition.* Community's only charge not mooted by later amendment is that ICBC may have misrepresented to the Commission the availability of the site it originally proposed.[3] To support this contention, petitioner presents the affidavit of the site owner's manager for administrative services, which states that no agreement existed to lease the site to ICBC. Petitioner speculates that ICBC may have proposed that site solely to permit it to file its application by the fast-approaching cut-off date, intending to amend its proposal later to specify some other, then undetermined site. In response, ICBC details by unrebutted affidavit three contacts it had with various officials of the site owner before it filed its application, including information transmitted by ICBC's realtor that the owner's president was willing to enter into a one-year option to lease the site, and a later conversation with the owner's corporate counsel looking toward preparation of the actual option agreement. The understanding was never formalized, applicant states, because of technical problems associated with the site. It is well established Commission policy that "neither absolute assurance nor legal control of a site is necessary, but only that when an applicant proposes a site, he must have done so in good faith that the site will be available to him." *Alabama Citizens for Responsive Television, Inc.*, 59 FCC 2d 1, 2-3 (1976). ICBC has met this test, and the petition will be denied.

10. Except as indicated by the issues specified below, both applicants are qualified to construct and operate as proposed.[4] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the applications are for different communities, they would serve substantial areas in common. Therefore, in addition to determining pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and

[1] Section 73.1125(a)(3) of the Commission's Rules provides that an AM station may locate its main studio outside its community of license when good cause exists and to do so would be consistent with operation of the station in the public interest.

[3] In *Report and Order* in Docket 82-320, FCC 83-81, released March 14, 1983, 53 RR 2d 681, 696-7 (1983), the Commission, in abolishing its *de facto* reallocation and *Berwick* policies, stated that "in the future we will examine applications to determine compliance with our licensing rules. If that exists, we will presume the licensee intends to serve the community designated. Compliance with the rules will result in the requisite signal to the community of license, *location of the main studio in that community*, and a programming proposal that will serve the needs of the community of license." (Emphasis added).

[3] The charges that have been mooted by amendment are that the site originally proposed was not available to ICBC, and that operations from that site would have placed an impermissibly strong signal (as defined by § 73.1030(c) of the Commission's Rules) over the FCC monitoring station at Fort Lauderdale.

equitable distribution of radio service, a contingent comparative issue will be specified.

11. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether Broward Public Radio Association, Inc. is financially qualified to construct and operate its proposed station.

2. To determine whether the proposal of Broward Public Radio Association, Inc. complies with § 73.1125(a) of the Commission's Rules and, if not, whether good cause has been shown to allow location of the main studio in Fort Lauderdale.

3. To determine with respect to ICBC Corporation:

(a) The source and availability of sufficient funds to meet anticipated costs; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified.

4. To determine whether ICBC Corporation's nighttime power proposal would provide Miami's business district with a 25 mV/m nighttime signal as required by § 73.24(j) of the Commission's Rules, and if not, whether circumstances exist which warrant waiver of that rule.

5. To determine with respect to ICBC Corporation's nighttime proposal whether circumstances exist which warrant waiver of § 73.21(a)(2)(ii)(C) of the Commission's Rules.

6. To determine the areas and populations which would receive primary service from each proposal and the availability of other primary aural service to such areas and populations.

7. To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

8. To determine, in the event it be concluded that a choice between the applicants should not be based solely on considerations relating to § 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

9. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

12. It is further ordered, That the petition to deny filed against the ICBC Corporation application by Community Service Broadcasters, Inc. is denied.

13. It is further ordered, That Broward Public Radio Association, Inc. shall amend its application as specified in paragraph 3 above within 30 days of the release of this Order.

14. It is further ordered, That ICBC Corporation shall publish a corrected local notice of the filing of its application and shall certify its publication to the presiding Administrative Law Judge within 30 days after the release of this Order.

15. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

16. It is further ordered, That pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the Rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-34336 Filed 12-27-83; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 83-1353 et al; File No. 50096-CM-P-75]

Digital Paging Systems, Inc. et al; Memorandum Opinion and Order

In the matter of Applications of Digital Paging Systems, Inc. (CC Docket No. 83-1353; File No. 50096-CM-P-74), Cross Country Network, Inc. (CC Docket No. 83-1354; File No. 50010-CM-P-75), and McClatchy Newspapers (CC Docket No. 83-1355; File No. 50022-CM-P-75), for construction permits in the Multipoint Distribution Service for a New Station at Sacramento, California.

Adopted: December 14, 1983.
Released: December 19, 1983.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Sacramento, California. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. These applications have been amended as a result of informal requests by the Commission's staff for additional information. There are no petitions to deny or other objections under consideration.

2. Upon review of the applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted. [1]

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e) and § 0.291 of the Commission's Rules, 47 CFR § 0.291, the captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [2]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Digital Paging Systems, Inc., Cross County Network, Inc., McClatchy Newspapers and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR § 1.221.

6. It is further ordered, That any authorization granted to Digital Paging Systems, Inc., a wholly owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in

[1] This finding is subject to paragraph 6, *infra*.

[2] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

hearing designated in *A.S.D. Answering Service, Inc., et al.*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. This Order is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Rules may be filed within the time limits specified in those sections. *See also* Rule 1.4(b)(2).

8. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 83-34342 Filed 12-27-83; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Cross Communications, Inc. and Dawn Marie Price

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and City/State	File No.	MM Docket No.
A. Cross Communications, Inc., Lagrange, Ind.	BPH-820418AG	83-1326
B. Dawn Marie Price,	BPH-821117AH	83-1327

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative—A, B.
2. Ultimate—A, B.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-34337 Filed 12-27-83; 8:45 am]

BILLING CODE 6712-01-M

New FM Station; Applications for Consolidated Hearing; KLOE, Inc. and Nebraska Rural Radio Association

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. KLOE, Inc., Alliance, Nebr.	BPH-820510AK	83-1351
B. Nebraska Rural Radio Association, Alliance Nebr.	BPH-820908AT	83-1352

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard—A.
2. (See Appendix)—A, B.
3. Comparative—A, B.
4. Ultimate—A, B.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issues

2. If final environmental impact statements are issued with respect to A (KLOE) and B (Nebraska) which conclude that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposals are consistent with the National Environemntal Policy Act, as implemented by Sections 1.1301-1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

[FR Doc. 83-34343 Filed 12-27-83; 8:45 am]

BILLING CODE 6712-01-M

New Fm Station; Applications for Consolidated Hearing; Lee Optical and Associated Companies Retirement and Pension Fund Trust

1. The Commission has before it the following mutaully exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Lee Optical and Associated Companies Retirement and Pension Fund Trust, Honolulu, HI.	BPH-821214AC	83-1338
B. C.E., Inc. Honolulu, HI	BPH-830420AF	83-1339
C. Phillip R. Antoine and Lan Thi Vuong-Antoine, Honolulu, HI.	BPH-830420AH	83-1340

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are sert forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard—B.
2. (See Appendix)—B.
3. Comparative—A,B,C.
4. Ultimate—A,C,C.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919

M Street, N.W., Washington, D.C. 20554. Telelphone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

2. If a final environmental impact statement is issued with respect to B (CEI) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.301–1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 83-34340 Filed 12-27-83; 8:45 am]

BILLING CODE 6712-01

New FM Station; Applications for Consolidated Hearing; Osage Radio, Inc. and Smokey Valley Broadcasting, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Osage Radio, Inc. Lindsborg, Kans.	BPH-830112AF	83-1328
B. Smoky Valley Broadcasting, Inc., Lindsborg, Kans.	BPH-830520AG	83-1329

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix)—A.
2. Air Hazard—A.
3. Comparative—A, B.
4. Ultimate—A, B.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. If a final environmental impact statement is issued with respect to A (Osage) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environmental,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301–1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 83-34338 Filed 12-27-83; 8:45 am]

BILLING CODE 6712-01-M

New FM Station; Applications for Consolidated Hearing; Snow Peak Ltd. Partnership and Mat-Su Broadcasting

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/State	File No.	MM Docket No.
A. Snow Peak Limited Partnership, Wasilla, Alaska.	BPH-830120AN	83-1341
B. Mat-Su Broadcasting, Wasilla, Alaska.	BPH-830520AK	83-1342

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard—A, B.
2. Comparative—A, B.
3. Ultimate—A, B.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 83-34341 Filed 12-27-83; 8:45 am]

BILLING CODE 6712-01-M

New FM Station; Applications for Consolidated Hearing: Sunshine Broadcasting, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Aplicant and city/State	File No.	MM Docket No.
A. Sunshine Broadcasting, Inc, Fort Myers Villas, Fl.	BPH-820825BY (formerly BPH-820224AK).	83-1332
B. Affirmative Broadcasting Co., Inc., Cape Coral Fl.	BPH-820504AS	83-1333
C. L.B.C., Inc., Cape Coral, Fl.	BPH-820824AI	83-1334
D. Todd Stuart Noordyk, Cape Coral, Fl.	BPH-820825AV	83-1335
E. Skinner Broadcasting, Inc., Cape Coral, Fl.	BPH-820825BA	83-1336
F. Richard Deem Rahall d.b.a. RDR Broadcasting Co., Cape Coral, Fl.	BPH-820825BI	83-1337.

2. Pursuant to § 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. City Coverage—B,D,F.
2. Air Hazard—B,D,E.
3. (See Appendix)—B,D,F.
4. 307(b)—A,B,C,D,E,F.
5. Contingent Comparative—A,B,C,D,E,F.
6. Ultimate—A,B,C,D,E,F.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the

complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

3. If a final environmental impact statement is issued with respect to B (Affirmative), D (Noordyk), and/or F (RDR), which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by Sections 1.1301–1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant(s) is qualified to construct and operate as proposed.

[FR Doc. 83-34339 Filed 12-23-83; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 81-893; File No. ENF 83-18; FCC 83-551]

Regarding Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Notice regarding final report and order.

SUMMARY: This notice pertains to a report and order (R&O) which adopts final policies and requirements regarding the offering of installed customer premises equipment (CPE) currently owned by the Bell Operating Companies (BOCs). The R&O permits this equipment to be removed from rate regulation and establishes a variety of rules and procedures governing the sale and lease of this equipment during a transition period. The R&O is necessary to advance Federal Communications Communications Commission (FCC) policies regarding the deregulation of CPE and the fostering of competition in the CPE marketplace. The intended effect of the R&O is to permit the American Telephone and Telegraph Company (AT&T) to transfer installed CPE to AT&T Information Systems (ATTIS), a separate sudsidiary of AT&T, after ownership of the installed CPE is transferred from the BOCs to AT&T pursuant to the divestiture of the Bell System scheduled to take place on January 1, 1984. ATTIS will be required to sell and lease this equipment to present customers under requirements established in the R&O.

EFFECTIVE DATE: The effective date of the Report and Order is December 16, 1983.

FOR FURTHER INFORMATION CONTACT: John Cimko, Jr., Common Carrier Bureau, FCC, 202–632–93242. Paul B. Froyd, Common Carrier Bureau, FCC, 202–632–4887.

SUPPLEMENTARY INFORMATION: The text of the R&O is not being published in the **Federal Register** because the decision does not establish rules of general applicability. A copy of the R&O is on file at the FCC Public Documents Room, Room 230, 1919 M Street, N.W., Washington, D.C. Copies also are available for purchase from the FCC's duplication contractor.

Related Document

A notice of proposed rulemaking was published on pages 29891–29917 of the **Federal Register** on June 29, 1983.

Request for Comments

The notice of proposed rulemaking invited comments by August 1, 1983, and reply comments by August 22, 1983. Comments were received from 50 sources, including individuals, state utility commissions, telephone companies, other business organizations, and trade associations.

Statutory Authority

The R&O is adopted pursuant to authority established in Sections 4(i), 4(j), 201–205, 218, and 403 of the Communications Act of 1934.

Waiver of Effective Date Requirements

The R&O takes effect on the date following the date of the release of the R&O by the FCC. Good cause is found to waive the requirements of section 553(d) of title 5, United States Code, because of the need for the requirements and procedures established in the R&O to be in place a sufficient time before the divestiture of the Bell System. This early effective date will assist in reducing uncertainty currently faced by telephone companies, installed CPE customers, and state utility commissions as they prepare for the post-divestiture period.

Summary of Actions Taken

Problems Addressed; General Requirements. The chief problem addressed by the R&O is the question of the best means for removing installed CPE from rate regulation. The alternatives included permitting the installed equipment to remain subject to state regulation for an indefinite period, authorizing the states to devise their own programs for removing installed CPE from rate regulation, attempting to arrange for the sale of the installed CPE to large bulk purchasers, providing for the immediate removal of the installed CPE from regulated service without the imposition of any conditions or requirements, and requiring the removal of rate regulation over a transition period during which ATTIS would be subject to rules and requirements applicable to the sale and leasing of the installed equipment to current customers.

The R&O has selected the last alternative, requiring a transition period during which sale and lease programs established by the R&O will be in effect. The R&O concludes that this is the best mechanism to protect ratepayers and current customers, to foster competition in the CPE market-place, and to guard the rights and interests of Bell System investors.

Valuation of Assets; Related Issues. The R&O requires that net book value of the installed equipment will be used as a substitute for fair market value for purposes of establishing the transfer value at the time the assets are removed from regulated service, and for purposes of establishing sale prices for the installed CPE during the transition period. The R&O requires that, for purposes of valuation and the establishment of sale prices, AT&T must disaggregate the installed equipment into two categories: single-line equipment (both residential and business), and multi-line equipment.

The R&O concludes that these valuation requirements, and the overall plan for removing the installed equipment from regulated service, satisfy the equitable requirements for allocating gains and losses associated with assets removed from utility service, as established in *Democratic Central Committee* v. *Washington Metropolitan Transit Commission*, 485 F.2d 786 (D.C.Cir. 1973), *cert. denied sub nom. D.C. Transit System* v. *Democratic Central Committee*, 415 U.S. 935 (1974). The R&O concludes that the FCC plan accommodates the interests of both ratepayer and investors, provides for a workable means for removing CPE assets from regulated service under the extraordinary circumstances created by the impending divestiture of the Bell System, and protests the viability and efficiency of the telecommunications network.

The R&O requires that deferred tax reserves and unamortixed investment tax credits associated with the installed equipment must be transferred to ATTIS. The R&O also permits an upward adjustment of the net book value of the installed equipment to reflect restoral of deferred taxes on

Western Electric profits. The R&O also requires land and buildings associated with support for the installed equipment to be transferred to ATTIS at appraised value, while other supporting assets must be transferred at net book value.

CPE Sale and Lease Program. The R&O accepts AT&T's proposed plan for the sale and lease of residential CPE during a two-year transition period following the date of divestiture. Sale prices to current customers will range from $19.95 to $54.95, and lease rates will range from $1.50 to $4.60. Lease rates will be subject to increases based upon the Consumer Price Index, except that the $1.50 lease rate for standard rotary telephones will not be increased during the transition period.

The R&O provides that multi-line CPE will be removed from rate regulation and transferred to ATTIS at the time of divestiture. A two-year transition period applicable to the various product lines of multi-line equipment will begin to run at the time the product lines are first offered for sale by ATTIS. If a partucular category of multi-line CPE is offered for sale by ATTIS at the time of divestiture, then the national lease rates established by ATTIS will be applied immediately and the transition period will begin to run immediately at the time of divestiture.

If a multi-line product line is not offered for sale by ATTIS at the time of divestiture, then lease customers will continue to pay lease rates which are equivalent to the applicable state tariffs in effect at the end of 1983 (if these tariff rates are lower than the initial minimum national lease rate established by ATTIS for the product line involved). ATTIS's national lease rates will not apply to these product lines until they are actually offered for sale to current customers by ATTIS. For equipment which is not also leased as new equipment by ATTIS, the national lease rates which ATTIS may establish are capped at the higher of an amount equal to 70 percent of the highest state tariff in effect on March 29, 1983, and the statistical median of all state tariffs in effect on such date for the product line involved.

Support Services During Transition. The R&O permits ATTIS to contract with the divested BOCs for billing, service order processing, and related services in support of ATTIS's provision of installed CPE during an interim period of not more than 18 months following divestiture. Cost of services will be the method used for calculating charges by the BOCs to ATTIS for the support services. ATTIS is permitted to have access to CPE customer-specific information, but the R&O requires that access to non-CPE information must be restricted and that ATTIS must inform current installed CPE customers that they may obtain information regarding their CPE from ATTIS if they desire to make this information available to other vendors.

During the transition period, ATTIS is required to provide maintenance service to current installed equipment customers. In most cases, ATTIS is not permitted to phase out any product line on less than one year's notice. Such notice must be furnished in writing to all customers using the affected product line. Not later than the date of the announced product phase-out, ATTIS is required to make available (at reasonable, compensatory rates) all technical information and rights necessary for support of the phased-out product.

Other Related Issues. The R&O provides that complex inside wiring associated with multi-line CPE will not be removed from regulated service at this time. AT&T will not be required to transfer this complex wiring from the BOCs to ATTIS. The R&O also concludes that capitalized costs associated with the installation and testing of CPE will not be added to net book value upon the removal of this CPE from regulated service.

The R&O requires that CPE associated with national security and emergency preparedness communications systems must be removed from regulated service and transferred to ATTIS. This requirement, however, does not become effective until June 1, 1984, so that parties may have an opportunity to petition the FCC for a waiver of this requirement and the FCC may have an opportunity to conduct a more extensive inquiry into these issues.

The R&O approves AT&T's proposed treatment of debt in its installed equipment capitalization plan for ATTIS, and concludes that the capitalization plan will not directly cause any increase in AT&T's overall financing needs.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-34335 Filed 12-27-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group, Expense Accounts Subcommittee, Meetings

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of two meetings of the Telecommunications Industry Advisory Group's (TIAG) Expense Accounts Subcommittee scheduled to meet on January 12-13 and January 26-27. The meetings will begin at 9:00 a.m. and will be open to the public. The meeting locations are:

January 12-13, 1983

GTE Suite 900, 1120 Connecticut Ave NW., Washington, D.C.

January 26, 1983

Pacific Telesis, 180 New Montgomery (Room 744), San Francisco, California.

January 27, 1983

Pacific Telesis, 140 New Montgomery (Room 1328), San Francisco, California.

The agenda are as follows:

I. General Administrative Matters
II. Discussion of Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjournment

With prior approval of Subcommittee Chairman John Howes, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of a Subcommittee and wishing to make an oral presentation should contact Mr. Howes ((212) 393-4029) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-34334 Filed 12-27-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 83-741]

Application for Merger

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted its revised Merger Application Form to the Office of Management and Budget for approval pursuant to 5 CFR 1320.12, pertaining to clearance of information collection requests. Requests for information including copies of the proposed information collection request and supporting documentation, are obtainable from the Board. Comments on the proposal should be directed to: Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board. The Board

would appreciate commenters also sending copies of their submission to the Board address given below.

Comments must be post marked no later than 30 days from date of publication of this notice.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G. Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: K. Diane Boyle, Office of District Banks, Federal Home Loan Bank Board, 202–377–6720.

Dated: December 21, 1983.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 83-34368 Filed 12-27-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Barclays Bank PLC, et al.; Proposed de Novo Nonbank Activities by Bank Holding Companies

The organizations indentified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views 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 comment that requests a hearing must include 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 that proposal.

The applications may be inspected at the offices of the Board of Governors of at the Federal Reserve Bank indicated. Comments and requests for hearing should indentify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays Bank PLC* and its subsidiary, *Barclays Bank International Limited*, each a bank holding company whose principal office is in London, England (consumer finance; Shreveport, Louisiana): To engage through their subsidiary, BarclaysAmerican/Financial, Inc. ("BAF"), in making direct consumer loans, including loans secured by real estate, and purchasing sales finance contracts representing extensions of credit such as would be made or acquired by a consumer finance company, and wholesale financing (floor planning), acting as agent for the sale of related credit life, credit accident and health and credit property insurance, and selling at retail money orders having a face value not exceeding $1,000. Credit life and credit accident and health insurance sold as agent may be underwritten or reinsured by the insurance underwriting subsidiaries of BarclaysAmericanCorporation ("BAC"). These activities would be conducted from an office BAF to be located in Shreveport, Louisiana, serving coustomers in Shreveport and surrounding areas in Louisiana. This notification is for the relocation of an existing office located in Shreveport, Louisiana. Comments on this application must be received not later than January 20, 1984.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon National Corporation*, Pittsburgh, Pennsylvania (trust activities; Florida): To enage, through a *de novo* office of its subsidiary, Mellon Bank (FL) National Association, in the solicitation of trust business. These activities will be conducted from an office in Sarasota, Florida, serving the western half of Florida. Comments on this application must be received not later than January 18, 1984.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Maryland National Corporation*, Baltimore, Maryland (leasing, insurance and finance activities; California): To engage through its subsidiary, Maryland National Leasing Corporation, in the following activities: engaging generally in the business of leasing personal property (including, but not limited to, the leasing of various types of equipment, machinery, vehicles, transportation equipment, and data processing equipment and including conditional sales contracts and chattel mortgages) where the lease is the functional equivalent of an extension of credit; originating and servciing personal property leases as principal or agent; buying, selling and otherwise dealing in personal property lease contracts as principal or agent; acting as adviser in personal property leasing transactions; engaging in the sale, as agent or broker, or insurance similar in form and intent to credit life and/or mortgage redemption insurance; engaging generally in the business of leasing real property where the lease is the functional equivalent of an extension of credit; originating real property leases as principal or agent; servicing real property leases for affiliated or nonaffiliated individuals, partnerships, corporations or other entities; buying, selling and otherwise dealing in real property leases as principal, agent or broker; acting as adviser in real property leasing transactions; engaging generally in commercial lending operations including, but not limited to, secured and unsecured commercial loans and other extensions of credit to commercial enterprises; and acting as adviser or broker in commercial lending transactions. These activities would be conducted from an office in San Mateo, California. The geographic area to be served will be the western United States including, but not limited to, the states of California, Oregon, Washington, Arizona, New Mexico, Nevada, Utah, Colorado, Idaho, Montana and Wyoming. Comments on this application must be received not later than January 16, 1984.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California (discount securities brokerage and incidental activities; *de novo* offices; all fifty (50) states and the District of Columbia): To engage, through its indirect subsidiary, Charles Schwab & Co., Inc., in the activities of discount securities brokerage, consisting principally of buying and selling securities solely upon the order and for the account of customers, and of extending margin credit in conformity with Regulation T. The activities will be conducted from *de novo* offices located in Palm Beach, Florida, New York, New York, and

Bellevue, Washington; each office serving all fifth (50) states and the District of Columbia. Comments on this application must be received not later than January 20, 1984.

2. *BankAmerica Corporation*, San Francisco, California (financing, servicing, insurance activities; *de novo* office; Texas): To engage, through its indirect subsidiary, FinanceAmerica Corporation, a Texas corporation, in the activities of making or acquiring for its own account of loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance and credit-related accident and health insurance. The aforementioned types of credit-related insurance are permissible under section 4(c)(8)(A) of the Bank Holding Company Act of 1956, as amended by the Garn-St Germain Depository Institutions Act of 1982. Credit-related property insurance will not be offered. Such activities will include, but not be limited to, making loans and other extensions of credit to consumers and businesses, making loans secured by real and personal property, purchasing installment sales finance contracts, and offering credit-related life insurance and credit-related accident and health insurance directly related to extensions of credit made or acquired by the above corporation. Credit-related life and credit-related accident and health insurance may be reinsured by BA Insurance Company, Inc., an affiliate of FinanceAmerican Corporation. These activities will be conducted from a *de novo* office located in San Antonio, Texas, serving the entire State of Texas. Comments on this application must be received not later than January 20, 1984.

3. *Wells Fargo & Company*, San Francisco, California (finance, servicing, and leasing investment or financial advisory, and data processing activities; southeastern United States): Proposes to engage, through its subsidiary, Wells Fargo Realty Advisors, in making or acquiring for its own account or for the account of others loans and other extensions of credit; servicing loans for the account of others; leasing real and personal property; acting as investment or financial advisory; acquiring and servicing such investments for the account of others, including acting as an agent, broker or advisor in leasing real and personal property; and providing bookkeeping and data processing services for its internal operations and for the processing and transmission of financial, banking and economic data for its clients in connection with and related to its advisory services for such clients, in accordance with the Board's Regulation Y. These activities would be conducted from an office in Tampa, Florida serving the southeastern United States. Comments on this application must be received not later than January 20, 1984.

Board of Governors of the Federal Reserve System, December 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-34352 Filed 12-27-83; 8:45 am]

BILLING CODE 6210-01-M

Catlan Corp.; Acquisition of Bank Shares by a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the 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.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Catlan Corporation*, Amarillo, Texas; to acquire 6.2 percent of the voting shares or assets of Preston North National Bank, Dallas, Texas. Comments on this application must be received not later than January 20, 1984.

Board of Governors of the Federal Reserve System, December 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-34351 Filed 12-27-83; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

December 21, 1983.

Background

When executive departments and independent agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Paperwork Reduction Act [44 U.S.C. Chapter 35]. Departments and agencies use a number of techniques to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibilities under the act also considers comments on the forms and recordkeeping requirements that will affect the public. Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. OMB's usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

List of Forms Under Review

Immediately following the submission of a request by the Federal Reserve for OMB approval of a reporting or recordkeeping requirement, a description of the report is published in the **Federal Register**. This information contains the name and telephone number of the Federal Reserve Board clearance officer (from whom a copy of the form and supporting documents is available). The entries are grouped by type of submission—i.e., new forms, revisions, extensions (burden change), extensions (no change), and reinstatements.

Copies of the proposed forms and supporting documents may be obtained from the Federal Reserve Board clearance officer whose name, address, and telephone number appear below. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearence Officer—Cynthia Glassman—Division of Reserach and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; (202-452-3829)

OMB Reviewer—Judy McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503; (202-395-6880)

Request for revision to an existing report

1. Report title: Country Exposure Report
Agency form number: FFIEC 009
Frequency: Semiannual
Reporters: State member banks and bank holding companies, Small

businesses are not affected. General description of report: Respondent's obligation to reply is mandatory [12 U.S.C. §§ 248(a) and 1844(c)]; a pledge of confidentiality is promised for the existing report. However, the proposed revision at this time involves requesting approval for banks to disclose the amount outstanding of net foreign country exposures in excess of 1 percent of total assets.

This report collects information on international claims of U.S. bank holding companies used for supervisory and analytical purposes. This information is also used to analyze the country exposure of banks in order to determine the degree of risk in their portfolios and the possible impact on U.S. banks of any advance developments in particular countries.

Board of Governors of the Federal Reserve System, December 21, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-34353 Filed 12-27-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. Because the processing of this document was inadvertently delayed, FDA is giving less than the ususal minimum of 15 days notice before the first meetings The following advisory committee meeting are announced:

Blood Products Advisory Committee

Date, time, and place. January 5 and 6, 8:30 a.m., Lister Hill Center Auditorium, National Library of Medicine, National Institutes of Health (NIH), Bldg. 38A, 9000 Rockville Pike, Bethesda, MD. The meeting is consponsored by the National Heart, Lung, and Blood Institute, NIH.

Type of meeting and contact person. Open public hearing January 5, 8:30 a.m., to 9:30 a.m., open committee discussion, 9:30 a.m., to 3 p.m.; closed presentation of data, 3 p.m. to 4:30 p.m.; open committee discussion, January 6, 8:30 a.m. to 4:30 p.m.; Mary Ann Tourault, National Center for Drugs and Biologics (HFN-830), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-5241.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The Committee will hear data and information on the criteria for safety and effectiveness of thrombolytic agents and hepatitis vaccines.

Closed presentation of data. The committee will hear trade secret or confidential commercial information from individual manufacturers relevant to pre-investigational new drug development of new thrombolytic agents and hepatitis vaccines. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 12 and 13, 9 a.m., Bldg. 29, Rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 5 p.m.; closed committee deliberations, January 13, 9 a.m. to 4 p.m.; Jack Gertzog, National Center for Drugs and Biologics (HFN-6), Food and Drug Administation, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss influenza vaccine formulation for the 1984-1985 influenza season.

Closed committee deliberations. The committee will discuss trade secret or confidential commercial information relevant to pending investigational new drugs and license applications. This portion of the meeting will be closed to premit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Device Section of the Immunology and Microbiology Devices Panel

Date, time, and place. January 16 and 17, 9 a.m., Rm. 703-727A, 200 Independence Ave. SW., Washington, D.C.

Type of meeting and contact person. Open public hearing, January 16, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 a.m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 5 p.m.; open committee discussion, January 17, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 12 a.m.; closed committee discussion, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Dr. Srikrishna Vadlamudi, National Center for Devices and Radiological Health (HFK-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 5, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for tumor markets for the monitoring of cancer and alpha-fetoprotein for the detection of neural tube defects.

Closed presentation of data. The committee will review and discuss trade secret information regarding premarket approval applications for tumor markers for the monitoring of cancer and alpha-fetoprotein for the detection of neural tube defects. This portion of the meeting

will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review and discuss trade secret information regarding premarket approval applications for tumor markets for the monitoring of cancer and alpha-fetoprotein for the detection of neural tube defects. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel

Date, time, and place. January 30 and 31, 9 a.m., Auditorium, 200 Independence Ave. SW., Washington, D.C.

Type of meeting and contact person. Open public hearing, January 30, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 5 p.m.; open public hearing, January 31, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Dr. George C. Murray, National Center for Devices and Radiological Health (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 16, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 30, the committee will discuss general issues relating to approval of premarket approval applications (PMA) for intraocular lenses (IOL) and neodymium:yttrium-aluminum-garnet (Nd:YAG) lasers, and may discuss specific PMA's for these devices. If discussion of all pertinent IOL or Nd:YAG lasers issues is not completed, discussion will be continued the following day. On January 31, the committee will discuss PMA's for contact lenses, other ophthalmic devices, and general issues relating to these devices.

Closed committee deliberations. On January 30, the committee will conduct reviews of PMA's for IOL's and Nd:YAG lasers. On January 31, the committee may discuss trade secret or confidential commercial information relevant to PMA's for contact lens or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public;

presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: December 21, 1983.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 83-34426 Filed 12-27-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of Peoria Tribe of Oklahoma Judgment Funds in Dockets 313, 314-A and 314-B Before the Indian Claims Commission

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on February 22, 1979, and March 2, 1979, in satisfaction of the awards granted to the Peoria Tribe of Oklahoma in Indian Claims Commission Dockets 313, 314-A and 314-B. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated July 12, 1983, and was received (as recorded in the Congressional Record) by the Senate on July 16, 1983 and by the House of Representatives on July 18, 1983. The plan became effective on November 3, 1983, as provided by Section 5 of the 1973 Act, as amended, since a joint resolution disapproving it was not enacted.

The plan reads as follows:

"The funds appropriated February 22, 1979, in satisfaction of the Peoria judgments granted in Dockets 313 and 314-A, and March 2, 1979, in satisfaction of the Peoria judgment granted in Docket 314-B, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be divided and used and distributed as provided herein.

Division of the Funds

The Secretary of the Interior (hereinafter 'Secretary') shall divide the funds between the two beneficiary entities, on the basis of the number of enrollees of each group as designated on the 1970 Peoria Tribe and the Peoria Descendants payment roll, prepared pursuant to the Act of July 31, 1970 (86 Stat. 688), in terms of 1640/2075ths (or 79.0361%) to the Peoria Tribe of Oklahoma, and 435/2075ths (or 20.9639%) to the Peoria Descendants.

Peoria Tribal Share

The share of the Peoria Tribe of Oklahoma shall be used and distributed as follows:

(a) Eighty (80) percent of the funds shall be distributed in the form of per capita payments, in sums as equal as possible, to all tribal members born on or prior to and living on the effective date of this plan.

(b) Twenty (20) percent of the funds, and any amounts remaining from the per capita payments, shall be utilized by the tribal governing body, subject to the approval of the Secretary, in terms of the percentages listed to support the following programs:

(1) Fifty (50) percent shall be invested by the Secretary and the interest and investment income accrued shall be available for tribal government purposes, including the tribal office budget;

(2) Ten (10) percent shall be utilized in a tribal education program;

(3) Fifteen (15) percent shall be used for a tribal economic development program;

(4) Five (5) percent shall be used in a tribal burial fund;

(5) Five (5) percent shall be utilized for the payment of tribal legal fees and expenses; and

(6) Fifteen (15) percent shall be applied to the tribal land purchase program.

Should any funds in any of the above program categories be found in excess of needs in any given annual tribal budget, the tribal governing body, with the approval of the Secretary, may apply such funds to another cited program category.

Peoria Descendant Share

For the purposes of distributing the apportioned share of the funds of the Peoria descendant group, the Secretary shall bring current to the effective date of this plan the descendant payment roll prepared pursuant to the Act of July 31, 1970, 86 Stat. 688, and approved on September 4, 1973: (i) by adding the names of persons living on the effective date of this plan who would have been eligible for enrollment under the 1970 Act, but who were not enrolled; (ii) by adding the names of children born on or prior to and living on the effective date of this plan to persons who were eligible for enrollment, regardless of whether such parents are living or deceased on the effective date of this plan and children born to enrollees on or prior to and who are living on the effective date of this plan; and (iii) by deleting the names of enrollees who are deceased as of the effective date of this plan and the names of those persons who are enrolled as members of the Peoria Tribe.

An application by a person who meets the requirements under sections (i) and (ii) must be obtained from and filed with the Area Director of the Muskogee Area Office, Muskogee, Oklahoma, within one-year from the effective date of this plan. The Secretary shall publish notice of the roll preparation and the deadline for filing applications in the **Federal Register**. The Area Director, on the basis of residence data available on the roll of September 4, 1973, shall publish similar notices in appropriate locales utilizing media appropriate to the circumstances. Appeals shall be handled in accordance with the procedures established under 25 CFR Part 62, Enrollment Appeals. The entirety of the Peoria descendant share shall be paid on a per capita basis, in sums as equal as possible, to the persons so enrolled.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, by Pub. L. 97-458.

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 83-34349 Filed 12-27-83; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Proposed Combined Hydrocarbon Lease Form; Extension of Comment Period on Combined Hydrocarbon Lease Form

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period on Combined Hydrocarbon Lease Form Proposal.

SUMMARY: The combined hydrocarbon lease form was published in the **Federal Register** on December 7, 1983, (48 FR 54904) with a 30-day comment period. In response to the request of industry that the comment period be extended, the comment period is extended by this notice to February 6, 1984.

DATE: Comments should be submitted by February 6, 1984. Comments received or postmarked after that date may not be considered in the decisionmaking process on the final combined hydrocarbon leasing form.

ADDRESS: Comments and suggestions should be sent to: Director (650), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 3610 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward E. Coggs (202) 343-3258.

Dated: December 21, 1983.

Arnold E. Petty,

Acting Associate Director.

[FR Doc. 83-34367 Filed 12-27-83; 8:45 am]

BILLING CODE 4310-84-M

Southern Appalachian Regional Coal Leasing; Regional Coal Team; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of regional coal team meeting.

SUMMARY: This notice is to advise the public that the Regional Coal Team (RCT) for the Southern Applachian, Alabama subregion will meet to make final RCT recommendation to the Secreatary of the Interior concerning Round II competitive coal lease consideration. The RCT will make recommendation on: (1) Specific tracts for lease sale; (2) special leasing opportunities; (3) the lease sale schedule.

DATE: The Regional Coal Team will meet on January 11, 1984, starting at 9:00 a.m.

ADDRESS: Any comments on the agenda items should be addressed to Tom Walker, Chairman, Regional Coal Team, Bureau of Land Management, 18th and C Streets NW., Washington, D.C. 20240.

The Regional Coal Team Meeting will be in The Black Warrior Room of the Stagecoach Inn, 4810 Skyland Boulevard, East, Tuscaloosa, Alabama.

FOR FURTHER INFORMATION CONTACT: Don Libbey, District Manager, USDI, Bureau of Land Management, Southeastern District Office, P.O. Box 11348, Delta Station, Jackson, Mississippi 39213, Telephone: (601) 960-5942, FTS 490-5942.

SUPPLEMENTARY INFORMATION: The RCT will meet on January 11, 1984, at 9:00 a.m. in the Black Warrior Room, Stagecoach Inn. The RCT will make final recommendation at this meeting to the Secretary of Interior on Round II leasing. Opportunity will be provided for public comment on any of the issues being considered. A verbatim transcript will be kept of the meeting which will be available with payment of a copy fee

Material concerning the Round II potential lease sale including the Final EIS and information on potential lease tracts can be obtained by contacting the District Manager, Southeast District Office, Bureau of Land Management at the address given above.

Denise P. Meridith,

Acting Eastern States Director.

[FR Doc. 83-34371 Filed 12-27-83; 8:45 am]

BILLING CODE 4310-GJ-M

Bureau of Reclamation

Velarde Community Ditch System Project, New Mexico; Public Meeting

The Department of the Interior, Bureau of Reclamation, will hold a public meeting at 7 p.m., January 19, 1984, in the Velarde School Gymnasium, Velarde, New Mexico, to provide information on the effect this project will have on wetlands (Executive Order 11990) and flood plains (Executive Order 11988). The Bureau of Reclamation plans to prepare an environmental assessment of this project. The meeting will also give the public an opportunity to express their views and comments relating to environmental concerns of this project.

The project consists of rehabilitating the Las Nueve Acequias Committee rock an brush diversion barriers. The present structures are subject to damage or complete destruction during high flows which results in frequent need for repairs or complete replacement and frequent streambed distrubance.

Additional information concerning theis project may be obtained by contacting Mr. Dan Rubenthaler, Bureau of Reclamation, 714 South Tyler Street, Suite 201, Amarillo, Texas 79101, telephone (806) 378-5473.

Dated: December 23, 1983.

R. A. Olson,

Assistant Commissioner—Planning and Operations.

[FR Doc. 83-34434 Filed 12-27-83; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF INTERIOR

Minerals Management Service

Safety Award for Excellence Program

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of booklet concerning the Safety Award for Excellence Program.

SUMMARY: The Safety Award for Excellence (SAFE) Program is designed to recognize exemplary performance by oil and gas lessees, operators, and contractors. It also provides the public with an awareness that offshore oil and gas activities are being conducted in a safe and pollution-free manner. The SAFE Program booklet describes the objectives of the SAFE Program, provides detailed information on the criteria and procedures for selection of operating companies, and sets forth the steps of the award process.

ADDRESSES: Copies of the booklet may be obtained from the following offices: (1) Offshore Inspection and Enforcement Division, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 647, Reston, Virginia 22091; (2) Regional Manager, Alaska Region, Minerals Management Service, P.O. Box 101159; Anchorage, Alaska 99501; (3) Regional Manager, Atlantic Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180; (4) Regional Manager, Gulf of Mexico Region, Minerals Management Service, P.O. Box 7944, Metairie, Louisiana 70010; (5) Regional Manager, Pacific Region, Minerals Management Service, 1340 West Sixth Street, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Mr. M. L. Courtois at (703) 860-7867.

Dated: December 19, 1983.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 83-34363 Filed 12-27-83; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Proposed Exemptions; Lowe-H' Doubler-Griffin Keogh Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Lowe-H'Doubler-Griffin Keogh Plan (the Plan) Located in Springfield, Missouri

[Application No. D-4172]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash purchase of a certain partnership interest (the Interest) from Dr. Peter H'Doubler (Dr. H'Doubler), a disqualified person with respect to the Plan, by Dr. H'Doubler's individually directed account in the Plan, provided that the purchase price does not exceed the fair market value of such Interest on the date of purchase. Dr. H'Doubler is an owner-employee with respect to the Plan as defined in section 401(c)(3) of the Code, due to his 50% ownership of Lowe-H'Doubler-Giffin, a partnership which is the Plan sponsor. Section 408(d)(3) of Title I of the Employee Retirement Income Security Act of 1974 (the Act) provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the purchase of any property by a plan from an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the purchase of the Interest. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a profit sharing Keogh plan with individually directed accounts and approximately 13 participants. As of December 31, 1982, Dr. H'Doubler had assets of approximately $115,843 in his account (the Account) in the Plan. Dr. H'Doubler is fully vested in the Account.

2. The Interest is a 4% partnership interest in the Battlefield West Investment Partnership (the Partnership). The Partnership's sole function is to allow investors to aggregate funds for the purchase and holding of a certain parcel of real estate (the Land) as a passive investment. The Land is the sole asset of the Partnership. The Partnership does not carry on any development activities. Other than Dr. H'Doubler, none of the partners in the Partnership is a party in interest with respect to the Plan.

3. The Land is a 76.6 acre tract located on the south side of Battlefield Street in Springfield, Missouri. The application states that the area in which the Land is located has seen substantial continuing development in the past few years and that one of the primary reasons for selection of this tract by the Partnership was that the City of Springfield's plan for development calls for eventual extension of Kansas Avenue, a major four lane thoroughfare, which, the applicant states, is expected to immediately double the value of the Land. The Land, which is improved by a farmhouse and outbuilding, provided the Partnership with rental income of approximately $2,200 in 1982, during which year the Partnership incurred expenses related to the Land in the amount of approximately $1,684. The applicant represents that, in any given year, expenses related to the Land are not expected to exceed income provided by the Land. Mr. R. L. Harrison, an independent M.A.I. appraiser with Realty Mortgage and Appraisals, Inc., Springfield, Missouri, has examined the Land and estimated its fair market value on May 6, 1983 to be approximately $670,000.

4. Dr. H'Doubler wishes to sell the 4% Interest in the Partnership to his Account for cash in the amount of $26,800. This amount represents 4% of the appraised fair market value of the Land. Because the Land is the sole asset of the Partnership, the application states that the fair market value of the 4% Interest is equal to 4% of the appraised fair market value of the Land. Dr. H'Doubler states that he wishes to sell the Interest to his Account because he believes that the Land has excellent potential for appreciation with little risk of loss. Dr. H'Doubler will pay any fees and commissions incurred with respect to the sale of the Interest to his Account and no Plan assets other than those in his own individually directed Account

will be involved in the proposed transaction.

5. In summary, the applicant represents that the proposed purchase satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the proposed purchase price equals the fair market value of the Interest based on an appraisal of the fair market value of the Land as established by a qualified, independent appraiser; (b) the proposed purchase involves less than 25% of Dr. H'Doubler's vested interest under the Plan; (c) the Account will not be charged with any fees and expenses incurred in effecting the purchase; (d) the only Plan assets involved in the proposed purchase are those credited to Dr. H'Doubler's individually directed Account under the Plan so that he is the only Plan participant affected by the proposed transaction; and (e) Dr. H'Doubler believes that the proposed purchase is in the best interest of his Account and desires that the purchase be effected.

Notice to Interested Persons: Since the only Plan assets involved in the proposed transaction are those in Dr. H'Doubler's own individually directed Account under the Plan and since he is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests are due 30 days after the date of publication in the **Federal Register.**

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone 523-8972. (This is not a toll-free number.)

Gamble Inc. Employees' Stock Bonus Plan (the Plan) Located in Portland, Oregon

[Application No. D-4396]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective February 4, 1983, to (1) the sale by the Plan of 220,007 shares of common stock of Gamble, Inc. (Gamble), the prior sponsor of the Plan to Timberline Beverage Corporation (Timberline); (2) the guarantee of the obligations of Timberline by its parent, MEI Corporation (MEI); and (3) other transactions to be described in the purchase agreement executed between the Plan, Timberline, and MEI; provided that the terms of the transactions are no less favorable to the Plan than those obtainable in arm's-length transactions.

Effective Date: If granted, the exemption will be effective February 4, 1983.

Summary of Facts and Representations

1. The Plan is currently funded by a wasting trust, distributing benefits from a prior stock bonus and money purchase plan. The Plan currently has 63 participants of whose accounts are fully vested and non-forfeitable. As of December 31, 1982, the Plan's assets constituted solely of stock of Gamble, and a receivable representing Gamble's contribution for the year ending December 31, 1982, in the amount of $241,620. This contribution was paid in full on April 28, 1983.

2. Messrs. Theodore R. Gamble, Forrest Gist, and Glenn Benson served as trustees (the Trustees) of the Plan. Messrs. Gamble and Gist served as officers of Gamble and/or its subsidiaries. Mr. Gamble also served as the chairman of the board of Gamble and its subsidiaries. The Trustees had complete authority with regard to the investment of Plan assets.

3. Gamble was an Oregon corporation engaged principally in the business of manufacturing and distributing soft-drink beverages in primarily the Portland and Salem, Oregon areas. Gamble had, as of April 28, 1983, authorized and issued 896,007 shares of common stock. In addition to the 220,007 shares owned by the Plan, Mr. Gamble owned 672,000 shares and his four children each owned 1,000 shares. The stock of Gamble was of one class with equal voting rights. There was no recognized market for the stock.

4. On February 4, 1983, a Stock Purchase Agreement (the Agreement) was entered into between the Plan, Mr. Gamble, his children and representives of the two children, and Timberline and MEI. The Agreement was amended in part by documents dated March 8, 1983, and April 29, 1983. The closing of the transactions pursuant to the Agreement occurred on April 29, 1983. There were no written agreements or other documents executed between any of the parties prior to the execution of the Agreement on February 4, 1983. Upon the closing of the transaction Gamble became a wholly-owned subsidiary of Timberline, which in turn is a wholly-owned subidiary of MEI. With respect to the Plan, a liquidating trust agreement (the Trust Agreement) was implemented, effective April 28, 1983, which provides for the liquidation and distribution of assets of participants. The Trust Agreement is administered by a group of three indiviudals, Messrs. Gamble, Gist and Alan Bellanca, a former officer of Gamble, who serve as the administrator of the trust. The Pacific Western Bank (the Bank) serves as trustee of the trust. Upon the execution of the Trust Agreement, Gamble relinquished all of its duties, responsibilities and relationships to the Plan.

5. The terms of the transaction are as follows: the Plan, Mr. Gamble, and his children (the Sellers) sold the stock to Timberline for a total price of $26,000,000. The purchase price is represented by a payment of $10,000,000 in cash, and a promissory note executed by Timberline in the amount of $16,000,000. Mr. Gamble, in consideration for the sale of his shares, received cash in the amount of $7,428,512, and a note in the amount of $12,071,334. The Plan received cash in the amount of $2,455,416, and a note in the amount of $3,928,666. The four children each received $29,018 in cash and did not receive a note from Timberline. Their consideration accounts for less than 1% of the purchase price. The proportion of the purchase price paid in the aggregate to Mr. Gamble and his children in cash (32%) equals the proportion of the purchase price received by the Plan in cash (32%).

6. The Agreement provides that the notes will bear interest during the first three years from date at the rate of 9% per annum, and during the balance of the term at the rate of 11% per annum. A principal payment in the amount of $368,312 on the note to the Plan, and $1,131,688 on the note to Mr. Gamble will be made three years after the date of each note which is April 29, 1983. Thereafter, the remaining principal balance of each note will be payable in equal consecutive annual installments of principal and interest calculated on a basis of a fifteen year amortization schedule, with the final payment of all unpaid principal and accrued interest due on April 29, 1995.

7. Pursuant to the terms of the Agreement, Mr. Gamble has entered into a consulting agreement with Gamble whereby Mr. Gamble agrees, for a five year period from closing, that he will from time to time furnish advice and consultations to Gamble. In consideration for these services Gamble agrees that it will pay Mr. Gamble $1,000,000 payable in 20 equal quarterly

installments, with an additional quarterly reimbursement for office expenses over the 5 year term in the amount of $17,500 each quarter. In order to induce Mr. Gamble to enter into this consulting agreement, MEI, the 2nd-tier parent of Gamble, issued and delivered to Mr. Gamble a warrant to purchase 50,000 shares of common stock of MEI on the New York Stock Exchange. The warrants are effective until April 29, 1988. MEI also guaranteed Gamble's obligations to pay the consideration pursuant to the consulting agreement. Mr. Gamble currently serves as a director and consultant for the bottling division of MEI.

8. The Agreement also provides for the entering into of covenants not to compete between Mr. Gamble, certain other prior officers of Gamble, and Gamble and Timberline. With respect to the covenant executed between Mr. Gamble and Gamble and Timerline, in consideration for his refraining from competition with the companies Mr. Gamble will receive $1,600,000 over a fifteen year period. The other covenants not to compete were executed between prior Gamble executive officers, and Gamble and Timberline: Frank Fifer in the amount of $600,000, Gorham Nicol in the amount of $560,000, Forrest Gist in the amount of $505,000, Theodore White in the amount of $275,000, and Alan Bellanca in the amount of $275,000. These executive covenants not to compete are also for a fifteen year term, and like the covenant with Mr. Gamble, are guaranteed by MEI.

9. Pursuant to the Agreement, MEI will guarantee unconditionally the payment of the notes and, as mentioned, the obligations of Gamble and Timberline under the covenants. Additionally, Timberline and MEI will indemnify and hold harmless, upon proper written notice, the Sellers at all times, from any damages which result from their breach of any covenant, agreement, representation or warranty contained in the Agreements.

10. The total consideration received by the shareholders of the stock, including the Plans, is approximately $29 per share. Williamette Management Associates, Inc. (Williamette), an appraisal company located in Portland, Oregon, was retained to appraise the value of Gamble stock. Williamette undertook a complete and thorough analysis of Gamble in April, 1982, and determined, based upon a combination of approaches, that, as of December 31, 1981, the publicly traded value of Gamble is $8.0 million or $9.38 per share based upon 853,320 outstanding shares. Williamette determined that after substracting a 10% discount for lack of marketability, and considering the year 1982 contribution of stock to the Plan, the fair market value of shares of stock held by the Plan was $8.03 per share as of December 31, 1981. Therefore, the consideration received by all of the shareholders, including the Plan, had a face value approximately $21 more per share than the last appraised fair market value of the stock. The applicant represents that the Agreement and the sale terms were established in arm's-lenght negotiations between all of the shareholders of Gamble and Timberline.

11. As mentioned, the Plan is continuing under the Trust Agreement. Each participant's interest in the cash and the note will be based upon the proportion that the number of shares credited to the participant's accounts as of April 29, 1983, bears to the total number of shares held by the Plan. The trust will hold all assets in a single, commingled fund and no participant will have any interest in any individual asset of the trust. Each participant, in lieu of receiving benefits from the trust may elect, at least annually, to receive a distribution of all or a portion of his or her account. The trustee, the Bank, unless a participant assumes management responsibility, pursuant to the directed investment provisions of the Plan, will have full responsibility and authority to manage the investment of the trust.

12. The applicant seeks an exemption for the Plan's decision to accept Timberline's offer to purchase the stock, for transactions resulting from the Agreement, such as the indemnification and guarantees of Timberline and MEI, and for the extension of credit between the buyers and the Gamble shareholders as described in the Agreement. Such transactions may constitute certain prohibited transactions as described in the Act.

13. The Bank was retained, prior to the closing of the transaction, to serve as fiduciary of the Plan regard to the sale. The Bank is a full-service bank and trust company incorporated under the laws of the state of Oregon. It is the principal subsidiary of Pacwest Bancorp, a bank holding company. The trust department of the Bank holds approximately $280 million in management and custodial accounts. The trust department has 26 employees, of which 8 have primary responsibilities in the employee benefits area. The Bank is independent of Gamble, as neither the corporation nor any of its affiliates have borrowed or maintained deposits at the Bank. Since 1981, Mr. Gamble has served as a director of the Bank, and owns a norminal number of shares of the bank holding company. Mr. Gamble has had no role in the Bank's determinations with respect to the sale of the shares of stock owned by the Plan.

14. The Bank, by letter dated April 28, 1983, rendered an opinion that the Plan's sale of the shares of stcok pursuant to the Agreement is fair, reasonable, and in the best interests of the Plan and its participants and beneficiaries. The Bank rendered this opinion while recognizing and acknowledging its fiduciary status with respect to the Plan. The Bank determined that the Agreement was negotiated at arm's-length, and that it is in the best interests of the participants for the Plan to continue to hold the note. In this regard, although the note will represent a high percentage of the Plan's assets the Bank represents that the cost to the Plan of selling the note at a substantial discount is much greater than the level of risk presently incurred by the Plan in concentrating a high percentage of Plan assets in one investment. The Bank is aware of its responsibility under the Act to properly diversify Plan investments, and represents that it is diversifying Plan assets other than the note in accordance with proper professional asset management standards.

15. In rendering its determination, the Bank reviewed the Trust Agreement, the Agreement, and the valuation opinions of the sock rendered by Williamette. The Bank represents that it is familiar with the expertise of Williamette, and considers them to be experts in determining the fair market value of closely held businesses. The Bank determined the sale price to be at fair market value taking into consideration the interest rate payable on the note together with the cash downpayment and sales price of the individual shares. The Bank further considers the sale price to be at fair market value because negotiations for the purchase of Gamble involved a number of prospective purchasers, and the price and terms of the sale were very favorable in comparison to recent sales of similar companies.

16. With respect to the post-sale relationships between the buyers and Mr. Gamble the Bank determined that his agreements and covenants with the buyers and Gamble are consistent with the value of Mr. Gamble's services. The Bank represents that the Plan would not have been able to sell its stock if Mr. Gamble had not offered, through the covenants and other post-sale agreements, the benefit of his extensive experience to the purchaser. The Bank

considered each of the arrangements between Mr. Gamble and the purchaser, and continues to believe that the sale was appropriate and in the best interests of the Plan. As trustee under the Trust Agreement the Bank recognizes its responsibilities to monitor compliance with the terms and conditions of the note held by the trust. In the event of any default, the Bank will take appropriate action to protect the trust's interests.

17. In summary, the applicant represents that the transactions satisfy the criteria of section 408 (a) of the Act because (a) the sale of the stock, including the stock held by the Plan, was negotiated on an arm's-length basis between unrelated parties; (b) the Plan received the same consideration and sold its stock upon the same terms as the other major shareholder of Gamble and his children; (c) the Bank, as Plan fiduciary, reviewed the transactions and determined, prior to closing, that the transactions are appropriate and in the best interests of the Plan; and (b) the Bank will monitor the transactions for compliance under the Agreement on behalf of the Plan, and will take appropriate action to protect the Plan's interests if necessary.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Robino, Incorporated Pension Plan (the Plan) Located in Seattle, Washington

[Application No. D-4599]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 497(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, for a five year period, to the proposed sale of certain mortgage loans (the Loans) to the Plan by Juantia Bay, Inc. (Juanita), a disqualified person with respect to the Plan, provided that the terms of each sale are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; and provided that the total value of all Loans sold to the Plan does not at any time constitute more than 25% of the total value of the Plan's assets.

Temporary Nature of the Exemption: If granted, this exemption will be temporary in nature, and will only apply to sales executed within 5 years from the date an individual exemption is granted on behalf of the transactions.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with two participants, Mr. and Mrs. George and Evelyn Filler. The Fillers are the trustees of the Plan and are responsible for Plan investments. As of February, 1983, the Plan had total assets of $521,259, of which $104,000 is represented by a note receivable executed by the Fillers which orginated in connection with a loan to them.[1] The Plan, as of December 20, 1982, had total cash assets of $412,259.

2. The Fillers are the sole shareholders, officers, and directors of Robino, Incorporated (the Employer), the sponsor of the Plan.[2] The Employer is a corporation engaged in the business of purchasing, selling, and managing real estate.

3. The applicant requests an exemption to allow Juanita to sell, over a five year period, the Loans to the Plan. Juanita is a disqualified person with respect to the Plan by virtue of 100% of its stock being owned by the Fillers. The Loans total eight in number, and represent the obligations of unrelated third party obligors with respect to the Plan.

4. The Plan proposes to purchase each of the Loans at its appraised fair market value. Mr. Richard J. Allen, an SRA appraiser located in Bainbridge Island, Washington, has appraised each Loan, Mr. Allen has detemined that, as of June 23, 1982, the Loans had a total value of $448,200, with the value of each individual Loan ranging from $38,000 to $84,600. During the five year period of the exemption the total value of all Loans sold to the Plan will not exceed at any time 25% of the total value of the Plan's assets. The appraised market value of each Loan is less than its outstanding principal balance as of the date of the appraisal.

5. Each Loan is secured by an individual residential condominium unit located at 9715 NE Juanita Drive, Kirkland, Washington. These properties were developed by Juannita. Mr. James A. Wharton, an SRA appraiser located in Bellevue, Washington, determined that, as of June, 1982, the properties had a total market value of $901,000. The value of each individual property is not less than 150% of the market value of each Loan. The sale of each Loan will be for cash and the Plan will not incur any commission expenses with regard to the transaction.

6. The applicant represents that if any other employees of the Employer become eligible to participate in the Plan, a new plan will be established for such employees so that the Fillers will be the only participants affected by the subject transactions.

7. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 4975(c)(2) of the Code because (a) the Fillers are the only participants affected by the proposed transactions and they desire that the transactions be consummated; (b) each Loan will be purchased at its appraised market value for cash; (c) the Plan will not incur any expenses with regard to the purchases; and (d) each Loan is adequately secured.

Notice to Interested Persons: Since the Fillers are the only persons affected by the proposed transactions, it has been determined that there is no need to distribute notice to interested persons. Comments and hearing requests are due 30 days after publication of this notice in the **Federal Register.**

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act

[1] The applicant represents that the loan to the Fillers is a participant loan as described in section 4975(d)(1) of the Code. In this proposed exemption, the Department expresses no opinion as to whether the loan meets the requirements of section 4975(d)(1) of the Code.

[2] Because the Fillers are the only participants in the Plan and the sole shareholders of the Employer, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 22nd day of December, 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 83-34385 Filed 12-27-83; 8:45 am]

BILLING CODE 4510-29-M

Grant of Individual Exemptions; John Hancock Mutual Life Insurance Company Pension Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

John Hancock Mutual Life Insurance Company Pension Plan Located in Boston, Massachusetts

[Prohibited Transaction Exemption 83-202; Exemption Application No. D-3998]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective September 9, 1983, to the acquisition, holding or redemption of a limited partnership interest in the John Hancock Venture Capital Fund Limited Partnership (the Fund) by the John Hancock Mutual Life Insurance Company Pension Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 26, 1983 at 48 FR 38915.

Written Comments: The applicant noted a discrepancy in the notice of pendency and asked that the Department clarify the representation for the record. The notice incorrectly indicated that two thirds of the Fund's capital will be invested in other venture capital limited partnerships and the remaining one third would be invested directly in operating companies. The percentages were reversed from those actually contained in the private placement memorandum. The Department has determined this error not to be material in satisfying the statutory criteria for providing administrative relief. Accordingly, the Department incorporates such correction in the final exemption and hereby grants such exemption.

Effective Date: This exemption is effective September 9, 1983.

For further information contact: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number).

United Technologies Corporation (UTC) Located in Hartford, Connecticut

[Prohibited Transaction Exemption 83-203; Exemption Application No. D-4031]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective November 15, 1982, to the leasing of office space in a building in the Highland Oaks Office Plaza in Downers Grove, Illinois by 35 retirement plans (the Plans) maintained by UTC which have all or some of their assets held in a master trust, to Aetna Casualty and Surety Company, a wholly owned subsidiary of Aetna Life and Casualty Company, a party in interest with respect to the Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 22, 1983 at 48 FR 33569.

Written Comments: One comment was received by the Department; however, the comment did not address the transaction which is the subject of this exemption request. Therefore, the Department has determined to grant the exemption as proposed.

For further information contact: Mrs. Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 22nd day of December, 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 83-34384 Filed 12-27-83; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Biotic Systems and Recources Advisory Panel, Subpanel on Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel of Ecology of the Advisory Panel for Biotic Systems and Resources.

Date and Time: January 12 & 13, 1984–8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Nancy L. Stanton, Program Director, Ecology (202) 357–9734, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Subpanel: To provide advise and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: December 22, 1983.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 83-34327 Filed 12-27-83; 8:45 am]

BILLING CODE 7555-01-M

Biotic Systems and Resources Advisory Panel; Suppanel on Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel on Systematic Biology of the Advisory Panel for Biotic Systems and Resources.

Date and Time: January 16 & 17, 1984—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Lloyd Knutson, Program Director, Systematic Biology, (202) 357–9588, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Subpanel: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: December 22, 1983.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 83-34328 Filed 12-27-83; 8:45 am]

BILLING CODE 7555-01-M

Biotic Systems and Resources Advisory Panel, Subpanel on Population Biology and Physiological Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel on Population Biology and Physiological Ecology of the Advisory Panel for Biotic Systems and Resources.

Date and Time: January 19 & 20, 1984–8: 30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Louis F. Pitelka, Program Director, Population Biology and Physiological Ecology (202) 357–9728, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of Subpanel: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10 (d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: December 22, 1983.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 83-34329 Filed 12-27-83; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Spill Maps and Responses; Availability

Spill Maps Issued:

Hazardous Materials Accident Spill Map—Gasoline Release Following Semi-trailer Collision With Cargo Tank Semi-trailer, near Canon City, Colorado, November 14, 1981 (NTSB–HZM MAP–83–1).

Hazardous Materials Accident Spill Map—Gasoline Release Following Commuter Train Collision With Cargo Tank Semi-trailer, Southampton, Pennsylvania, January 2, 1982 (NTSB–HZM MAP–83–2).

Note.-Single copies of these spill maps are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. A limited supply is available free of charge.

Recommendation Responses from:

Aviation—*Federal Aviation Administration: Oct. 18: A–82–149:* Has reviewed the recommendations of the Safety Board, the Mitre Corporation, the Jones Committee, and the Flight Safety Foundation as they apply to the air traffic training efforts. Rather than providing or modifying organizational structures to accommodate training per se, will enact those recommendations that will improve the integrity of entire air traffic training program. Is rewriting the Air Traffic Training Handbook to eliminate ambiguity and define more clearly responsibility, thus enhancing accountability. Is establishing criteria to be used in the selection of on-the-job instructors as well as a course to standardize the administration of field training. *Oct. 18: A–83–59 and –60:* Issued General Notice (GENOT) No. 8320.286 on Sep. 1, 1983, covering inspection of Fairchild (Swearingen) Models SA226 and SA227 airplanes. Issued Airworthiness Directive (AD) 83–19–02 on Sep. 14, 1983, applicable to Fairchild Models SA26–T, SA26–AT, SA226–T, SA226–AT, SA226–T(B), and SA226–TC airplanes, and requires visual inspection in the cockpit area for hydraulic leaks, oxygen lines for leakage or deterioration, and the electrical wire bundles and components for support and proper installation. *A–83–61:* Is investigating the susceptibility of the hydraulic tubing in the Fairchild (Swearingen) airplanes to stress or fatigue cracking, particularly where such tubing is routed in the vicinity of electrical circuitry. *Oct. 21: A–81–6:* Although data indicate that most of the problems with throttle controls have been maintenance connected, and the FAA has emphasized improved maintenance and has issued maintenance alerts, the FAA now believes that justification exists to include this item for consideration in the forthcoming 14 CFR Part 23 Airworthiness Review announced in the **Federal Register** on Jan. 31, 1983. *Oct. 21: A–79–21 and –22:* FAA's Mar. 11, 1981, letter to the Safety Board provides the complete presentation of the results of its research and findings concerning the magnetic clutch malfunction as they pertain to the packed powder problems. *Oct. 21: A–83–47:* Has witnessed component testing of lavatory flushing pump motors, including test conditions in which the motors were intentionally overheated. Inspected numerous transport category airplanes in the area of the lavatories with special emphasis on the flushing pump motor and associated electrical wiring and circuitry. From these inspections and the lack of further data presented to determine the fire source on Air Canada Flight 797, FAA has determined that the present maintenance programs being conducted by operators of transport category airplanes are sufficient for detecting deteriorated or corrosion-damaged conditions. *A–83–48 and –49:* Issued GENOT No. 8320.285 on Jul. 20, 1983, requesting that principal maintenance inspectors assure that assigned operators have adequate programs for (1) the removal of waste from all areas of the lavatory with particular attention to enclosed areas in and around waste receptacles and (2) the inspection of areas susceptible to the accumulation of fluids which can cause corrosion in the vicinity of wire harnesses and other electrical components. *Oct. 25: A–82–18:* Cessna has redesigned the device system for the Cessna 1983 Model P210N with dual alternators and vacuum pumps. *A–82–21:* Airborne Manufacturing Company, Edo-Aire Manufacturing Company, and FAA are continuing an engineering evaluation to determine the failure mode and design adequacy of aircraft vacuum pumps. *A–82–22:* Believes that any IFR flight instrument system that complies with the requirements of 14 CFR 23.1309, Amendment 14, dated Nov. 19, 1973, will assure the reliability envisioned by this recommendation. *A–82–23:* Continues to monitor the testing that the vacuum pump manufacturers are conducting relative to the effects of altitude and other factors on the performance and reliability of vacuum pumps. *Oct. 25: A–81–118:* The Committee of Aviation Services, under the Federal Coordinator for Meteorological Services, has begun a project which will examine methods for improving icing forecasts and associated warning systems. *Oct. 25: A–81–8:* Modified the Weather Message Switching Center to allow all categories of urgent meteorological data to be immediately disseminated. *Oct. 28: A–72–64 and A–79–39:* Technical Standard Order C13d, issued Jan. 3, 1983, addressed eliminating difficulties relating to the packaging of life preservers. *Oct. 31: A–80–60:* In consideration of National Airspace Review (NAR) Task Group 1–6.3 recommendations, FAA plans to cancel Advisory Circular 90–1A, Civil Use of U.S. Government Approach Procedures Charts and revise/expand the Airman's Information Manual and chart legend in accordance with NAR/Flight Information Advisory Committee guidance. *Nov. 4: A–79–43:* Issued Advisory Circular 90–48C, Pilots' Role in Collision Avoidance on Mar. 18, 1983, to alert all pilots to the potential hazards of midair collision and near midair collision and to emphasize those basic problem areas related to the human causal factors where improvements in pilots education, operating practices, procedures, and improved scanning techniques are needed to reduce conflicts. *Nov. 7: A–82–156, –158, –160:* Amended Handbook 7110.65C(1) regarding pilot solicitation of cloudbases/tops and braking action pilot reports (PIREPS) under certain conditions; (2) to allow controllers to furnish runway friction measurement readings/values obtained from several types of friction measurement readings/values obtained from several types of friction-measuring devices; and (3) to require that current braking action be issued whenever braking action advisories are in effect. Airman's Information Manual has been revised regarding braking action advisories. *A–82–157 and –159:* Amended Handbook 7210.3F to (1) establish the responsibility for the prompt exchange of braking action reports between the tower and airport management; (2) clarify the need to update broadcasts based on braking action reports; and (3) require the message "Braking Action Advisories are in effect" to be placed on the ATIS when reports of runway braking action are received which include the terms "poor" or "nil" or whichever conditions are conducive to deteriorating or rapidly changing runway braking action.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 20 cents per page ($2 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

December 22, 1983.

[FR Doc. 83-34345 Filed 12-27-83; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

[License No. 43–12757–02; EA 83–47]

American Testing Laboratories, Inc.; Order Revoking License

I

American Testing Laboratories, Inc., 2580 South West Temple, Salt Lake City, Utah 84115 (the "Licensee") is the holder of a specific byproduct material license issued by the Nuclear Regulatory Commission (the "Commission")

pursuant to 10 CFR Part 30. The license, issued on May 24, 1982, and due to expire on May 31, 1987, authorizes the use, storage, and transfer of byproduct material as stated in the Licensee's application dated March 30, 1982.

II

An investigation and inspection of American Testing Laboratories, Inc., on May 23–25, 1983 revealed that the licensee had willfully violated the conditions of its license and the Commission's regulations in the following respects:

1. Sealed sources in the licensee's gauges were not leak-tested at six month intervals from May 24, 1982 to January 17, 1983.

2. The licensee transported gauges containing licensed radioactive material on public highways without the use of DOT-required packages and the use of proper blocking and bracing of packages to prevent movement.

3. The licensee failed to issue personnel dosimetry to individuals from May 24, 1982 to January 17, 1983.

In addition, licensee management made willful material false statements to an NRC inspector during an inspection of the licensee on January 17, 1983. Subsequently, an Order to Show Cause and Order Temporarily Suspending License (48 FR 28371) was issued to American Testing Laboratories, Inc., on June 10, 1983. The circumstances surrounding this matter are more fully described in the report of the Office of Investigations. An enforcement conference was held with licensee management at the NRC Region IV office in Arlington, Texas, on June 14, 1983.

The licensee responded to the Order to Show Cause on June 23, 1983. The licensee responded to each of the items of noncompliance cited in the Order and described corrective actions planned to preclude recurrence of the violations. An inspection of the licensee's premises on July 26, 1983, confirmed that licensed material had been secured and apparently had been stored in compliance with the Order Temporarily Suspending License.

III

Notwithstanding the licensee's response to the Order to Show Cause, the Director of the Office of Inspection and Enforcement has determined that the license should be revoked. The licensee's President knew that licensed activities were being conducted in noncompliance with NRC requirements. Moreover, when an NRC inspector attempted to conduct an inspection of the licensee's activities, the laboratory manager knowingly gave the inspector false information concerning the licensee's use of radioactive material and thereby deliberately concealed violations of NRC requirements. Although the potential hazards posed by the radioactive material possessed under the license are relatively low, the conduct of management officials in this case is unacceptable and would be by responsible officials of any licensee. Circumstances indicating that a licensee has willfully failed to comply with NRC requirements and has knowingly provided false and misleading information to NRC inspectors constitute conditions which would cause the Commission to deny a license upon an initial application. Although the licensee states that it will comply with NRC requirements and will try to ensure that its employees deal honestly with NRC representatives, these promises of good future behavior are outweighed by the flagrant conduct of management that led to this enforcement action. In view of these circumstances, the Director has determined that there is no longer reasonable assurance that the licensee will comply with its license requirements and, therefore, the license should be revoked.

IV

Accordingly, pursuant to sections 81, 161b and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2, 30, and 150, it is hereby ordered that:

A. Within 30 days of the effective date of this Order, American Testing Laboratories, Inc. shall transfer all licensed radioactive materials in its possession to a person authorized to receive such materials and shall notify the NRC Region IV office when such transfer has been made.

B. Upon such transfer of the materials to a person authorized to receive them, Byproduct Material License No. 43–12757–02 and the authorization in 10 CFR 150.20 to receive or use byproduct material in areas under NRC jurisdiction is revoked.

C. Pending the effectiveness of this Order Revoking License, the licensee shall maintain byproduct material in its possession in locked storage or transfer such material to a person authorized to receive the material as provided in section V.B of the Order to Show Cause and Order Temporarily Suspending License issued on June 10, 1983.

V

The licensee may request a hearing on this Order within 25 days of the date of its issuance. A request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Drive, Suite 1000, Arlington, Texas 76011.

If a hearing is requested by the licensee 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 a hearing shall be whether, on the basis of the matters set forth in sections II and III of the Order, this Order should be sustained.

This Order Revoking License shall be effective upon the licensee's consent or upon expiration of the period within which the licensee may request a hearing or, if a hearing is requested, on the date specified in an order issued following further proceedings on this Order.

Dated at Bethesda, Maryland this 10th day of December 1983.

For the Nuclear Regulatory Commission.

Richard C. DeYoung,

Director, Office of Inspection and Enforcement.

[FR Doc. 83-34374 Filed 12-27-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-424; and 50-425]

Georgia Power Co. et al.; Receipt of Application for Facility Operating Licenses; Availability of Applicants' Environmental Report; Consideration of Issuance of Facility Operating Licenses; Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received the remainder of an application for facility operating licenses from Georgia Power Company acting for itself and as agent for Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the applicants) to possess, use, and operate Vogtle Electric Generating Plant, Units 1 and 2, two pressurized water nuclear reactors (the facilities) located on the applicants' site in Burke County, Georgia, 26 air miles south southeast of Augusta and 15 air miles east northeast of Waynesboro. The reactors are designed to operate at a steady-state power level of 3411 megawatts themal, with an equivalent net electrical output of approximately 1160 megawatts. Georgia Power Company retains exclusive responsibility for the planning,

design, licensing, construction, acquisition, completion, maintenance, operation, and decommissioning of these units. Notice of receipt of a portion of the application was published in the **Federal Register** on October 13, 1983 (48 FR 46670).

The applicants have also filed, pursuant to the National Evironmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, an environmental report which discusses environmental considerations related to the proposed operation of the facility. This report is being made available at the Office of Planning and Budget, Room 610, 270 Washington Street, S.W., Atlanta, Georgia 30334 and at the Central Savannah River APDC, 2123 Wrightsboro, P.O. Box 2800, Augusta, Georgia 30904.

After the environmental report has been analyzed by the Commission's staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the **Federal Register**, a notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft environmental statement will focus only on any matters which differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permits. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the **Federal Register.**

The Commission will consider the issuance of facility operating licenses to Georgia Power Company which would authorize the applicants to possess, use and operate the Vogtle Electric Generating Plant, Units 1 and 2, in accordance with the provisions of the licenses and the technical specifications appended thereto, upon: (1) The completion of a favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicants' application for facility operating licenses by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility licenses, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter 1. Construction of the facilities was authorized by Construction Permit Nos. CPPR–108 and CPPR–109 issued by the Atomic Energy Commission [1] on June 28, 1974. Construction of Unit 1 (CPPR–108) is anticipated to be completed by September 1986 and Unit 2 (CPPRD–109) by March 1988. Amendment No. 1 to CPPR–108 and CPPR–109 was issued on January 24, 1977, reflecting a change in the ownership of the plants. Georgia Power Company retained ownership of 50.7% of the facilities with the Oglethorpe Power Corporation obtaining a 30% interest, Municipal Electric Authority of Georgia, a 17.7% interest, and the City of Dalton, Georgia, a 1.6% interest. An application to further amend the construction permit, dated October 14, 1983, is pending before the Commission. The application seeks approval of the sale by Georgia Power Company, of an additional 5% of the two units to Municipal Electric Authority of Georgia.

With regard to Executive Order 11988, Floodplain Management, the Vogtle Electric Generating Plant, Units 1 and 2, will have structures located on the floodplain. The subject of floodplain management will be discussed in the Commission's environmental statement referenced above.

Prior to issuance of operating licenses, the Commission will inspect the facilities to determine whether they have been constructed in accordance with the application, as amended, and the provisions of the construction permits. In addition, the licenses will not be issued until the Commission has made the findings reflecting its review of the application under the Act, which will be set forth in the proposed licenses, and has concluded that the issuance of the licenses will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the licenses, the applicants will be required to execute an indemnity agreement as required by Section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

By January 27, 1984, the applicants may file a request for a hearing with respect to issuance of the facility operating licenses and any person whose interest may be affected by this proceeding may file 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, designated 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 of the Commission, or 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 his petition, 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, the 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. 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.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555, by January 27, 1984. A copy of the petition should also

[1] Pursuant to the Energy Reorganization Act of 1974, as amended, the Atomic Energy Commission (AEC) was abolished. The Nuclear Regulatory Commission assumed the licensing and related regulatory functions of the AEC.

be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esq., Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, D.C. 20036, attorney for the applicants. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and § 2.714(d).

For further details pertinent to the matters under consideration, see the application for the facility operating licenses dated September 13, 1983, and the applicants' environmental report dated November 11, 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Burke County Library, 4th Street, Waynesboro, Georgia 30830. As they become available, the following documents may be inspected at the above locations: (1) The safety evaluation report prepared by the Commission's staff; (2) the draft environmental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards on the application for facility operating licenses; (5) the proposed facility operating licenses: and (6) the technical specifications, which will be attached to the proposed facility operating licenses.

Copies of the proposed operating licenses and the ACRS report, when available, may be obtained by request to the Director, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation report and final environmental statement, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 9th day of December 1983.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-34375 Filed 12-27-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operation License No. NPF-21, to Washington Public Power Supply System (WPPSS, also the licensee) which authorizes operation of the WPPSS Nuclear Project No. 2 (the facility), by Washington Public Power Supply System at reactor core power levels not in excess of 3323 megawatts thermal (100 percent power) in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. However, the License contains a condition currently limiting operation to 5 percent of full power (166 megawatts thermal). Authorization to operate beyond 5 percent of full power will require specific Commission approval.

WPPSS Nuclear Project No. 2 is a boiling water nuclear reactor located on Hanford Reservaton in Benton County, Washington, approximately 12 miles north of Richland, Washington. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulation s in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on July 26, 1978 (43 FR 32338-32339).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environment Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-21, complete with Technical Specifications and Environmental Protection Plan; (2) the report of the Advisory Commission on Reactor Safeguards dated October 13, 1982; (3) the Commission's Safety Evaluation Report dated March 1982, Supplement No. 1 dated August 1982, Supplement No. 2 dated December 1982, Supplement No. 3 dated May 1983, and Supplement No. 4 dated December 1983; (4) the Final Safety Analysis Report and amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement dated December 1981.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555, and at the Richland City Library, Swift & Northgate Streets, Richland, Washington 99352. A copy of Facility Operating License No. NPF-21 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washingtn, DC 20555, Attention: Director, Division of Licensing. Copies of the Safety Evaluation Report and its Supplement 1, 2, 3, and 4 (NUREG-0892) and the Final Environmental Statement (NUREG-0812) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, DC 20555. GPO deposit account holders can call (301) 492-9530.

Dated at Bethesda, Maryland, this 20th day of December 1983.

For the Nuclear Regulatory Commission.

A Schwencer,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 83-34376 Filed 12-27-83; 8:45 am]

BILLING CODE 7590-01-M

Availability of NUREG-0957: Report to Congress Entitled "The Price-Anderson Act—The Third Decade"

NUREG-0957 is a detailed report that the Nuclear Regulatory Commission is required to submit to Congress on the need for continuation or modification of Section 170 of the Atomic Energy Act of 1954, as amended, the Price-Anderson provisions. Section I through III include an examination of issues that the NRC was required to study (i.e., condition of the nuclear industry, state of knowledge of nuclear safety, and availablility of private insurance), as well as a discussion of other issues of interest and

importance. Section IV of the report contains conclusions and recommendations and Section V contains a bibliography. Detailed subject reports are appended to the main report.

Copies of NUREG–0957 are available for sale through the Government Printing Office Sales Office, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone number (301) 492–9530.

Signed in Bethesda, Maryland on December 14, 1983.

Jerome Saltzman,

Assistant Director, State and Licensee Relations, Office of State Programs.

[FR Doc. 83-34377 Filed 12-27-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review (OMB)

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of the Office of Management and Budget Review of Information Collection.

SUMMARY: The USTR has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: New

2. The title of the information collection: Survey on General Attitudes and Policy Perceptions of Trade Issues

3. The form number if applicable: Not applicable

4. How often the collection is requried: One time telephone interviews

5. Who will be required or asked to report: Probability sample of adults in the United States

6. An estimate of the number of responses: 1500

7. An estimate of the total number of hours needed to complete the requirement or request: 722.5 hours

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable

9. Abstract: A public opinion study on public perceptions of foreign trade issues

Copies of the submittal may be inspected or obtained for a fee from the Office of Management, Office of the U.S. Trade Representative, Room 122, 600 17th Street, NW., Washington, D.C. 20506

For the Office of the U.S. Trade Representative

John P. Giacomini,

Director, Office of Management.

[FR Doc. 83-34383 Filed 12-27-83; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Power Planning Council

Regional Conservation and Electric Power Plan; Proposed Amendment, Hearings, and Inquiry

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council.

ACTION: Notice of proposed amendment, hearings, and opportunity to comment.

SUMMARY: On April 27, 1983, the Pacific Northwest Electric Power and Conservation Planning Council ("the Council") adopted a final regional conservation and electric power plan. The Council is now proposing to amend a portion of that plan. The proposed amendment is being released for public review and comments, and public hearings will be held. This notice describes the proposed amendment, provides information on how to obtain additional information, and outlines the process for submitting written comments and participating in the hearings.

DATES AND ADDRESSES: Public hearings on the proposed amendment will be held during the following regularly-scheduled Council meetings:

(1) Seattle, Washington, January 12, 1984
(2) Boise, Idaho, February 2, 1984
(3) Missoula, Montana, February 23, 1984
(4) Eugene, Oregon, March 15, 1984

Further information regarding the times and places of these hearings will be provided in public notices issued before each meeting. Information regarding these hearings can also be obtained by calling Ms. Dulcy Mahar, Director of Public Information and Involvement, at 1–800–222–3355 (Toll-free in Montana, Idaho, and Washington,) 1–800–452–2324 (Toll-free In Oregon), or 503–222–5161. Information may also be requested by writing Ms. Mahar at the Council's Central Office, 700 S.W. Taylor, Suite 200, Portland, Oregon 97205. Written comments regarding the proposed amendment must be received at the above address by 5 p.m., March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Tom Foley, Manager of Conservation and Resources, 700 S.W. Taylor, Suite 200, Portland, Oregon 97205 (Toll-free 1–800–222–3355 in Montana, Idaho, and Washington; toll-free 1–800–452–2324 in Oregon; or 503–222–5161).

SUPPLEMENTARY INFORMATION: On April 27, 1983 the Council adopted its regional conservation and electric power plan as required by the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96–501, 94 Stat. 2697, 16 U.S.C. 839 *et seq.* ("the Act"). The Act allows the Council to amend the plan from time to time. The Council now proposes to amend a portion of its plan regarding large thermal plants.

In chapter 10 of the plan ("two-year action plan," page 10–22), the Council stated that it would:

23.1 Conduct a study, in cooperation with Bonneville [Power Administration], the region's public and private utilities, E.P.R.I. [Electric Power Research Institute], representatives from architectural and engineering firms, and equipment manufacturers, to determine whether and how the planning and construction schedules of large thermal plants can be rduced.

The Council has since learned that utility industry studies are now underway regarding the planning and construction schedules of the large thermal plants. The Council belives that it would be more efficient now to monitor these studies and evaluate their results before deciding whether additional Council studies are required. For that reason, the Council proposes amending action item 23.1 to read as follows:

The Council will:

23.1 Monitor the progress of utility industry studies to determine whether and how the planning and construction schedules of large thermal plants can be reduced. Following completion of these studies, the Council will determine whether there is a need for additional study by the Council.

(Sec. 4, Pub. L. 96–501, 16 U.S.C. 839b)

Edward Sheets,

Executive Director.

[FR Doc. 83-34355 Filed 12-27-83; 8:45 am]

BILLING CODE 0000-00-M

PRESIDENT'S ECONOMIC POLICY ADVISORY BOARD

Meeting

January 11, 1984.

The President's Economic Policy Advisory Board will meet on January 11, 1984, at the White House, Washington, D.C. from 9:00 a.m. to 12:00 p.m. The purpose of this meeting is to review and discuss:

Monetary Policy
Trade Policy
Budget and Economic Outlook

All agenda items concern matters listed in section 552b(c) of Title 5, United States Code, specifically sub-paragraphs (1), (4), (8) and (9) thereof, and will be closed to the public.

For further information, please contact the Office of Policy Development, the White House, at (202) 456-6515.

John A. Svahn,

Assistant to the President for Policy Development.

[FR Doc. 83-34416 Filed 12-27-83; 8:45 am]

BILLING CODE 3195-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20502; (SR-Amex-83-26)]

American Stock Exchange, Inc., Order Approving Proposed Rule Change

December 19, 1983.

The American Stock Exchange, Inc. ("Amex"), 86 Trinity Place, New York, NY 10006, submitted on October 17, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to provide that the order of a registered options trader ("ROT") may retain priority or have parity with an off-floor member or broker-dealer order represented in the trading crowd where both orders are to establish or increase a position.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20335, October 31, 1983) and by publication in the Federal Register (48 FR 51186, November 7, 1983). No comments were received with respect to the proposed rule filing.

Amex reports [1] that ROT market making has been hindered by the present requirement to yield to the sometimes substantial traffic of orders from off-floor professionals. Moreover, the time and place advantages ROTs on the floor enjoy over off-floor professionals are not so extensive as to require in these circumstances a general rule that ROTs yield to them. The Chicago Board Options Exchange, for example, has no such requirement. The Commission, therefore, finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder, in that it will enhance ROTs' ability to fulfill their market making resposibilities thereby creating better liquidity in options to the benefit of the investing public.

It is therefore ordered, pursuant to Section 19(b)(2) or the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34390 Filed 12-27-83; 8:45 am]

BILLING CODE 8010-01-M

[1] See File No. SR-Amex-83-26 and Securities Exchange Act Release No. 20335 (October 31, 1983), 48 FR 51186 (November 7, 1983).

[Release No. 23173; (70-6937)]

Consolidated Natural Gas Co., et al.; Supplemental Notice of Proposed Transactions Related to Reorganization of System Operations in West Virginia

December 21, 1983.

In the matter of Consolidated Natural Company, 100 Broadway, New York, New York 1005; Consolidated Gas Supply Corporation, Consolidated Gas Transmission Corporation, 445 West Main Street, Clarksbury, West Virginia 26301; and CNG Coal Company, Four Gateway Center, Pittsburgh, Pennsylvania 15222. Consolidated Natural Gas Company ("Consolidated"), a registered holding company, two of its subsidary companies, Consolidated Gas Supply Corporation ("Supply Corporation") and CNG Coal Company ("Coalco"), and Consolidated Gas Transmission Corporation ("Transmission"), a newly-organized corporation, have filed an application-declaration with this Commission pursuant to Section 6(a), 7, 9(a), 10, 12, and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42, 43, 44, 45, 87(a)(3), 90 and 91 promulgated thereunder.

On December 6, 1983 (HCAR No. 23154), notice was given of certain proposed transaction related to the reorganization of the Consolidated system's operations in West Virginia. It is now further proposed that Transmission will, upon consummation of the proposed transactions, render services to Hope Gas, Inc. (the new name for Supply Corporation). The services will be rendered at cost and will be substantially the same as are presently rendered by Supply Corporation to its Hope Gas Division. It is stated that the new Hope Gas, Inc.'s small size precludes its own staffing inasmuch as the expenses associated therewith (duplicating those of Transmission) would place an unreasonable cost burden on the ratepayer. In addition, Hope Gas, Inc. and Transmission will be headquartered in the same city, and Transmission will have personnel with the expertise required to accommodate Hope's services requirements.

The amended application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 16, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34388 Filed 12-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13683; (812-5685)]

HOMAC Government Financial Corporation West; Application for an Order

December 20, 1983.

Notice is hereby given that HOMAC Government Financial Corporation

West ("Applicant"), 1110 Vermont Avenue, N.W., Suite 510, Washington, D.C. 20005, a District of Columbia corporation, filed an application on October 27, 1983, for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant represents that it is a newly formed, limited purpose financing corporation, wholly-owned by Home Mortgage Access Corporation, which like Applicant is a District of Columbia corporation, and which is wholly-owned by Home Mortgage Access Holding Corporation, a Delaware membership corporation. Applicant further states that it has been organized to facilitate the financing of long-term residential mortgages on single-family residences, and will not engage in any other unrelated or investment activities.

Applicant states that it intends to issue, in series, certain GNMA-Collateralized Bonds ("Bonds"). Applicant further states that each series of Bonds will be issued pursuant to an indenture ("Indenture") between Applicant and an independent trustee ("Trustee"), supplemented by one or more supplemental indentures. Each series of Bonds will be sold to institutional or retail investors through one or more investment banking firms, it is stated. It is contemplated that certain series of Bonds will be registered under the Securities Act of 1933, while others will be sold in private placements, Applicant states. It is also stated that indentures for public offerings will be subject to the provisions of the Trust Indenture Act of 1939.

Applicant further states that the net proceeds of the sale of each series of Bonds will be lent by Applicant to various finance companies ("Finance Companies"), each of which will itself be a single purpose corporation or partnership, wholly-owned by a home building company. Applicant further states that each Finance Company will redistribute the proceeds to its builder parent, which in turn will use such proceeds to repay indebtedness incurred by it in connection with the origination of mortgage loans on residences constructed by it. It is stated further that each loan by Applicant to a Finance Company will be secured by the grant to Applicant of a security interest in "fully modified pass-through" mortgage-backed certificates ("GNMA Certificates") owned by such Finance Company, which are fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA"). Each GNMA Certificate, Applicant states, will evidence an interest in a pool consisting of the above-mentioned mortgage loans on residences constructed by the Finance Company's builder parent. It is stated also that Applicant will provide security for the Bonds by pledging the GNMA Certificates to the Trustee, and that the GNMA Certificates and other collateral will produce a cash flow sufficient to support the Finance Companies' obligations to Applicant and Applicant's obligations to the Bondholders.

Applicant represents, in addition, that an independent mortgage company will be the servicer of each mortgage loan, and will have the power and obligation to foreclose against the property securing any delinquent mortgage loan, liquidate that property, pursue any mortgage insurance or guarantee claims, collect prepayments of principal, and collect any insurance proceeds. Amounts so collected will be paid to the Trustee as a registered holder of the GNMA Certificates, it is stated.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. In support of this request, Applicant notes that a number of large home builders have issued mortgage-backed bonds through wholly-owned finance companies, and that such finance companies have not been required to register under the Act, in apparent reliance upon the exception from the definition of investment company afforded by Section 3(c)(5) of the Act. Applicant submits that there is no public policy reason to require Applicant to register as an investment company because it is merely facilitating the financing efforts of a number of smaller builders to institute the same financing mechanism and to achieve the same economies of size as the larger builders. Applicant has sought exemptive relief in order to eliminate any uncertainty as to its status under the Act and to its proposed activities as described herein.

An exemption of Applicant from all provisions of the Act is necessary and appropriate in the public interest, it is asserted, because: (1) A company engaged in the business of facilitating the financing of single-family residences, and the assets of which consist principally of interests in GNMA Certificates, is not the type of entity to which the provisions of the Act were intended to apply; (2) Applicant may be unable to proceed with its proposed business if the uncertainties concerning the applicability of the Act are not removed; (3) Applicant's proposed business is intended to serve a recognized and critical public need for housing and for new sources of mortgage funds for such housing; (4) the granting of the requested exemption will not be inconsistent with the protection of investors, who will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the Securities Act of 1933 and thereafter by the Indenture and the independent trustee representing their interests under the Indenture.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 16, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-34387 Filed 12-27-83; 8:45 am]

BILLING CODE 8010-01-M

Midwest Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 21, 1983.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12-1 thereunder, for unlisted trading privileges in the following stocks:

Brooks Fashion Stores, Inc. Common Stock, $.10 Par Value (File No. 7-7245)

AMCA International Ltd. Common Stock, No Par Value (File No. 7-7246)

Hunt Manufacturing Common Stock, $.10 Par Value (File No. 7-7247)

Caressa, Inc. Common Stock, $.50 Par Value (File No. 7–7248)
Rymer Group Common Stock, $1 Par Value (File No. 7–7250)
Time, Inc. Common Stock, $1 Par Value (File No. 7–7251)
Time, Inc. $1.575 Cumlative Convertible Preferred Stock, Series B $1 Par Value (File No. 7–7252)
CooperVision, Inc. Common Stock, $.10 Par Value (File No. 7–7253)
TGI Friday's Inc. Common Stock, $.01 Par Value (File No. 7–7254)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 13, 1984 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34389 Filed 12-27-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20501, File No. ODD-83-2]

Philadelphia Stock Exchange, Inc.; Listed Options on Foreign Currencies

December 19, 1983.

On December 8, 1982, the Commission issued a release pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 (the "Act") allowing distribution to public investors of an options disclosure document with respect to standardized options on foreign currencies ("Foreign Currency Disclosure Document") prepared by the Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA 19103. [1] On November 3, 1983, Phlx filed a revised Foreign Currency Options Disclosure Document with the Commission. The Foreign Currency Options Disclosure Document is a supplement to the basic options disclosure document, which was prepared by the American Stock Exchange, Inc. ("Amex"), Chicago Board Options Exchange, Incorporated ("CBOE"), the Pacific Stock Exchange, Incorporated ("PSE") and the Phlx. On October 18, 1982, the Commission issued an order allowing distribution of the basic options disclosure document to investors.[2]

Rule 9b-1 provides that an options market must file five preliminary copies of an options disclosure document with the Commission at least 60 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors. This provision is intended to permit the Commission either to accelerate or extend the time period before definitive copies of a disclosure document may be distributed to the public.

The Commission staff has reviewed the Foreign Currency Options Disclosure Document and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.[3]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-34391 Filed 12-27-83; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* Securities Exchange Act Release No. 19312.

[2] *See* Securities Exchange Act Release No. 19153.

[3] Rule 9b-1 provides that the use of an options disclosure document shall not be permitted unless the options class to which the document relates is the subject of an effective registration statement on Form S-20 under the Securities Exchange Act of 1933. In this regard, on December 8, 1982, the Commission, pursuant to delegated authority, declared effective Options Clearing Corporation's Form S-20 registration statement with respect to the options described in the Foreign Currency Options Disclosure Document. *See* File No. 2-79558.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Milwaukee County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway improvement project in Milwaukee County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Cooper, District Engineer, Federal Highway Administration, 4502 Vernon Blvd., P.O. Box 5428, Madison, WI 53705. Telephone (608) 264–5940.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, is preparing an Environmental Impact Statement for a 3.1-mile urban arterial on or adjacent to the C&NW Railway right-of-way from the south end of the Daniel Hoan Memorial Bridge (Harbor Bridge) at South Carferry Drive to East Layton Avenue in Milwaukee County, Wisconsin.

The project would be designed to provide a suitable connection at the sourthern termius of I.H. 794 with sufficient capacity to accommodate anticipated future traffic volumes. It would also serve to remove through traffic from residential streets in the area south of the Harbor Bridge. The EIS will assess the need, location and environmental issues of six alternatives including:

Alternative 1—Four lanes with shoulders. Opposing traffic separated by a median. Outside barrier wall or curb. No access.
Alternative 2—Five lanes with shoulders. Center lane reversible for peak traffic. Outside barrier wall or curb. No access.
Alternative 3—Over, under, or at-grade with railroad junction between Oklahoma Avenue and Norwich Street. No access.
Alternative 4—Cross street intersection or interchange points at two intermediate locations.
Alternative 5—Alternative connections at south end to Layton and Pennsylvania Avenues in area south of Bolivar Avenue.
Alternative 6—No Build.

Coordination and Scoping Process

Coordination and scoping activities began with an Operational Planning Meeting held at the beginning of the project with representatives of local, State and Federal highway and governmental agencies. Coordination will continue with the Wisconsin State Histroical Society, the Wisconsin Department of Natural Resources, the Southeastern Wisconsin Regional Planning Commission, or other agencies identified during the project as having an interest in or jurisdiction by law regarding the proposed action. The scoping process includes an extensive public involvement program consisting of personal interviews, numerous Public Information Meetings and a Public Hearing, all of which will solicit written

and oral comment on the project alternatives. No formal scoping meeting is planned.

Issued on: December 19, 1983.

Frank M. Mayer,

Division Administrator, Madison, Wisconsin.

[FR Doc. 83-34364 Filed 12-27-83; 8:45 am]

BILLING CODE 4190-22-M

Federal Railroad Administration

[BS-Ap-No. 1954]

Burlington Northern Railroad Co.; Public Hearing

The Burlington Northern Railroad Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the automatic block signal system currently installed on its line between Sapulpa, Oklahoma and Oklahoma City, Oklahoma, a distance of approximately 101 miles. This proceeding is identified as FRA Block Signal Application Number 1954.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 11:00 a.m. on February 16, 1984, in Room 355 of the Multipurpose Building at the Transportation Safety Institute, 6500 South MacArthur Boulevard, Oklahoma City, Oklahoma.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on December 21, 1983.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 83-34395 Filed 12-27-83; 8:45 am]

BILLING CODE 4910-06-M

[BS-Ap-Nos. 2174, 2178, and 2179]

Chicago and North Western Transportation Co.; Public Hearing

The Chicago and North Western Transportation Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of three manually controlled interlockings currently installed on drawbridges on its line between Milwaukee, Wisconsin and St. Francis, Wisconsin on the Kenosha Subdivision of the Milwaukee Division. These proceedings are identified as FRA Block Signal Application Numbers 2174, 2178, and 2179.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on these proposals.

Accordingly, a public hearing is hereby set for 11:00 a.m. on February 14, 1984, in Room 298 of the Federal Courthouse at 517 East Wisconsin Avenue, Milwaukee, Wisconsin.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing will be announced at the hearing.

Issued in Washington, D.C. on December 21, 1983.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 83-34396 Filed 12-27-83; 8:45 am]

BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 250
Wednesday, December 28, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 10:30 a.m., January 4, 1984.

PLACE: Sheraton Carlton Hotel—Williamsburg Suite, 923 16th Street, NW., Washington, D.C. 20006.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) 22 CFR 1302.4 (c) and (h) of the Board's rules (42 FR 9388, Feb. 16, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Arthur D. Levin, Budget and Administrative Officer, Board for International Broadcasting, Suite 1100, 1201 Connecticut Avenue, NW., Washington, D.C. 20036, 202-254-8040.

[S-1797-83- Filed 12-23-83; 11:40 am]

BILLING CODE 6155-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, January 4, 1984.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed changes to the Plans administered under the Federal Reserve System's employee benefits program. (Originally announced for a meeting on December 22, 1983.)

2. Federal Reserve Bank and Branch director appointments. (Originally announced for a meeting on December 22, 1983.)

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. 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.

Dated: December 23, 1983.

James McAfee,

Associate Secretary of the Board.

[S-1798-83 Filed 12-23-83; 11:53 am]

BILLING CODE 6210-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-1]

TIME AND DATE: 9 a.m., Tuesday, January 3, 1984.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., SW. Washington, D.C. 20594.

STATUS: Closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Option and Order:* Petition of Fore, Dkt. SM-3081; disposition of Administrator's interlocutory appeal.

2. *Option and Order:* Petition of McHenry, Dkt. SM-2316; disposition of Administrator's appeal from initial decision after removal.

3. *Option and Order:* Application of Thomas R. Moore for attorney fees and other expenses; NTSB No.6-EAJA; disposition of the appeals of both parties.

4. *Option and Order:* Administrator v. Kelso, Paul, and Nichols, Dkts. SE-5534, 5541, and 5543; disposition of appeals of Administrator and respondents.

5. *Order:* Administrator v. Smith, Dkt. SE-5564; disposition of Administrator's petition for reconsideration.

6. *Option and Order:* Petition of Phillips, Dkt. SM-27[illegible], disposition of petition's appeal.

7. *Option and Order:* Administrator v. Mannix, Dkt. SE-5679; disposition of the Administrator's appeal.

8. *Option and Order:* Administrator v. Genereaux; Dkt. SE-5688; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming (202) 382-6525.

December 22, 1983.

[S-1796-83 Filed 12-22-83; 4:38 p.m.]

BILLING CODE 4910-58-M

4

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: (To be published).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, December 14, 1983.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting scheduled for Tuesday, December 20, 1983, at 9:30 a.m.

Institution of injunctive action and Litigation matter.

Chairman Shad and Commissioners Longstreth, Treadway and Cox determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jerry Marlatt at (202) 272-2092.

December 21, 1983.

[S-1795-83 Filed 12-22-83; 4:26 pm]

BILLING CODE 8010-01-M

5

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 2, 1984, at 450 fifth Street NW., Washington, D.C.

A closed meeting will be held on Wednesday, January 4, 1984, at 9:30 a.m. An open meeting will be held on Thursday, January 5, 1984, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway and Cox voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, January 4, 1984, at 9:30 a.m., will be:

Formal orders of investigation.

Settlement of administrative proceeding of an enforcement nature.

Litigation matter.

Institution of administrative proceedings of an enforcement nature.

Settlement of injunctive action.

Institution of injunctive actions.

The subject matter of the open meeting scheduled for Thursday, January 5, 1984, 2:30 p.m., will be:

1. Consideration of whether to permit Owen D. Snyder to become an associated person in a supervised non-supervisory capacity with Jim Becherer & Company. For further information, please contact Mary Binno at (202) 272–2318.

2. Consideration of whether to propose for public comment Rule 26a–1 under the Investment Company Act of 1940, which would permit the deduction of administrative fees from the assets of unit investment trusts; and Rule 26a–2, which would provide registered insurance company separate accounts and others with exemptive relief from various provisions of the Act to the extent necessary to permit them to engage in certain custodianship activities and make certain deductions. For further information, please contact Robert E. Plaza at (202) 272–2622.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Michael Lefever at (202) 272–2468.

December 22, 1983.

[S–1799–83 Filed 12–23–83; 2:38 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
December 28, 1983

Part II

Department of Labor

Occupational Safety and Health Administration

Oil and Gas Well Drilling and Servicing; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-360]

Oil and Gas Well Drilling and Servicing

AGENCY: Occupational Safety and Health Administration (OSHA).

ACTION: Proposed rulemaking.

SUMMARY: OSHA proposes to issue employee safety requirements for drilling, servicing and special services operations for oil and gas wells. This standard would supplement existing standards in 29 CFR Part 1910 and would address the unique hazards found in these operations. OSHA expects that this standard will result in a decrease in the number of deaths and injuries occurring in this industry. Also, this standard, along with the non-mandatory appendices, will provide employers and workers with a set of mandatory rules and voluntary guidelines on which to base company safety programming efforts.

DATES: Comments on the proposed standard must be postmarked by March 5, 1984.

Requests for a hearing must also be postmarked by March 5, 1984.

ADDRESS: Comments, information, and hearing requests should be sent to: Docket Officer, Docket No. S-360, Occupational Safety and Health Administration, Room S6212, U.S. Department of Labor, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, Washington, D.C. 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

The drilling and servicing industry is involved in locating and extracting underground deposits of oil and gas and in maintaining the equipment used to bring the oil and gas to the surface. This industry has some safety problems which are unique, and some which are common to all workplaces. Unique hazards include those related to the cathead, rotary table, and well pressures. Hazards which are common to many industries including the oil and gas well drilling and servicing industry are falls from elevated platforms, slipping/tripping hazards and machine guarding hazards.

The oil and gas well drilling and servicing industry is ranked among the most hazardous industries in the United States according to data collected and published by the Bureau of Labor Statistics. In 1973 OSHA decided to regulate this industry under its Construction Safety Standards (29 CFR Part 1926). This decision was based on the proposition that the processes and equipment used and the hazards encountered were similar to those in the construction industry.

However, the application of the construction safety standards to the oil and gas well drilling and servicing industry was contested by the industry. As a result of this controversy, the Occupational Safety and Health Review Commission (OSHRC) issued several rulings holding that the construction standards were not applicable to oil and gas production *(MND Drilling Corporation*, No. 76-4149, 1977-1978 CCH OSHD ¶22,289 (ALJ 1977); *R. B. Montgomery Drilling, Inc., et. al.*, No. 76-2131, 1977-1978 CCH OSHD ¶21,755 (ALJ 1977); *Fairbanks Well Service, Inc.* No. 76-4297, 1977-1978 CCH OSHD ¶21,740 (ALJ 1977); *Bomac Drilling*, No. 76-450, 977-1978 CCH OSHD ¶21,667 (ALJ 1977); *B-J Hughes, Inc.*, 1982 CCH OSHD ¶25,977 (3/31/82), re: Construction standards not covering drilling; *Snyder Well Servicing, Inc.*, 1982 CCH OSHD ¶25,943 (2/2/82), re: not covering well swabbing). (See Reference 25.) According to the OSHRC, employers engaged in oil adn gas well drilling and servicing should be subject to the general industry standards found in 29 CFR Part 1910.

OSHA subsequently began gathering information on the types and numbers of injuries and deaths occurring in this industry and attempting to determine whether the general industry standards (29 CFR Part 1910) were adequate to protect workers in this industry. It was determined, based on Bureau of Labor Statistics (BLS) data, that this industry has a number of special safety and health problems which are relfected by a higher than average injury and illness incidence rate (see Reference 26).

In addition, new enforcement problems emerged as a result of applying the general industry standards. It was apparent that the general industry standards either did not address or inadequately addressed a number of hazards unique to the oil and gas well drilling and servicing industry, possibly even contributing to this higher injury and illness incidence rate. Because of the uniqueness of these operations and the lack of specific standards to protect workers from serious hazards associated with these operations, Section 5(a)(1) citations (general duty clause of the Occupational Safety and Health Act (OSH Act)) were issued whenever a specific standard was lacking (see Reference 6).

In 1980, the National Institute for Occupational Safety and Health (NIOSH) began a study of problems in this industry to provide recommendations for standards development. In addition, OSHA continued to gather information and data concerning the operations, machinery, equipment and hazards related to the industry (see Reference 8). Reviews were conducted of state standards (see References 9-16), standards of other government agencies (see References 19-20), industry practices (References 1-3) and standards of foreign governments (see References) to see how specific problems were addressed. Many of the proposed requirements were adopted from, or based on, state standards and industry recommendations when OSHA found that these standards appeared to adequately address the hazards found. (Examples include: (d)(3), (d)(6), (e)(1), and (e)(6)).

In January 1982, oil industry representatives, including members of the International Association of drilling Contractors (IADC) and the Association of Oil Well Servicing Contractors (AOSC), met with OSHA. These industry representatives expressed an interest in providing assistance to OSHA to develop a meaningful standard that would protect the safety and health of workers performing drilling and servicing operations and reduce the adversarial relationships that existed in the past. The representatives stated their dislike for the widespread use of "general duty" citations and requested that the proposed standard clearly state what was necessary for compliance.

In the spring 1982, BLS began a Work Injury Report (WIR) study (Reference 7). At the same time OSHA initiated an analysis to determine the costs of the proposed standard. In addition OSHA analyzed all of the Agency's closed fatality case files related to oil and gas well drilling and servicing (Reference 5).

In June 1982, OSHA circulated a draft of the proposed rule and requested comments from its field staff, states, trade associations, labor unions, and other interested groups and parties. In July 1982, OSHA participated in a meeting in Dallas, Texas with representatives of industry, Government, and other interested parties. Additionally, OSHA held meetings with ad-hoc committees, trade association groups, state and Federal

field staff, and several individuals and groups who requested discussion of the proposed rule. The draft was modified to reflect the input OSHA received during this first round of review.

A second draft (dated November, 1982) was circulated for additional comment in December 1982. OSHA again received significant input from industry sources, interested states and the insurance industry.

In all, OSHA received written and oral input from over 100 external sources. These included the following: Association of Oilwell Servicing Contractors, American Petroleum Institute, individual drilling and servicing companies, the states of Oklahoma, Michigan, Alaska, California, Kentucky, and the United General Insurance Company. OSHA found this input helpful in developing this proposal.

OSHA believes that the current general industry standards inadequately address the unique hazards encountered during drilling, servicing and the performance of special services operations on oil and gas wells. OHSA believes this lack of adequate regulatory protection has contributed to the high number of deaths and injuries in this industry. Additionally, the frequent issuance of general duty citations by OSHA compliance officers is further evidence of the inadequacy of current regulations.

In OSHA's view, an industry-specific standard should be promulgated in order to provide adequate protection to workers in this industry. Therefore, this proposed standard covers those hazards which are unique to this industry and complements the general industry standards protecting the workers in this industry.

Many hazards found on oil and gas well drilling and servicing rigs are common to virtually all workplaces and these hazards are addressed by the OSHA General Industry Standards (29 CFR Part 1910) which will continue to apply. However, this industry has many unique hazards or special work circumstances which require special standards. Therefore, these industry-specific problems—the unique hazards—are addressed in the proposed rule.

The selection of the proposed requirements to be added to Part 1910 are based upon (1) the situations where the general duty clause (Section 5(a)(1) of the Act) has been invoked; for example, using the rotary table to breakout drill pipe (Reference 6); (2) the special situations dictated by the location of operations, for example, medical and first aid requirements and emergency planning; (3) the unusual or specialized equipment, for example, catheads, drawworks, and rotary tables; and, (4) the specialized procedures in this industry, for example, cementing, drill stem testing, and wireline operations.

In common with most OSHA safety standards recently promulgated or under development, a level of performance rather than adherence to a specification is emphasized. OSHA believes this approach allows sufficient latitude for the employer to control the hazards effectively. In many cases, however, some employers may not have the expertise or the time available to develop specific compliance measures that will meet the performance-oriented standard. For assistance to these employers, some examples of "how to meet the standard" are included in the Appendices. These examples are not mandatory, but only provide guidance. Other sources may also be consulted, such as trade associations, professional safety publications, and states with on-site consultation services.

II. Agency Action

OSHA has determined that there now exists a sufficient body of data and information upon which a reasonable standard can be based to effectively reduce the number of injuries and deaths associated with oil and gas well drilling, servicing and special services operations. The standard being proposed by OSHA reflects this determination.

Workers in the oil and gas well drilling and servicing industry are exposed to a number of hazards associated with both the equipment and the various operations performed during the course of drilling or servicing. There are approximately 5,400 rigs in operation where workers are exposed to these hazards and it is estimated that there are approximately 95,000 workers employed in various occupations relating to oil and gas well drilling and servicing. The death and injury experience which is described in References 4, 5, 6, 7, 8, 17, and 18 is compelling evidence that OSHA needs to take action to reduce the occurrence of these deaths and injuries. These reports clearly show that there is a significant risk to workers in this industry, and that mandatory standards are necessary. This proposal is the Agency's response to this need for mandatory standards.

Data indicate that workers in this industry have been exposed to hazards for many years which OSHA has inadequately regulated through existing standards. OSHA data show that the oil and gas industry receives the highest percentage of 5(a)(1) citations compared to other industries. These citations, which are issued only when a standard does not exist to address the hazard but yet the hazard is well recognized as a potential source of serious injury, have indicated clearly that there is a lack of standards directed to these hazards. OSHA can be and must be more specific in its requirements in order to assist employers in meeting their obligations under the Occupational Safety and Health Act.

OSHA has completed three studies covering accidents in the oil and gas well drilling and servicing industry. These studies show that workers in this industry are exposed to significant risks of injury and death on the job.

The first study (Reference 4) was completed in 1980 and is entitled, "Selected Occupational Fatalities Related to Oil/Gas Well Drilling Rigs as Found in Reports of OSHA Fatality/Catastrophe Investigations." This was a study of 30 selected fatal incidents related to oil and gas well drilling rigs. All of the incidents occurred between 1974 and 1978, and the majority of the fatalities were related to falls from elevations or "struck by" or "caught in" machinery and equipment. The information on which the study was based was obtained from Federal OSHA Fatality/Catastrophe investigations files.

The study found that operational problems (failure to observe or lack of operating procedures such as not tying off when on the monkeyboard or stabbing board) accounted for almost one-half of the fatal incidents investigated. Falls from the derrick or other working surfaces accounted for 75 percent of all the fatalities. The proposed rule will address these problems by requiring training and establishing mandatory operating procedures related to ladders and working surfaces, particularly elevated working surfaces.

The study also found that one-fourth of the fatal incidents were related to hazards with the equipment, material, or the facility. Workers were struck by parts of equipment that separated or failed, by the collapse of the derrick, failure of the ropes, etc. Also, the study shows a variety of occupations were involved in these incidents with the derrickman, floorhand and roughneck among the more frequently involved. The proposed standard contains many provisions directly related to these types of hazards.

The second study (Reference 6) was completed in 1981 and is entitled,

"Comprehensive Summaries of Serious Accidents in the Oil/Gas Well Industry Standard Industrial Classification (SIC)—138." This study found that most of the 208 accidents investigated were caused by inadequate supervision, training, or operating procedures; failure to use fall restraining devices; rig collapse or failures; materials handling problems, equipment and materials striking employees; and contact with live electrical equipment. Other fatalities and injuries resulted from tongs striking employees, flammable liquid or gas fires, elevator failures, or unguarded rotary table or bushings. The information in this study was obtained from OSHA reports of fatality and injury investigations (July 1972–March 1980).

The third study (Reference 5) was completed in 1983, and is entitled "Selected Occupational Fatalities Related to Oil and Gas Well Drilling and Servicing as Found in Reports of OSHA Fatality/Catastrophe Investigations." This study is an analysis of over 453 Federal OSHA Fatality/Catastrophe investigation files which were made between 1977 and 1981. By examining the information in these files, OSHA was able to establish an apparent cause-effect relationship between hazards and accidents that resulted in deaths and/or multiple injuries to the workers in this study. There were 467 workers killed in these accidents. Among the most often cited causes for the 467 deaths were equipment failures, lack of training, improper supervision of new employees, failure to wear personal protective equipment, failure to lockout power sources and failure to guard machinery and equipment.

Based on this information, OSHA is proposing a series of requirements directly related to these hazards which will minimize the potential for an accident that could result in an injury or death.

In order to gather additional data on non-fatal accidents for this rulemaking, OSHA requested the Bureau of Labor Statistics (BLS) to conduct a Work Injury Report (WIR) study (see Reference 7). WIR data collection is carried out by individual states under contract with BLS. Based upon the "first report of accident" filed by the employer with the state, the injured employee is sent a form (and post-paid envelope) with a request that the form be completed and returned to BLS. While the forms are coded by BLS, all information regarding identity of employer and employee are deleted. The data collected over several months were compiled to provide useful information associated with non-fatal accidents and their causes. The WIR study on the oil and gas well drilling and servicing industry involve reports which describe the event at the time of the injury as well as the activity which preceded it. This study shows that two-thirds of the injuries occurred during drilling operations, with one-fourth of these incidents occurring during tripping in or tripping out operations. This study further demonstrates that workers in this industry are exposed to significant risks on the job and shows the severity of the injuries in these workplaces is greater than in general industry workplaces. For example, the incidents of amputations in the oil and gas drilling and servicing industry are five times the average for all compensation cases.

In addition to the WIR study, the BLS through its annual survey work, has made available data indicating that this industry has a higher injury and illness incidence rate than the private sector "all industry" rate (see Tables I and II).

According to this survey, the injury and illness incidence rate for Oil and Gas Extraction in 1981 was about two times higher (6.6) than the rate for the private sector "all industry" (3.8). In the classification Oil and Gas Field Services, the rate in 1981 was nearly three times higher (9.3) than for "all industry." This rate reflects the number of lost workday cases per 100 full-time workers. In addition, the oil and gas industry injury and illness incidence rate is similar to those in the mining and construction industries—two industries traditionally considered "high hazard" because of their injury and illness incidence rates. Furthermore, the number of lost workdays per 100 full-time workers for the oil and gas extraction (139.4) and oil field services industry (198.1) are significantly higher than they are for private sector "all industry" (61.7).

TABLE I.—OCCUPATIONAL INJURY AND ILLNESS INCIDENCE RATES

[Lost workday cases per 100 full-time workers]

	1981	1980	1979	1978	1977
Private Sector "All Industry"	3.8	4.0	4.3	4.1	3.8
Mining	6.2	6.5	6.6	6.4	6.0
Oil and Gas Extraction	6.6	6.7	7.0	6.9	6.3
Oil and Gas Field Services	9.3	9.8	9.5	10.2	
Construction	6.3	6.5	6.6	6.4	5.9

TABLE II.—OCCUPATIONAL INJURY INCIDENCE RATES

[Lost workday cases per 100 full-time workers]

	1981	1980	1979	1978	1977
Private Sector "All Industry"	61.7	65.2	67.7	63.5	61.6
Mining	146.4	163.6	150.5	143.2	126.8
Oil and Gas Extraction	139.4	152.7	151.2	154.4	143.7
Oil and Gas Field Services	198.1	227.6	215.7	229.7	

TABLE II.—OCCUPATIONAL INJURY INCIDENCE RATES—Continued

[Lost workday cases per 100 full-time workers]

	1981	1980	1979	1978	1977
Construction	113.1	117.0	120.4	109.4	111.5

Another study examined (Reference 18) was made by the Texas Employers Insurance Association. This study of accident costs showed that oil and gas well servicing ranked fourth in severity of the 52 major types of industrial operations in Texas. The study of 300 fatalities in major industry groups showed 27 percent of the fatalities occurred in oil and gas operations. This group also studied 3,054 injuries that occurred during 1980 and 1981. Forty-seven percent of the injuries were caused by being "struck by or striking against," with the hand and head being the part of the body most frequently injured. Three hundred accidents from 1981 were selected for further study, showing that floorhands, normally the most inexperienced workers, had 155 or 51.7 percent of these accidents.

Dr. Maurice Schade of the University of Oklahoma's Petroleum Drilling Safety Research Group (Reference 17) prepared a report in March 1981 in which he examined 561 injuries in the petroleum drilling industry. The study was based on information received from six medium sized drilling companies and covered accidents that occurred during the year 1981 only. There were 1,873 employees who had 561 accidents involving both non-lost time and lost time accidents. The study showed that floorhands were involved in 44 percent of the injuries and most of those injuries involved the handling of tubular goods. From his study, Dr. Schade concluded that workers in the group examined had more than a one in four chance of being involved in an accident on the job (non-lost time or lost time injury).

The National Institute for Occupational Safety and Health (NIOSH) conducted a study of the oil and gas well drilling industry and provided OSHA with recommendations for developing a standard. The study is entitled, "Comprehensive Safety Recommendation—Land-Based Oil and Gas Well Drilling" (Reference 8). In addition to a discussion of the BLS injury data for the oil and gas well drilling industry, an early draft of the study also referenced a study of data NIOSH received on fatalities and injuries that occurred between 1973 and 1978 in Texas and California drilling operations. NIOSH applied these statistics to project estimated fatalities

for the entire drilling industry. NIOSH concluded that the injury incidence and severity rates for the oil and gas drilling industry are more than *six times* the rates of general industry. Allowing for the possibility of error as much as a factor of 2, the potential for sustaining a recordable injury was still three times higher than for general industry. NIOSH also analyzed 603 accident reports from OSHA investigation files, company accident reports, workers compensation reports and published case histories related to drilling. There were 106 deaths associated with these accidents. Nearly half of the accidents (45.8%) and over half (56%) of the fatalities involved three categories—falls from the derrick, handling drill pipe, and tong operations. Falls from the derrick accounted for 31 percent of the fatalities in this study; handling of drill pipe resulted in 16 percent of the fatalities, and tong operations for nine percent of the fatalities. The NIOSH document also referenced a study compiled by the International Association of Drilling Contractors entitled, "Drilling Accident Analysis, 1979." This study also establishes that there is a significant risk of injury to workers in the drilling industry. Finally, the NIOSH document includes recommendations for a drilling standard to address the unique hazards not covered by existing OSHA general industry standards.

In addition to comments on the proposed rule, OSHA is seeking comments, information and data on the following issues which it wishes to resolve in this rulemaking:

A. Can and should fall arrest devices be used on servicing and workover rigs to protect personnel riding the hoisting equipment? What problems would this create in rig up and in work operations? What costs would be involved in additonal rig up time and in work operations and other related costs?

B. Are manual shutoffs of air intake sufficiently rapid to prevent diesel engine runaway in the event of a gas leak or blowout? How can and should the gas be detected? Are automatic controls and actuators required? What costs and benefits would such controls bring? What sensing mechanism should be used (e.g., engine overspeed, gas detector, other)?

C. OSHA had originally intended to include an exemption from the General Industry Standard for perimeter guarding. This exemption would have relaxed the requirement for guardrails on all rigs 4 feet or more off the ground by not requiring perimeter guardrails unless the rig was 10 feet or more above the ground. OSHA subsequently received data from BLS (Reference 7) that showed that a significant number of injuries occurred to workers who fell from heights of 10 feet or less. Because of this, OSHA has decided not to propose this exemption at this time. However, OSHA would like comment or information about injuries that have occurred when workers were not able to make a rapid escape from the rig floor during an emergency because guardrails limited or prevented their rapid escape.

D. Under what conditions would the need for blowout preventers (BOP) be unnecessary? Can this decision be based on information about geological strata and other scientific evidence? Are there known situations or areas where it will not be necessary to use blowout prevention equipment? What market incentives are already available that would encourage the use of blowout prevention equipment (lowered insurance premiums, reduced worker's compensation costs, and reduced tort liability) and hence render a specific regulatory requirement unnecessary?

How frequently should blowout prevention equipment be tested? What types of tests are appropriate and adequate? Are there adverse effects on equipment operation and reliability resulting from frequent testing of blowout prevention equipment? Should OSHA require blowout prevention (BOP) classroom training for one person per rig site? What schools should be recognized for this training? What costs are involved?

Is there any additional information that can be provided on BOP to assist the Agency in rulemaking?

E. Recently OSHA has received several reports of fatalities and serious injuries attributed to the placement of operating controls on the control panel of the drillers console. The reports indicated that several controls were located close to each other. These controls had identical operating characteristics and were equipped with identical knobs in spite of the fact that they were used to activate different powered functions. Apparently, in several instances the driller activated the wrong control causing needless injuries and fatalities. In one case, during the course of drilling, after the kelly had been "drilled down," the driller had stopped the rotary table and begun to hoist the drill string. The kelly bushing started rising with the drill string and the driller stopped hoisting to allow a crewman to free the bushing. While the effort to free the kelly bushing was going on, other crew members prepared to break out the kelly. The tongs were hanging freely suspended by the counterbalance line. Once the bushing was free, the driller reached for the hoisting control but instead activated the control for the breakout cathead. (On this rig, controls are located less than six inches apart and were equipped with identical knobs.) This caused the breakout cathead to take up the slack in the tongs snub line which caused the tongs to swing violently. The tongs struck a rig hand and threw him against the drawworks causing serious injury.

OSHA is seeking comment on the extent of this problem in the industry; the economic feasibility of requiring distinctive knobs for each control; and other methods of abating this type of hazard. Additionally, should OSHA require that all control panels be standardized in relation to the placement of operating controls, with each control having distinctive knobs? If OSHA requires this, should OSHA require existing rigs to be brought into compliance, and what period of time should be allowed to bring rigs into compliance? What are the costs of requiring new rigs to have controls that minimize the described hazards? What costs are imposed on retrofitting existing rigs?

Finally, OSHA seeks accident and fatality reports related to these types of problems.

F. Should employers be required to fill or cover all holes or depressions in the area of the worksite into which employees could trip or fall?

G. OSHA recently promulgated a revised hearing conservation amendment to its occupational noise exposure standard (48 FR 9738, 3/8/83). The amendment required the establishment of a hearing conservation program including exposure monitoring, audiometric testing, and training for all employees who have occupational noise exposures equal or exceeding an eight hour time weighted average of 85 dBA. OSHA decided to exempt the oil and gas well drilling and servicing industry from the requirements of the revised hearing conservation amendment because of the pending project to develop a special standard for this industry. Specifically, OSHA stated:

> A combination of factors, including tremendous variation in working conditions, high mobility of operations, extremely high employee turnover rate, and limited accessability of many worksites, convinced OSHA that employees would be better served by developing a standard more specifically tailored to the needs of this industry. (Citations omitted); footnotes 53. 48 FR at 9775.

For example, Dresser Industries, (an employer with many locations ranging from multi-employee worksites to

innumerable small mobile field servicing units) while recognizing the "value . . . and need of effective hearing conservation programs," felt that a more performance oriented approach to hearing conservation than permitted under the general hearing conservation amendment was necessary. (See Ex. 327–146A.) [1]

Dresser believes that the ideal hearing conservation program is one developed or approved by knowledgeable experts in the field. Such a program will be developed around the actual conditions in the workplace and will be designed to achieve four objectives. First is the identification of employees who are likely to be exposed to noise in excess of 85 dBA (TWA). Second is the timely taking of baseline and periodic hearing tests of such employees under acceptable conditions. Third is the informing of such employees in general terms of the potential hazards of continuous loud noise, and informing any such employees who the testing shows may be incurring unusual hearing loss, of such loss. And fourth is the requiring of suitable hearing protection in cases that warrant this.

Such a program appears to be contemplated by the possible alternative (to the hearing conservation amendment which was suggested during the administrative reconsideration of the amendment) . . ." (Ex. 327–146A, pp. 1–2.)

The alternative reads as follows:

1. Employers shall conduct audiograms annually of every employee exposed to noise in excess of an 8-hour time weighted average sound level (TWA) of 85 dBA,[2] according to standards on audiometers and audiometric test rooms established by the American National Standards Institute,[3] and under the supervision of a qualified technician;

2. Such audiograms shall be reviewed annually by a qualified audiologist, otolaryngologist or physician to identify employees whose hearing acuity has diminshed more than normal;

3. Employers shall instruct all employees identified under paragraph 2 in the proper use of hearing protection when working in noisy areas and shall take appropriate measures to enforce the use of suitable protective devices for those employees when they are exposed to noise levels in excess of an 8-hour time weighted average sound level (TWA) of 85 dBA.

Specifically Dresser suggested that modifications to the hearing conservation amendment to accommodate the peculiarities of the industry might be useful. It was suggested that employers within this industry have the option of subjecting employees to audiometric testing and hearing protection provisions without what were viewed as burdensome monitoring requirements. "Such a provision will allow a higher degree of protection to those marginally exposed employees without requiring an immediate and highly precise reassessment of exposure." (Ex. 327–146A, p. 4.) A relaxation of the requirement to obtain baseline audiograms within a short period of time was also suggested. Dresser suggested a one year period be allowed to obtain audiograms if hearing protection were required until the base line is obtained (Ex. 327, 146A p. 5). Similarly, R. Brisnehan of the Petroleum Equipment Suppliers Association and G. McKnown of the International Association of Drilling Contractors suggested that extending the period of time in which to obtain a baseline audiogram to one year would solve several of the industry's problems in complying with the audiometric test provisions of the amendment (Tr. Vol. I–B, p. 295, 3/25/82).

Similarly, with regard to the training provisions, several participants indicated that these requirements presented special problems for the oil and gas well drilling and servicing industry. As Mr. McKnown testified at Tr. 296, "We don't have any problems with the training requirements * * *. Training is an excellent idea. No problems on that." Mr. Carlton, representing the Association of Oilwell Servicing Contractors and Mr. Karger representing a number of employers in oil and gas well drilling expressed similar views (Tr. 162 and 188 respectively).

On the other hand, several participants argued that special characteristics unique to the industry made it inconvenient or infeasible to comply with the hearing conservation amendment as it applied to general industry. For example, high turnover rates ranging from 200 to 600% combined with mobile work sites, frequently in remote locations and a decentralized hiring procedure all tend to negatively impact the feasibility of conducting baseline audiograms within a four month period. (See Tr. 156, 169 and 173). These factors, it was argued, would further create costs of compliance that were prohibitive. Even the usefulness of baseline audiograms was questioned in an industry with such a high turnover rate where many employers receiving the baseline audiogram would not still be employed by the same company for the annual audiometric testing which follows the taking of a baseline audiogram. The existence of long term employees in the industry however, was attested to by several parties: McKnown, Tr. 293; Carlton, Tr. 162; Karger Tr. 184.

Although industry representatives argue for exemption from the general industry hearing conservation standard, none seriously disputed the significance of noise exposure in the industry or the possible need to some kind of hearing conservation regulation. Mr. Karger argued that the exemption should remain in effect "at least to a point in time when the unique problems of the industry can be addressed and alternatives conducive to the realities of land based oil and gas well drillings * * * can be developed." (Tr. 170)

In consideration of the evidence presented in the Hearing Conservation Amendment proceeding, some of which is summarized above, and the seriousness of occupational hearing loss and impairment, OSHA, in this rulemaking, would like to examine more closely the unique problems of the industry with regard to noise exposure and hearing conservation. As an outcome of this rulemaking the exemption found in 1910.95(o) will be considered for modification based on the record developed. OSHA therefore seeks comment on the following questions in order to determine whether an effective hearing conservation program for the oil and gas well drilling and servicing industry can be developed and, if so, what elements would be appropriate.

1. What is the nature and extent of worker exposure to noise in this industry?

2. Which job tasks and locations on rigs and how many employees have noise levels of 85 dBA or more (expressed in time weighted averages (TWAs))? List job tasks and estimate numbers of employees with exposures at 90 dB, 95 dB and 100 dB or more.

3. To what extent is monitoring nessesary to assure an effective hearing conservation program in this industry?

4. What alternatives to monitoring could provide information regarding when hearing protectors are needed and the degree of attenuation that hearing protectors need to provide?

5. What is the employee turnover rate? To what extent do employees tend to remain in the industry regardless of employer? What is the average number of years in the industry per employee? Can this be broken down by operation?

[1] For the purpose of this discussion on the hearing conservation amendment all record and transcript citations are referencing the hearing conservation amendment docket, H–011.

[2] See Appendix A (of 29 CFR 1910.95)

[3] American National Standards Institute (ANSI) Specification for Audiometers, S3.6–1969, and the Institute's Specification for Audiometric Test Rooms, ANSI S3.1–1977. Audiometers shall be calibrated annually to ensure the standard is met. ANSI S3.1–1977 must be followed for testing performed at frequencies of 1,000 Hz and above; for testing below 1,000 Hz, ANSI S3.1–1960 may be used.

6. Would a requirement that baseline audiograms be obtained within one year rather than six months still provide for an effective hearing conservation program for long term workers in this industry? Should employers whose employees have eight hour TWA's between 85 and 90 dB be given longer to obtain baseline audiograms than employers whose employees have extremely high exposures?

7. Are there any alternatives to audiometric testing to ascertain that workers are not losing hearing and that the hearing conservation program is effective?

8. Describe the present effort of your company to conserve employee hearing including the specific elements of the hearing conservation program?

9. How can the various key elements of the hearing conservation program set forth in 29 CFR 1910.95 be adopted to fit the particular characteristics of the oil and gas well drilling and servicing industry? Would the three paragraph alternative set forth above provide employers with enough flexibility for compliance and assure that employees are adequately protected?

All submissions and testimony presented by interested parties in the hearing conservation amendment proceeding and relevant to this industry are being included in the Oil and Gas Well Drilling and Servicing Docket, No. S-360, and will be fully considered in this rulemaking. OSHA encourages, however, continued participation by these parties in this rulemaking in order to help resolve these difficult issues.

III. Summary and Explanation of the Proposal

This proposal adds to existing general industry regulations a number of new provisions which will directly address the hazards of a single industry—oil and gas well drilling and servicing. In paragraph (a), OSHA defines the scope and application of the standard proposed for oil and gas well drilling and servicing operations. The standard contains requirements for the control of hazards or workplace situations unique to oil and gas well drilling and servicing operations.

It is OSHA's intent that the scope of this standard include all drilling, servicing and special services operations performed on wells as specified in proposed paragraph (a)(2) of this standard. Operations performed to prepare the site for drilling, such as road construction, grading, and digging of earthen pits are covered by the OSHA Construction Standards (29 CFR Part 1926). Therefore, these operations are not addressed by this proposal.

However, it should be noted that the Coast Guard has authority for occupational safety and health on the Outer Continental Shelf (OCS) pursuant to 43 U.S.C. 1333(e), 1347, and 1348, although OSHA has authority pursuant to 29 U.S.C. 653(a) and 43 U.S.C. §1347. Pursuant to 29 U.S.C. 653(b)(1), providing that OSHA does not apply to working conditions with respect to which other Federal agencies exercise statutory authority to prescribe or enforce occupational safety or health regulations, OSHA and the U.S. Coast Guard, in December 1979, signed a memorandum of understanding which delineated their respective authorities and responsibilities and which established procedures for conducting inspections and investigations of OCS operations. This agreement, under which the Coast Guard and primary responsibility for the safety and health of employees engaged in OCS operations, was based on a recognition of the Coast Guard's extensive regulations, regular presence on the OCS, and consequently of that agency's superior ability to make onsite visits to offshore rigs located there. Further, the Coast Guard has regulations dealing with mobile offshore drilling units, which are inspected vessels as defined by the Coast Guard (46 CFR Subchapter I–A). Pursuant to a memorandum of understanding signed by OSHA and the Coast Guard in March 1983, the Coast Guard, with certain exceptions not relevant here, has exclusive authority with respect to the occupational safety and health of seamen on inspected vessels because of the Coast Guard's comprehensive regulation of these vessels.

In paragraph (a)(2) OSHA is proposing the application of the standard. The requirements of this standard would apply to rigs performing drilling, servicing or special services operations on exploratory wells, development wells, injection wells and water wells drilled to support oil and gas recovery operations. Excluded from the requirements of this section are: cable tool drilling, drilling for seismic tests and subsoil structural investigations, drilling for minerals such a sulfur, and drilling water and brine wells for purposes other than in support of oil and gas recovery. OSHA data research was targeted to rotary drilling which represents the bulk of the drilling industry. Other areas excluded above are unique enough to be addressed individually and may be in the future if data show this is necessary.

Additionally, all drilling, servicing and special services operations employers would not be required to comply with every proposed requirement contained in the standard. Paragraphs (c), (d), and (e) of the proposed standard would apply to all operations. The requirements of paragraph (f) of the proposed standard would only apply to those operations specifically addressed.

In paragraph (b) OSHA proposes a number of definitions which would clarify the meaning and intent of certain terms contained in the proposed standard. Many of these definitions are consistent with those published by the University of Texas, Petroleum Extension Service, in their primer booklets for Oilwell Drilling and Oilwell Service and Workover and in their Dictionary of Petroleum Terms (see References 22–24). However, some are provided which augment these. They include, but are not limited to the following: imminently dangerous to life and health, confined spaces, drilling, frozen plug, and headache post.

In paragraph (c) OSHA proposes general requirements for all operations.

Paragraph (c)(1) proposes medical and first aid requirements in addition to those found in Subpart K of this Part. Considering the type and frequency of injuries experienced in this industry (see References 4–8 and 17–18) and the fact that, in many instances, these operations take place in remote locations without ready access to emergency medical services, OSHA believes the additional requirements being proposed will result in saving lives and reducing injury severity.

In many cases, slips and falls or being struck by machinery or equipment result in back injuries, shock or fractured bones and are all too common in this industry (see References 4–8). OSHA believes that transportation in an inappropriate manner of a worker with a back injury or broken bones, or one suffering from shock and trauma would aggravate these types of injuries, in some cases with catastrophic consequences. For example, workers with back injuries or suffering from shock should not be transported in the cab of a pickup truck in a sitting position. Following standard practices for first aid, the victim should be placed in a horizontal position, and then transported to the hospital or clinic.

OSHA is also proposing that a contingency plan which details the procedures for obtaining prompt medical assistance be prepared in advance and implemented when needed. OSHA believes the concept of preplanning for medical emergencies will better enable the employer and his employees to be prepared. Employees should know what actions to take in the event of a medical

emergency so that treatment can be promptly provided to reduce the severity of the injury. The contingency plan must prescribe, at a minimum, how to establish communication with medical assistance, the location of the communication instrument and details of the arrangements made to transport injured employees.

Paragraph (c)(2) proposes that an emergency action plan which meets the requirements of § 1910.38(a) be developed in advance and implemented when needed for all rigs and their operations. OSHA believes it is necessary for the employer to preplan for emergencies so employees involved in these operations know what actions are required of them during emergency situations. Preplanning will enhance safety for the entire crew.

In paragraph (c)(1) and (c)(2) just discussed, OSHA is proposing requirements for a medical contingency plan and an emergency action plan. The proposal provides the employer with alternative means of compliance for these provisions. The options include development of a written plan, available at the worksite in a location known to the employees; or preparation of a plan, employee training in the provisions of the plan, and certification by the employer that these steps have been taken.

Paragraph (c)(3) of the standard proposes training requirements for employees working in this industry. OSHA believes that an effective training program will enhance worker safety by teaching employees how to recognize hazards and the procedures or means to control or avoid them. The training program will familiarize employees with necessary personal protective equipment and the proper method of use, inspection and care of this equipment, and will make employees aware of special requirements such as lockout and tagout procedures and confined space entry procedures. Trained employees will be better able to avoid being injured while performing such work (see References 4, 6, and 8). It is OSHA's intent that employees receive some training prior to beginning work and that this training should be augmented and repeated from time to time.

Paragraph (c)(4) proposes specific requirements for the unique hazards of over-water operations. These requirements would assure that OSHA's standards for water rescue and flotation equipment conform with current U.S. Coast Guard regulations for offshore rigs under their jurisdiction.

Paragraph (c)(5) of the standard proposes housekeeping requirements for all operations. OSHA believes that a conscientious effort to eliminate slipping and tripping hazards and hazards due to flammable and combustible liquids will produce a significant decrease in injuries in the drilling, servicing and special services industry (see References 4–8).

Illumination requirements for all rigs are proposed in paragraph (c)(6) of the standard. OSHA believes minimum lighting levels are necessary to help minimize slips, trips, and falls and to allow work to continue safety in other than daylight hours. These lighting levels are consistent with ANSI recommendations for other industries. Injuries have occurred where adequate lighting was not provided (see References 5–8).

In paragraph (d) OSHA proposes specific requirements for drilling, servicing and special services workplace situations which apply to all types of operations.

OSHA is proposing, in paragraph (d)(1), requirements to assure the safe raising and lowering of derricks or masts and related rig-up operations.

The first two proposed requirements in paragraph (d)(1) address preplanning the arrangement or placement of equipment and outbuildings to minimize environmental problems like water drainage and to assure the prescribed clearances for buildings and equipment are maintained. OSHA believes that preplanning is essential. It will enable the employer to foresee hazardous situations and plan to avoid them. Additionally, this will help the employer avoid the problems of having to move equipment and outbuildings once they are initially set.

Additionally, paragraph (d)(1) prescribes the need to perform a visual inspection of the raising and lowering mechanism before operations begin. This check can catch any obvious problems that can be seen with the naked eye before the equipment is operated. Also, a check needs to be made of the mast to remove any loose tools or materials before movement begins. Otherwise, these must be secured to prevent them from falling on employees. As a general safety precaution against the possibility of line or derrick member failure, employees are to remain clear of the area and are not to be under the equipment when the derrick or mast is being raised or lowered.

The sixth proposed requirement addresses a floor opening hazard that can occur during rig-up operations. During these operations, the rotary table opening is to be covered until the equipment is put in place. This is to prevent employees from inadvertently falling into the floor opening. If covers cannot be used, guardrails or other means may be used provided the safety of the employees can be assured.

Paragraph (d)(2) of the proposed standard details OSHA's requirements for emergency escape systems. Under emergency conditions, such as a blowout or rig fire, it would be impossible for the derrickman to use normal means of egress from the elevated work station. Therefore, OSHA is proposing that an emergency escape system be provided for those employees working in the derrick or mast (see References 1–8).

In the first two requirements of paragraph (d)(2), OSHA proposes to require that an emergency means of escape be rigged and secured from the derrickman's work platform upon completion of rig-up operations. The next requirement proposes a similar duty when stabbing boards are used, except that the emergency escape must be available before a crew member is required to work in that area. OSHA believes these requirements are necessary due to the fact that shallow entrapments of gas, such as methane or hydrogen sulfide, can be present and drilling into these can cause a blowout and rig fire which could cause death and serious injury. Without these precautions and escape systems, anyone working on the derrickman's platform would have little or no chance of escaping these dangers.

OSHA proposes in the third requirement in paragraph (d)(2) that the emergency escape route be kept clear of obstructions, be arranged to carry the employee away from the area of potential danger and allow the employee a safe landing. OSHA feels these requirements are necessary to insure that the escape route can be used for its intended purpose without further endangering the employee.

OSHA is proposing in the fourth requirement that the employer make sure that tension on the escape line will permit a safe landing for the user. When an escape line is used as part of an emergency escape device, proper tension on that line is a critical factor. Either excess or insufficient line tension can result in injuries to employees using the line.

In the fifth requirement OSHA is proposing that emergency escape devices without automatic velocity limiting controls be equipped with a braking device which can be operated by the employee using it. The braking-device requirement that OSHA is proposing is essential to allow the

employee a safe landing when using this type of emergency escape device.

The last requirement of paragraph (d)(2) addresses emergency escape units equipped with automatic velocity limiting devices, and proposes to clarify the intent of a safe landing as it is to be applied when this type of unit is used. Additionally, OSHA proposes to limit the speed of these devices at the time of landing and to require separate anchors for escape lines in those cases where use of the rig guying anchors could pose a hazard to the employee. OSHA believes these requirements are necessary to ensure the safe use of these devices. The maximum landing velocity OSHA is proposing is 15 ft/sec which is equivalent to about 10 miles per hour. Speeds at landing in excess of 15 ft/sec have the potential of causing serious injury to the employee, further delaying the employee from evacuating the vicinity after landing (see References 5–8).

Paragraph (d)(3) of the standard proposes minimum requirements for fire prevention and protection covering incipient fire fighting equipment, ignition source control and control of fuel sources including iron sulfide.

In the first three requirements of paragraph (d)(3), OSHA proposes the minimum numbers and types of fire extinguishers which are to be present on rigs. Requirements for fire extinguishers to be installed at all workplaces are those specifically addressed in Subpart L of this Part. These proposed requirements differ from Subpart L in that OSHA is specifying the type and number of extinguishers necessary for rigs used in this industry. These requirements are based on, and in line with, current industry recommendations and State standards (see References 1, 2, 3, and 9–16).

The fourth requirement of paragraph (d)(3) addresses the maintenance, testing, and inspection of fire extinguishers and is a cross reference to the requirements of Subpart L of this Part. This is done to alert the employer that there are additional requirements for this equipment in Subpart L.

In the remaining seven requirements of (d)(3) OSHA is proposing work practice requirements or other safety measures controlling flammable liquid vapor accumulations; keeping ignition sources at a safe distance away from the wellhead, and other measures to minimize the potential of a fire. OSHA believes these requirements or the equivalent measures are necessary to isolate potential fire hazards (flammable liquids and other fuel sources) or sources of ignition (open flame heaters, portable light plants and others) thereby reducing the possibility of fire and/or explosion (see References 5, 6, and 8).

In paragraph (d)(4) OSHA is proposing requirements for the safe handling of drilling fluids containing hazardous substances and chemicals. Examples include calcium oxide and sodium hydroxide used for pH control. Personal protective equipment and work procedures are addressed.

The first duty in paragraph (d)(4) proposes safe handling instructional requirements for employees required to handle hazardous substances, and the next requirement proposes that those employees be required to wear appropriate personal protective equipment. Because of the high potential for exposure to inhalation hazards, skin contact, absorption, and other hazards in these situations, OSHA believes that these requirements are necessary (see References 5, 6, and 8).

The third requirement proposes that eyewash equipment be readily available when using acids. This requirement is based on OSHA's belief that in most, if not all, instances when acid is used, it is used in large quantities and is injected into, and retrieved from, the well under pressure. Caustics, on the other hand, are usually mixed into the drilling fluid at the mud hopper; are in a pelletized or other easily handled form; and are diluted by the drilling mud. Thus OSHA is proposing that three 1 quart bottles of an approved eyewash solution be available.

In paragraph (d)(5) OSHA is proposing requirements to assure safe operation near energized power lines to prevent electrocutions.

The requirements of paragraph (d)(5) propose clearances for rig operations or material storage near or under electrical transmission or distribution lines. Also it proposes requirements for notification of the owner of the lines if lines are to be relocated. These proposed requirements are similar to § 1910.180 and OSHA believes they are necessary for this industry to assure that employees will not be exposed to electrical shock hazards (see References 5 and 6).

OSHA proposes in paragraph (d)(6) requirements for handling and racking pipe, drill collars and similar equipment to prevent employee injuries due to being "struck by" moving pipes or being "pinned against" stored pipes.

The first requirements of paragraph (d)(6) propose design requirements for storage racks. These requirements are intended to control hazards resulting from collapsing racks and from tubular materials rolling off racks. These requirements are based on industry recommendations and practices, and the need for these requirements is substantiated by injury and fatality reports (see References 1–3, 6–8, and 17–18).

In the third requirement of paragraph (d)(6), OSHA proposes to prohibit employees from standing or walking between any pipe rack and a load of pipe being loaded or unloaded. OSHA believes this practice is very dangerous and injury and fatality reports substantiate this belief (see References 5–7).

The fourth provision of paragraph (d)(6) proposes that pipe or other tubular material be secured at all times except when it is actually being worked. OSHA agrees with industry recommendations (see Reference 1) and believes these requirements will eliminate hazards resulting from unsecured material falling or shifting (see References 5–7).

The last requirement of paragraph (d)(6) proposes that drainage of the drill stem stands be provided to minimize ice plug formation. In this instance, OSHA again agrees with industry recommendations (see References 1 and 2) and feels that these requirements are necessary to prevent injury to crew members working in the derrick. The hazard occurs when a stand containing an ice plug is run into the hole, and the ice plug is then blown out by well pressure, thus possibly causing injury to the worker.

OSHA is proposing in paragraph (d)(7) to prohibit the riding of hoisting equipment unless certain conditions exist and certain requirements are met. These requirements include the wearing of a full-body harness attached to a lanyard, the use of an emergency stop device and specific work practice requirements. Although OSHA does not condone this practice, it is felt that workplace situations could make this practice preferable to other available alternatives. For example, in the servicing industry, an employee is frequently required to reach a work station in the derrick several times during the work day. OSHA believes it may be less of a hazard to allow the employee to ride the hoisting equipment under the controlled conditions prescribed by this paragraph than to have a physically fatigued employee make the climb.

In paragraph (d)(8) OSHA is proposing requirements for drilling, servicing and special services operations performed in areas where a potential for exposure to hydrogen sulfide gas exists. This gas is a poison which, at low concentration, will desensitize one's sense of smell. These requirements also propose establishing

and implementing a monitoring program in specified areas of the rig using automatic environmental monitoring systems, detector tubes, etc., to assure the safety and health of employees exposed to hydrogen sulfide. Additionally, OSHA is proposing that the details of this monitoring program and its procedures be available in written form for review at the worksite. OSHA believes that this precaution is necessary because of the extreme toxicity of hydrogen sulfide.

In addition, OSHA proposes exemptions from the requirements of monitoring where the potential for exposure to hydrogen sulfide has been determined not to exist such as in many fields where drilling has been performed over many years and these areas are known to have no hydrogen sulfide exposure potential. Employers operating rigs in areas with known hydrogen sulfide exposure potential or in areas with unknown or inconclusive data regarding exposure potential must meet the requirements for monitoring.

As part of this paragraph, OSHA is proposing requirements for respiratory protection equipment to be used in areas where exposure to hydrogen sulfide exceeds the permissible exposure levels in Subpart Z of this Part. For example, exposure to 500 to 700 ppm causes unconsciousness to occur rapidly with cessation of breathing occurring in a few minutes. A hydrogen sulfide release can result in concentrations that far exceed this level and such releases have occurred on oil and gas well rigs (see Reference 5). OSHA believes that escape respirators are absolutely necessary for all crew members where exposure to hydrogen sulfide may be present. Additionally, OSHA believes that approved positive pressure respirators are necessary for any extended work in a hydrogen sulfide atmosphere that exceeds the levels allowed in Subpart Z of this Part.

Where an automatic hydrogen sulfide environmental monitoring system is used, it shall be connected to an employee alarm system. OSHA believes that in order to be totally effective, the monitoring system must provide adequate warning so that the emergency action plan (discussed earlier) can be properly activated with regard to all employees on the site—not just those at or near the monitoring readout.

Additionally, this paragraph proposes requirements for the testing and maintenance of the monitoring system. OSHA feels that untested or poorly maintained monitoring systems are as dangerous as not having a system. Improperly maintained or untested systems may lead to a false sense of security for employees who rely on them for warning. This could have serious consequences should the system fail during an actual hydrogen sulfide release.

In the final requirement of paragraph (d)(8), OSHA is proposing all rigs, except those excluded from monitoring, be equipped with an operable automatic hydrogen sulfide environmental monitoring system by July 1, 1987. OSHA believes that these types of systems represent an effective means of warning employees about an actual exposure to hydrogen sulfide before it becomes dangerous. The extended effective date will allow employers to phase in these systems in an orderly fashion as availability and work situations dictate.

OSHA has several reports of fatalities involving persons entering confined spaces associated with oil and gas well rigs. In common with other industrial settings, it is not only the employee gaining initial entry and being overcome who proves to be a fatality, but would-be rescuers are also overcome and die (see Reference 6).

Paragraph (d)(9) addresses hazards associated with personnel entering confined spaces, whether inadvertently or because of work requirement within these spaces. Most confined spaces in and around rigs are tanks. Under certain circumstances, cellars and pits are also considered to be confined spaces for the purposes of this regulation. Criteria for deciding if an open-topped space is to be considered a confined space is:

(1) Depth four feet or more, and

(2) Depth greater than one-half the smallest dimension of the top opening. Are these criteria appropriate to assure adequate ventilation under the worst environmental conditions? Are there alternative criteria more appropriate to define confined spaces?

OSHA has received reports of entry problem in and around tanks where personnel are required to monitor the in and out flow of fluids. These describe how personnel enter or fall into tanks during well fracturing operations, and are then overcome and die. Multiple fatalities have occurred when other workers attempted a rescue and were in turn overcome and killed.

The proposed rules require posting of caution signs adjacent to openings or accesses into confined spaces. Barriers are required to prevent inadvertent entry. The proposed rules require warning signs adjacent to those confined spaces employees may enter to warn of entry hazards and to identify persons who must authorize entry.

This paragraph requires employers (who expect their employees to enter confined spaces) to set conditions prior to entry, procedures to be followed at entry, and procedures for mitigating hazards within or associated with the confined space. It is OSHA's opinion that the majority of problems will be addressed by these requirements, and the steps taken by employers in fulfilling these requirements will assure that such work can be done safely.

The remainder of the paragraph is directed toward procedures to affect rescue in the event of an emergency where an employee is unable to escape on his own. Training requirements are established for designated rescuers who may enter confined spaces. Also included are requirements for backup personnel and for rescue equipment.

In paragraph (e)(1) OSHA is proposing general equipment requirements for all operations. The implementation of specific work practices related to general rig safety is included.

The initial two proposed requirements are to eliminate falling or tripping hazards caused by uncovered or unguarded openings in the rotary table and unoccupied mouseholes and ratholes. Accident reports seen by OSHA indicate that falling or tripping hazards are a major cause of accidents in this industry (see References 4–8). These hazards are recognized within the industry and are the subject of industry standards and recommendations (see References 1 and 2).

OSHA's current General Industry Standard requires that guardrails be provided along the perimeter of working platforms which are 4 feet or more above the ground. As mentioned earlier, OSHA had considered relaxing this requirement so that guardrails would not be required unless the platform was 10 feet or more above the ground. OSHA has since decided against this for the reasons previously mentioned. OSHA, however, is still willing to consider an increase of the height requirement above 4 feet if sufficient data are made available to justify any change. This paragraph also allows the use of a chain across the vee-door in lieu of guardrails. Guardrails across the vee-door could pose a hazard during the movement of tubular materials.

The fourth requirement of paragraph (e)(1) is proposing that a ladder or stairs be provided for employee access and egress to cellars of five (5) feet or more in depth. OSHA believes that providing safe access to and exit from this restricted area is necessary. Additionally, in emergency situations, safe access and/or a means of rapid egress could facilitate rescue operations or well control measures.

OSHA is proposing in the fifth requirement that employers implement a lockout and tagout procedure which will render the equipment inoperable and ensure that power sources may not be energized. This requirement is intended to protect employees who are cleaning, servicing, adjusting, or maintaining equipment. Accident and fatality reports show that the inadvertent or accidental activation of machinery or equipment while an employee is servicing them is a serious problem in this industry, resulting in several fatalities and/or traumatic injuries each year (see References 5 and 7). OSHA believes that a lockout and tagout program based on the rquirements of this proposal will effectively protect employees who are required to perform maintenance of equipment, etc., proximate to hazards likely to cause injury.

The sixth requirement proposes that all employees on the rig site wear safety-toe footwear. OSHA believes that the nature of the work involved makes this requirement necessary to prevent or reduce injuries to the foot. Accident statistics substantiate OSHA's belief (see References 5–7).

The seventh provision in paragraph (e)(1) proposes to prohibit operation of machinery without all guards in proper position and these guards are to be in good, safe condition. Exceptions are allowed for repair, maintenance and testing of machinery. OSHA feels that accident data indicate that accidents caused by improperly used machine guards or lack of machine guarding represent a significant percentage of the accidents reported in the industry (see Reference 5).

The last two requirements of paragraph (e)(1) propose requirements for wire rope used for hoisting purposes on rigs. These requirements include a minimum design factor of three (3) for all regular or normal operations; visual inspection on a daily basis; and replacement of rope found to be weakened due to wear or damage. OSHA believes that these requirements are necessary to assure employee safety during hoisting operations. Weak or damaged rope can break which could result in employee injury from line recoil or from an overhead load falling on the employee.

In this paragraph, OSHA also is proposing to exempt employers from creating or maintaining written records of the inspections. OSHA feels that compliance with the inspection requirements of this paragraph, and the correction of any defects found are the important features of this requirement. Although written records are not required, the employer must certify that inspections and any needed corrections have been performed. Also, chain or wire rope connections to equipment are to be secured positively so that inadvertent separation could not occur (see References 5 and 6).

OSHA has received reports of fatalities and serious injuries sustained by employees following the collapse of derricks and masts. Additional accident reports have been received of rig collapse where employees sustained less serious injuries. These situations are usually the direct result of misuse or misrigging of the equipment. Paragraph (e)(2) addresses these problems and provides criteria on correct design and rig-up procedures to be followed including procedures to repair damaged rigs. Provision is made to allow the use of equipment under emergency conditions where a greater hazard may be created by not controlling the emergency. For example, during a blowout, a damaged derrick or mast cannot be removed until the well is brought under control. Manufacturer's recommended limits are incorporated to prevent misuse of derrick components that would stress them and lead to failures (see References 5 and 6). Repairs that fail to meet specifications could lead to a rig collapse.

Provisions are included to ensure that repaired and remanufactured equipment meet or exceed the original design specifications. Ordinarily, structural strength to original specification would be determined by certification by the manufacturer or by a professional engineer; and these are certainly acceptable. However, OSHA recognizes that there are employers with the competence to complete repairs and to ensure their adequacy. Provision is made for self-certification in these cases.

OSHA is proposing in paragraph (e)(3) to require the use of ladder safety devices or other acceptable devices on all derrick or mast ladders to prevent injuries or deaths due to falls. In this paragraph OSHA provides general guidance as to what is and what is not acceptable as a ladder safety device. The use of a climbing assist device (counterweight) without the means to control the descent velocity if an employee should fall is not acceptable as a ladder safety device since it does not arrest the fall or allow the safe landing of the employee. If the weight of the counterweight is greater than the employee's weight, which could cause the employee to be pulled up into the derrick or mast, it is not acceptable. The proposed rule requires the counterweight of a climbing assist device to be of such weight so as not to exert an upward force greater than 90 percent of the user's weight. Also, means shall be taken to prevent the counterweight from falling if the sheave or line breaks. OSHA believes these precautions are necessary due to the number of injuries and deaths reported in this industry which were the result of falls or equipment failure which resulted in falls (see References 4–7).

In paragraph (e)(4) the factors which affect rig stability and use are addressed. OSHA has received reports of fatalities and has investigated accidents involving overturned rigs. This paragraph addresses the need for foundations and guy lines which are adequate for the anticipated loads that may be imposed. Requirements for inspection and testing are included to help assure adequacy of anchors. Temporary, non-standard items such as trees and rocks are specifically prohibited for use as anchors due to the number of unknowns of these items (see References 5 and 6).

Trees, rocks, and other natural occurring items have been prohibited as anchors due to the number of unknown properties of these items. It has been pointed out to OSHA that sound, substantial trees with good tap root structures (e.g. various oaks, hickories, walnut) are frequently available in hilly locations, and it may be a better alternative to utilize such trees rather than to rely on anchors set in newly disturbed soil. What experience factors are available to ascertain suitability of trees as anchors? What method of fastening guy lines to trees is suitable? Is the information and data developed by the Forest Services, U.S. Department of Agriculture for skyline logging anchors applicable to evaluating and selecting trees as anchors for oil well worksites (see References 28 and 29)?

Additional questions concern the use of rocks, rocky crags, outcroppings, cliffs, high walls, and similar items. What methods are available to fasten guy lines to rocks? What criteria are available for rock selection and fastening or attaching guy lines? How should such anchors be tested? Are there any other comments on the use of rocks as anchors?

There are general requirements for pull testing of anchors in the proposed standard. OSHA has received reports that testing of anchors should be performed at regular intervals and in accord with a schedule based upon exposure and use conditions of the anchors. What frequencies of testing of anchors is sufficient to ensure safety of workers? What kind of testing program and protocol should be used? What

criteria should be established for rejection of an anchor? Should pull test records be required on anchors?

Releasing boomers or load binders have been the cause of a number of accidents when wind load is added after rig-up. Since available alternatives exist, there appears to be no reason to continue the use of boomers. Phase-out time is included, along with an extension if a method is used temporarily to relieve tension before the boomer is released (see Reference 5 and 6).

In paragraph (e)(5) OSHA is proposing design and work practice requirements related to the drawworks. OSHA believes these requirements are necessary based on accident and fatality reports it has received (see References 5 and 6). Additionally, hazards related to the drawworks have long been recognized by the industry and have been addressed by trade association safety recommendations, which OSHA's proposal closely parallels (see References 1 and 2).

OSHA has records of numerous accidents involving tongs and slips which have resulted in fatalities and injuries. OSHA believes many of these injuries can be prevented by following safe work procedures proposed in paragraph (e)(6). These rules follow and parallel accepted industry practices (see References 1–3 and 5–8).

In paragraph (e)(7) OSHA is proposing design and work practice requirements to address hazardous conditions and practices associated with catheads and related lines, ropes and chains. OSHA has documented, in accident and fatality reports it has reviewed, that the cathead, catlines, ropes and chains were directly or indirectly responsible for numerous deaths and injuries to workers in this industry (see References 5 and 6).

In paragraph (e)(6) standards are proposed to address potential hazards such as the accidental release of a load associated with blocks, hooks, and elevators. OSHA has reviewed current industry recommendations, State standards, and other relevant sources and has determined that the proposed requirements will adequately address these hazards (see References 1, 2, 3, 5, 6, 7, and 9–16). OSHA has received reports of fatalities arising from running the travelling block into the crown block. To deal with this potentially fatal hazard, OSHA proposes to include a travel limiting device on all new rigs for drilling, servicing and special services. Due to economical and technical considerations, OSHA proposes that existing rigs be exempted from this provision. Provisions are included to prevent sheaves and blocks from falling, and to ensure that elevators used to handle tubular goods are maintained so as to prevent failure. Provisions are also included with regard to inspection and use of hoisting lines.

Paragraph (e)(9) proposes that all drilling and servicing rigs be equipped with a weight indicator in operating condition. OSHA believes it is necessary for the driller to know the hook load which is suspended so the driller can avoid exceeding the rated capacity of the derrick or mast or the other components of the hoisting system. OSHA is also proposing that weight indicators installed six feet or more above the rig floor be secured by a separate safety line or chain. OSHA feels this is necessary to prevent injury to employees working below should the primary connection to the mast or derrick fail (see References 1, 5, and 6).

Well blowouts present a serious potential hazard to workers at a well site. Blowouts can result in fires and explosions which are capable of causing serious injuries and fatalities. Paragraph (e)(10) addresses the installation, testing, and specialized training of personal required to control potential blowouts.

OSHA is requesting additional information on the need for and design of blowout prevention in the Agency Action section of this preamble. These questions are being raised to provide the Agency with sufficient information to promulgate a final rule which will provide adequate employee protection without causing undue financial burden to the industry.

Blowout prevention equipment is required at all well sites where it is known that blowouts can occur, and at all wells drilled into areas of unknown blowout potential. Provisions are included on inspection and testing of blowout prevention equipment. Additional provisions are included to ensure all equipment subject to well pressure will be capable of withstanding pressures encountered. Kelly cocks, or equivalents, are required and shall be readily operated by a lever or similar device to prevent back pressure at the kelly from rupturing the kelly hose or blowing back through the mud pipes (see References 1–3, 5, 6, and 13).

Paragraph (e)(11) proposes design and work practice requirements related to the kelly bushing, rotary table and other rotary equipment. In paragraph (e)(11), OSHA proposes that rotary equipment including the kelly bushing and the rotary table be guarded unless the construction and installation prevents the catching or snagging of employees or their clothes or ropes, lines, hoses, chains and similar materials that could catch and then swing around on the rig floor striking equipment and employees. Accident and fatality reports reviewed by OSHA show that this equipment is a major factor contributing to injuries and fatalities in this industry (see References 5–7 and 21). OSHA believes that appropriate guarding of this equipment, or proper design and installation of this equipment supplemented with appropriate work practices, will control this hazard.

The first requirement in paragraph (e)(11) proposes to allow the rotary table to be used to spin out connections. This practice is widely used in the industry and OSHA feels that it has no adverse effect on employee safety. This paragraph further proposes to prohibit the use of the rotary table for breaking out connections except under emergency conditions. OSHA feels that the torque available when the rotary table is used to break out connections is not controlled and would easily produce enough force to break the tong snub lines, thereby allowing the tongs to spin freely. The spinning tongs have resulted in fatalities or severe injuries to employees standing nearby. OSHA prohibits this practice, except under emergency conditions, e.g., to break out frozen connections. OSHA believes this practice can be accomplished in relative safety if the other provisions of this paragraph are followed.

In the next requirement of paragraph (e)(11), OSHA is proposing that the rotary table to be clear of all employees and unsecured materials before the operator engages the power. OSHA believes this requirement is necessary because if power is engaged prematurely, any employees standing on the rotary table would be thrown off and could receive critical injuries if thrown into other equipment or machinery. Additionally, loose materials could also be thrown off the rotary table causing injury to any employee close enough to be struck by them.

Paragraph (f) proposes additional requirements for well servicing and special services. Some of these operations, which involve special services that are covered in this paragraph, have been selected based on industry recommendations and other sources (see References 1, 2, 5, 6, and 7).

In paragraph (f)(1) requirements are proposed to lessen possible hazards present in certain well servicing operations. The first requirement concerns possible well pressures that may be encountered and requires that means to control these pressures shall be implemented before starting the

servicing operations. The requirements are additional and supplementary to the blowout prevention requirements proposed in paragraph (e)(10) of this section. Additionally, requirements are included to ensure that employees are not struck by the pumping machinery and shall be out the derrick or mast when unseating a subsurface pump.

Paragraph (f)(2) proposes specific equipment testing requirements and work practices for cementing operations. Due to the high pressures involved in these operations, OSHA feels these requirements are necessary to protect employees. OSHA believes that compliance with these requirements will lessen the chances of the rupture of high pressure lines or will at leasty minimize the injury potential to employees if the lines do rupture.

In paragraph (f)(3) the first set of proposed requirements are included to ensure wireline service units remain fixed in position once they are set up. Inadvertent or unexpected movement can occur with these units, creating immediate hazards to employees. Requirements are included to ensure that the wireline does not whip and indure employees when released from tension.

The second and third set of proposed requirements address the safe use of gin poles and rope falls. These requirements are being proposed to ensure that these hoisting systems will be so designed and maintained that they will be able to handle all anticipated loads, to prevent unwanted releases of loads and collapse of this hoisting equipment, damaged or worn parts may not be used.

The last set of proposed requirements in paragraph (f)(3) address a number of potentially hazardous operations which are involved in swabbing and perforating. The requirments proposed include control of flammable vapors or gases, limiting the possible ignition of any escaping gases, and taking additional precautions to protect employees engaged in swabbing.

Perforating has unique problems associated with the handling of explosives. Requirements proposed address these problems in accord with good practices in the industry (see References 1, 5, 6, and 7).

In paragraph (f)(4) OSHA is proposing design and work practice requirements for stripping and snubbing operations (see References 1, 2, 5, and 6).

The first requirement in paragraph (f)(4) proposes an emergency escape system for employees working atop hydroaulic snubbing equipment. Even though this equipment is usually smaller than most drilling and servicing equipment, OSHA believes that employees working atop this equipment are exposed to the same hazards as derrickmen and must be provided the same protection.

The next requirement in paragraph (f)(4) proposes that snubbing towers be guyed or otherwise supported to prevent collapse or turnover. Although these towers are not as large as drilling or servicing masts or derricks, OSHA believes it is necessary to take precautions to prevent collapse or turnover.

The third requirement proposes that flow lines or bleed-off lines be located away from frequently occupied areas, such as the doghouse, or that they be secured to prevent whipping if the lines should rupture. OSHA feels that it is reasonable to anticipate that one of these lines could rupture due to high pressure, and that by taking the required precautions, the employer could lessen the chances of employee injury.

The fourth provision in paragraph (f)(4) proposes that two-way communication be provided between the snubbing operator and the pump operator. OSHA believes that communication is necessary to lessen the chance of equipment failure caused by the pressures on the system or other problems and to minimize the injury potential to employees.

In the next two requirments in paragraph (f)(4), OSHA is proposing that well pressure be monitored at all times during stripping and snubbing operations. OSHA believes this requirement is necessary to warn of impending blowouts and to allow control measures to be taken to prevent the blowout from occurring. Some of the control measures to be taken are that employees will be informed of the maximum working pressure limit of the equipment, and where this limit could be or actually is exceeded, the employer must provide blow down lines with remote control valves. OSHA believes that to conduct these operations safely, the employee must be aware of the limits of the equipment, and when these limits are exceeded, the employee must vacate the wellhead area, and the employee must be able to release excess pressure from a safe distance.

The last requirement in paragraph (f)(4) proposes to prohibit the use of gasoline engines in snubbing operations. OSHA believes that gasoline engines would be potential ignition sources, igniting flammable gases or vapors generated or released by these operations.

Paragraph (f)(5) proposes to address the hazards related to drill stem testing which present an especially severe set of problems. When conducting a drill stem test, conditions may exist in a well which could easily lead to a fire or blowout. OSHA is requiring all sources of ignition (icluding artificial lighting) be strictly controlled. In addition, OSHA would prefer that drill stem testing be conducted during daylight hours to eliminate the need for artificial lighting. When conditions require the use of artificial lighting, light levels shall be sufficient to allow emloyees to safely conduct the test. The remaining provisions are to control the hazards of possible blowouts and allow well control to be established quickly and effectively (see References 1 and 15).

In paragraph (f)(6) OSHA is proposing design and work practice requirements for acidizing, fracturing and hot oil operations (see References 1, 2, 5, and 6).

The first two requirments of paragraph (f)(6) propose that all lines connected from the pumping equipment to the well have a check valve installed as close to the wellhead as possible. Additionally, when a multi-pump manifold is used, a check valve needs to be placed in each discharge line as near to the manifold as possible. OSHA believes this is necessary in order to prevent backflow if the well is under pressure or develops pressure during the operation. OSHA proposes that an inspection be made before beginning pump operations to ensure that discharge line connections are assembled properly and that all valves in the discharge lines are opened. Restricted flow of liquid under pressure could cause the lines to rupture and endanger employees in the area.

The next provision of paragraph (f)(6) proposes all blending equipment used in these operations be electrically grounded, and all equipment unloading proppants into the hopper be bonded to the blending equipment. OSHA believes this precaution is necessary to prevent the buildup of static electricity which could arc and ignite flammable or combustible vapors or liquid leaks.

In the fourth requirement of paragraph (f)(6) OSHA is proposing that hoses which develop a leak while being used to pump flammable or combustible liquids, under pressure, be covered to prevent the liquid from spraying into the air. Additionally, OSHA is proposing that all leaking hoses be removed from service as soon as practicable. OSHA believes that hoses used to pump flammable or combustible liquids under pressure should not leak since this would pose a fire hazard. OSHA feels that covering hoses which develop leaks during the operation will significantly reduce the chances of a fire by limiting

the atomization of an enriched flammable mixture in the air around the leak, and thus will greatly reduce the build up of a flammable vapor cloud which could be ignited.

Paragraph (f)(8) proposes in the fifth requirement that pump discharge lines be tested before treatment begins to the maximum expected treating pressure plus 1000 psi. OSHA believes that this pre-treatment testing is a necessary precaution to ensure the hose is safe for its intended use. This is especially important when using acids, flammables, or other hazardous materials.

Paragraph (f)(6) proposes in the sixth provision that all ignition sources be controlled when pumping flammable and combustible liquids. OSHA believes that leaks and spills are an ever present hazard during these operations and control of ignition sources is necessary.

The last provision of paragraph (f)(6) proposes that spilled oil or acid be disposed of promptly. Additionally, this paragraph proposes to require that employees performing this duty wear rubberized protective clothing or other clothing which is resistant to oil and/or acid penetration. OSHA believes that the prompt clean up off spills is necessary to minimize fire and/or slipping hazards. Additionally, employees required to perform this task must be protected from exposure to the hazards related to the acid or oil in use.

Paragraph (f)(7) proposes requirements for freezing, valve drilling and pipe tapping operations. These proposed requirements are based on current industry recommendations (see Reference 1) and address hazards related to the high pressures involved in these operations. Testing procedures are prescribed to assure that the equipment is capable of operating at test pressures.

Paragraph (f)(8) proposes the employer review the history of a well before starting fishing operations. Additionally, OSHA is proposing that when such review shows that the well has the potential of flowing, or could contain high pressure or hydrogen sulfide, the employer must take steps to control hazards (see References 1, 5, 6, and 7). OSHA believes such reviews a necessary part of preplanning a fishing operation and will permit employers to determine what steps or equipment are necessary to protect the employees.

In paragraph (f)(9) OSHA is proposing design and work practice requirements for gas, air or mist drilling. OSHA has reviewed current industry practices and recommendations (see Reference 1) and State standards (see Reference 15) which addressed the hazards found in these operations and has based these proposed requirements on those sources. Phase in dates of July 1, 1984, are prescribed for pressure relief valves, enging shut-off valves, pressure gauges, check valves and other equipment to allow for an orderly conversion or upgrading of the employer's equipment. Ignition source control and other work procedures and equipment used in these operations are addressed (see Reference 1, 5, and 6).

OSHA has received reports of serious injuries and fatalities in air drilling operations due to the misapplication of high pressure air. What restrictions are appropriate to prevent misuse of potentially hazardous high pressure air? How may the available high pressure air be used for purposes other than as the drilling fluid on and about rigs?

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V. Preliminary Regulatory Impact Assessment and Regulatory Flexibility Analysis and Environmental Assessment

Introduction

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) similarly requires the Occupational Safety and Health Administration (OSHA) to consider the impact of the proposed regulation on small entities.

Consistent with these requirements, OSHA has prepared a Preliminary Regulatory Impact and Regulatory Flexibility Analysis for the proposed oil and gas well drilling and servicing standard. This standard would supplement existing OSHA standards in 29 CFR Part 1910 that either fail to address or inadequately address the unique hazards found in these operations. This analysis describes the industries affected by the standard, the non-regulatory environment and alternative provisions considered, the cost of compliance with the proposed standard, the technological feasibility of the proposed provisions, and some of the potential benefits that will accrue to employees who are subject to the hazards unique to oil and gas well drilling and servicing.

The Secretary has determined that this action would not be major as defined by Section 1(b) of Executive Order 12291. The Secretary also certifies that this action would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

The proposed standard would cover an estimated 1,000 drilling, 800 well servicing, and 750 special services companies.* The oil and gas well drilling, servicing, and special services industries are primarily engaged in producing and recovering oil and gas. Drilling forms own and operate rotary drilling rigs and are contracted to drill oil and gas wells. Well servicing contractors perform activities related to completion and maintenance of new wells or workover of existing wells using workover rigs. Well servicing includes special services on new and old wells including cementing, acidizing, fracturing, etc.

Exposure Profile

OSHA estimates that the proposed standard would cover approximately 95,000 employees—47,000 in drilling, and 48,000 in servicing and special services. These numbers reflect the recent declines in drilling and servicing through March/April 1983. The number of workers covered in servicing and special services by this proposal excludes approximately 40 percent of the workers in this industry covered by Part 1910 General Industry Standards or by Part 1926 OSHA Construction Standards. These excluded employees perform work not involved in "downhole" servicing, for example road construction.

Overview of Expected Effectiveness of Proposed Standard

The current regulatory environment for oil and gas drilling and servicing includes state regulation and OSHA General Industry Standards. Nonregulatory alternatives to mitigate hazards in the drilling and servicing industries include worker's compensation and tort liability. Both the regulatory and nonregulatory alternatives will result in an estimated baseline risk of 15,650–17,080 accidents and 48–52 fatalities in drilling, and 24,400–26,635 accidents and 94–103 fatalities in servicing, for 1984, the first year the rule is anticipate to be in effect. This is based on adjusted BLS estimates of accidents per 100 workers for 1981. In 1981 oil field accidents accounted for 259 fatalities. Further, the accidents represented 328,100 lost workdays for the drilling industry and 414,200 lost workdays for the servicing industry, or 198.1 lost workdays per 100 full-time workers for both industries.

The estimated average monetizable cost of an accident is $9,886 in the drilling industry and $12,357 for servicing and special services industries. The average cost of an accident in the drilling industry is estimated to be 20 percent lower than for the servicing industries, because accidents in drilling are generally less severe.

A major cost of these accident is the foregone production or value of goods and services that would have been provided by the worker if he or she had not been incapacitated by the injury. This reduction in output is a cost incurred by society in general. In addition, society incurs the cost of medical treatment for these accidents. Because of the severity of these accidents, the medical treatment required is often complex and prolonged.

The total social cost of foregone production and medical treatment associated with injuries and fatalities in these industries is expected to be between $456 million and $498 million in 1984 (fatalities and totally permanent disabilities account for 18 percent of total accident costs). OSHA estimates that the proposed standard would significantly reduce the injury and fatality incidence rate and save between $150 and $164 million in 1984, which would be the first full year after implementation of the standard. The present value of this reduction in social cost for 1984–1993 is expected to be between $1.02 billion and $1.32 billion, using a 10-percent discount rate. This period represents the first 10 years that the standard will be in effect. The reason for the range in the estimated number of accidents and the monetized economic benefits reflects the use of two alternative growth projections—one assuming zero growth and one an annual growth of 4.5 percent during 1983–1993.

Reduction in these social costs represents only some of the benefits that would be forthcoming when the proposed standard is implemented. Many of the impacts of the accidents in these industries such as the pain and suffering of the affected workers and their families are not quantifiable. Given the severity of accidents, the nonquantified social costs are expected to be substantial. Hence, the figures above underestimate the true social costs.

Overview of Compliance Costs

Industry conditions and practices in March/April 1983 are used as the baseline to measure the cost of complying with the proposed standard. The unit cost extimates per rig (or special service unit) are combined with the number of facilities and employees affected by the proposed standard to yield the total compliance cost.

*A few provisions will impact on oil producing firms.

The estimated annual cost of the proposed standard for the oil field industries is $22.3–24.3 million. Equipment cost would represent 41.0 percent of total annual costs. Work practice modifications and training would represent 47.8 percent and 11.1 percent of the total annual cost, respectively. The present value of the total cost stream from 1984–1993 discounted at 10-percent annually would be between $151 million and $195 million. Again, these ranges reflect the use of the two growth assumptions mentioned previously.

Blowout prevention is one of the major objectives of the proposed OSHA standard. Blowouts cause severe occupational injury as well as property and environmental damage. The requirement for blowout prevention equipment would be the largest cost component of the proposal and would account for 11 percent of the total estimated compliance costs. In another section of this preamble, OSHA requests additional information on the frequency and severity of blowouts and hence the need for regulatory action. In addition, OSHA seeks information on whether market incentives (such as reduced cost of workers' compensation and insurance as well as reduced tort liabilities) prompt employers to provide adequate protection against the hazards of blowouts in the abcense of regulation. The proposed OSHA standard also would require specific handling procedures for hydrogen sulfide, a poisonous gas found in some oil and gas formations. This requirement would account for 10 percent of the total compliance cost.

Industry Impacts

Compliance costs for the oil field industries are expected to be relatively small on a per firm or per rig basis. It must also be noted that compliance costs are overestimated because accident prevention should also increase productivity by reducing the costs of downtime, administration costs, insurance premiums, and environmental damage.

Compliance costs on a per rig basis are $2.639 for drilling and $3.054 for servicing. Compliance costs as a percentage of total revenue for individual firms would be 0.1 percent for the drilling industry and 0.8 percent for the servicing sector. For special services, the cost would vary from 0.03 to 0.34 percent, depending on the type of unit.

These industries, however, are currently in a downturn as a result of the decline in wellhead revenues. Small drilling firms are in a particularly poor financial condition as capacity for the industry is below 50 percent. Several small firms have ceased operations and more may likely follow.

This contraction of these industries, however, is due to the current reduced demand for oil and gas and the resultant decline in fuel prices. It is not expected that the proposed OSHA standard would have a perceptible inpact on the rate of firms leaving the oil field business.

Technological Feasibility of the Proposed Standard

OSHA is required to assess the technological feasibility of new regulations prior to promulgation. The safety equipment and work practices contained in the proposed OSHA standard have been demonstrated to be technologically feasible. A significant protion of the firms in the industry are currently implementing the measure or are clearly capable of doing so. This conclusion is based on a comparison of current industry practices compared with the requirements of the proposed standard.

In summary, the high levels of compliance observed in site visits and confirmed in discussions with industry experts indicate that the vast majority of requirements in the proposed standard have already been implemented by the industry. These requirements are clearly technologically feasible. Even those subparagraphs in the proposed standard that are generally not followed are capable of being complied with and are therefore technologically feasible.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 (U.S.C. 601 *et seq.*)), OSHA does not believe that the regulation would have an adverse impact upon a significant number of small entities.

As the analysis indicates, the current decline in demand for oil and gas in combination with declining fuel prices has sharply cut revenues and profits of both drilling and servicing companies, and has an adverse impact upon the smaller firms in these industries. A number of small companies are either barely profitable or are incurring losses. In such a situation, any added cost would be burdensome. Yet, the problem for these small firms is not the added cost of the OSHA proposal, it is the state of the oil and gas market. Thus, the financial problems will persist irrespective of OSHA as long as the current slump in oil drilling and servicing continues. It appears that these industries overexpanded during the late 1970's and are likely to shrink somewhat in the near future. Much of this shrinkage is likely to occur through the exit of the smaller companies. While cost attributable to this proposal may hasten their decline somewhat, such costs will not be the source of the decline.

OSHA is aware of the sensitivity of this issue, however, and requests public comment on the extent of small business burdens which may result from this proposal and other regulatory alternatives.

Other Impacts

OSHA has reviewed the likely effects of this proposal on productivity and market concentration in the drilling and servicing industries, and has concluded that the proposal will not significantly affect these factors. OSHA also has reviewed the macroeconomic impact of the proposal on employment and inflation and has determined that these impacts also will not be significant.

Environmental Impact

This proposal has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 et seq.), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary has determined that the proposed rule will have no significant environmental impact. Although safety standards rarely impact on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment, it is appropriate to examine whether the proposed provisions of the OSHA oil and gas well drilling and servicing standard (29 CFR 1910.270) will alter the environment external to the workplace.

Both oil and gas well drilling and servicing are activities that can have potential environmental impacts, such as those resulting from blowouts. These types of environmental accidents come under the jurisdiction of the Environmental Protection Agency (EPA) and are covered by the Clean Air Act of 1977 (33 U.S.C. 1251 *et seq.*).

The requirements of the proposed standard concern mainly work practices and procedures, emergency planning, education and training, fire prevention and protection, equipment use and maintenance, and medical treatment and first-aid.

One provision of the proposal—the use and maintenance of blowout prevention equipment—may have some beneficial impact on the environment.

This equipment is required when well surface pressures are encountered that present blowout hazards, when such pressures are anticipated at the well site, or when drilling in areas where there is no prior knowledge of the kinds of well surface pressures to be encountered. This provision may prevent some environmental damage, since it is intended to prevent blowouts. Most other provisions of the standard, however, appear unlikely to have any significant environmental consequences, either positive or negative.

VI. Recordkeeping

The proposed standard contains a "collection of information" (recordkeeping) requirements pertaining to hydrogen sulfide monitoring procedures (§ 1910.270(d)(8)). In accordance with 5 CFR Part 1320 (Controlling Paperwork Burdens on the Public), OSHA has submitted the proposed recordkeeping requirement to the Office of Management and Budget (OMB) for review under Section 350(h) of the Paperwork Reduction Act. Comments regarding the proposed recordkeeping requirements may be directed to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Occupational Safety and Health Administration, Washington D.C. 20503.

VII. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. These comments must be postmarked on or before March 5, 1984 and submitted in quadruplicate to the Docket Officer, Docket S-360, Room S6212, U.S. Department of Labor, Washington, D.C. 20210. Written submissions must clearly identify the specific provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding. The preliminary regulatory assessment and the exhibits cited in this document will be available for public inspection and copying at the above address. OSHA invites comment concerning the conclusions reached in the economic impact assessment.

Additionally, interested persons may file objections to the proposal and request an informal hearing with respect thereto. The objections and hearing requests should be filed in accordance with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked on or before March 5, 1984;

3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

VIII. State Plan Standards

The 24 States with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final rule. These states are: Alaska, Arizona, California, Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

IX. Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; U.S.C. 655, 657, Secretary of Labor's Order No. 9-83 (43 FR 35736)), and 29 CFR Part 1911, it is proposed to add a new § 1910.270 to 29 CFR Part 1910 as set forth below.

Singed at Washington, D.C. this 22nd day of December 1983.

Thorne G. Auchter,

Assistant Secretary of Labor.

List of Subjects in 29 CFR Part 1910

Occupational safety and health, Safety, Oil and gas well, Drilling, Well servicing, Chemicals, Electric power, Explosives, Fire prevention, Flammable materials, Footwear, Gases, Hazardous materials, Ladders and scaffolds, Machinery, Protective equipment, Respiratory protection, Signs and symbols, Tools, Welding.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended by adding a new § 1910.270 and Appendices A, B, C, and D to read as follows:

§ 1910.270 Oil and gas well drilling and servicing.

(a) *Scope and application.* (1) *Scope.* This section contains requirements for drilling, servicing and related operations performed on, or in support of, potential and actual oil and gas wells, including injection wells and water supply wells. The standard addresses hazards associated with assembling and disassembling rigs, rotary drilling, well servicing, cementing, drill stem testing, well completion, wireline services, and acidizing. In addition to the provisions of this section, all other relevant provisions in Part 1910 apply to oil and gas well drilling and servicing. This section does not apply to site preparation, which includes grading, road construction, excavating, and pit construction, since these operations are covered by Part 1926, Construction Safety and Health Standards, of this Title.

(2) *Application.* The requirements of this section apply to all rigs engaged in these operations, whether they are land-based rigs or over-the-water rigs except to the extent that 29 U.S.C. 653(b)(1) prohibits the application of the OSH Act. Exploratory wells, development wells, injection wells and water supply wells drilled in support of oil and gas recovery operations are also covered by this section. The requirements of this section do not apply to cable tool drilling, drilling for seismic tests, subsoil structural investigations, drilling of wells for sulfur and other minerals, nor to water wells drilled for purposes other than to support the recovery of gas or oil.

(b) *Definitions.*

Acidizing means to treat oil-bearing limestone or other formations with acid under pressure to increase production.

Air drilling means a method of rotary drilling using compressed air as its circulating medium.

Anchor means a device that is used to secure, fasten, or stablize.

Annular blowout preventer means a large valve, usually installed above the ram preventers, that forms a seal in the annular space between the pipe and wellbore.

Bleed-off line means the pipe used to release pressure from a well or pressurized equipment.

Blind ram means that part of the blowout preventer which serves as the closing element when no pipe is present in the hole. Its ends do not fit around the drill pipe, but seal against each other and shut off the space below completely.

Blooey line means the discharge pipe from a well being drilled by air, gas or mist drilling. The blooey line is used to conduct the air, gas or mist used for circulation away from the rig to reduce the fire hazard as well as to transport the cuttings a suitable distance from the well.

Blowdown line means the surface pipe which carries oil, gas or other fluid from a well to processing equipment or storage.

Blowout means an uncontrolled flow of gas, oil or other well fluids into the atmosphere.

Blowout preventer (BOP) means the equipment installed immediately above the casing/conductor to prevent the escape of pressure into the atmosphere.

Boomer (load binder) means a lever actuated device used to tighten chains on a load of pipe or other equipment to make it secure, or to tighten backstays or anchors on derricks and masts.

Block valve means a shut-off vale.

Borehole means the wellbore; the hole made by drilling or boring.

Brake means a device for arresting the motion of a mechanism, usually by means of friction, as in the drawworks brake.

Break out means to unscrew one section of pipe from another section.

Casing means the pipe used to line a well to prevent caving in during drilling and to provide a means of extracting petroleum if the well is productive.

Casinghead means a steel fitting that connects to the first string of casing and provides a housing for slips and packing assemblies which are used to suspend the intermediate strings of casing.

Cathead means a spool-shaped extension of the drawworks shaft use to lift heavy equipment and to make up or break out drill pipe.

Catwalk means the ramp at the side of the drilling rig where pipe is laid out to be hoisted to the derrick floor by the catline. The term can also mean an elevated walkway.

Cellar means a pit in the ground to provide additional height for equipment between the rig floor and the wellhead.

Cementing means the application of a liquid slurry of cement and water to various parts inside or outside the casing.

Change house means a small building used by the crew members to change clothes.

Check valve means a valve that permits flow in one direction only.

Choke line means an extension of pipe from the blowout preventer used to direct well fluid from the annulus to the choke manifold.

Christmas tree means the control valves, pressure gauges, and chokes assembled at the top of a well to control the flow of oil, gas or other fluid after the well has been drilled and completed.

Come-along means a manually-operated device used to tighten guy wires or move heavy loads.

Confined space means an enclosed working space (including, but not limited to, tanks, vats, vessels, and boilers) with limited or restricted ingress and egress and possessing known or potential hazards of:

(1) Insufficient oxygen to support life;

(2) Flammable, highly reactive or unstable gases, vapors, fumes or solids;

(3) Toxic gases, vapors, fumes or solids immediately dangerous to life; or

(4) Presence of energy sources (e.g., thermal, chemical, mechanical, electrical) where the confinement factor increases the likelihood of contact between the energy source and employees.

Pits, cellars and other open-topped spaces are not considered confined spaces whenever:

(1) Their depth is four (4) feet or less; or

(2) Their depth is less than one-half the smallest dimension of the top opening.

Crew member means a driller/operator, derrickman and floorhands, helpers, etc., who operate or work on a rig.

Crown block means an assembly of sheaves or pulleys mounted on beams at the top of the derrick or mast over which a hoisting line is reeved.

Deadline means the line from the crown block sheave to an anchor.

Derrick means a large load-bearing structure that supports the crown block. (Also see mast.)

Derrickman's working platform (See monkeyboard, stabbing board, tubing board, rod basket.)

Detector tube means a sampling device used to detect atmospheric contaminants and provide an approximation of the concentration of the contaminant.

Development well means a well drilled in a proven field to complete a pattern of production.

Doghouse means a small enclosure on the rigfloor used as an office, storehouse or changeroom.

Drawworks means the hoisting mechanism on a drilling, well servicing or workover rig. It is essentially a large winch that spools off or takes in the hoisting line and thus raises or lowers the drill stem and bit, tubing or sucker rods.

Drill collar means a heavy thick-walled steel tube placed above the drill bit in order to add weight.

Drill pipe means the seamless pipe used to rotate the drill and circulate drilling fluids.

Drill stem means all members in the assembly used for drilling by the rotary method from the swivel to the bit, including the kelly, drill pipe and tool joints, drill collars, stabilizers, and drill bit.

Drill stem test means a method of gathering data on the potential productivity of a formation by permitting the flow of petroleum products back through the drill pipe.

Drill string means the column or string of drill pipe including attached tool joints.

Driller's/operator's console means a cabinet on the rig floor whch contains the controls that the driller/operator uses to manipulate the various functions of the rig.

Drilling means the operation of boring a hole in the earth, deepening a hole, or use of similar processes to clean or modify an existing well.

Drilling fluid means any fluid circulated in a well which is being drilled or worked over.

Drilling rig means the derrick, drawworks and all other surface equipment of a drilling unit.

Drum means a cylinder around which wire rope is wound in the drawworks.

Elevator means a set of clamps or latches that grip a stand, or column of casing, tubing or drill pipe so that the stand can be raised or lowered into the hole.

Exploratory well means a well drilled in an area where no oil or gas production exists. It is also known as a wildcat well.

Fastline means the end of the drilling line that is affixed to the drum or reel of the drawworks.

Fingerboard means a rack that supports the tops of the stands of pipe being stacked in the derrick or mast. It has several steel finger-like projections that form a series of slots into which the derrickman can set a stand of drill pipe or tubing as it is pulled out of the hole.

Fish means an object left in the wellbore.

Fishing means the act of retrieving a fish from the wellbore.

Flow line means the surface pipe which carries drilling fluid from surface tanks or other storage.

Fracturing means a method of stimulation in which a fluid is pumped into the well under high pressure to create or enlarge cracks in a formation.

Frozen plug means an intentional blockage formed by the use of a refrigerant or cryogen to solidify liquid in the pipe.

Gas drilling means a method of rotary drilling using compressed gas as its circulating fluid.

Gin pole means hoisting equipment and a pole or arrangement of poles for lifting heavy machinery.

Headache post means a device used to prevent broken or whipping lines from striking the driller.

Hoist means an arrangement of pulleys and wire rope or chain used for lifting heavy objects; a winch or similar device; the drawworks.

Hoisting equipment means any powered arrangement of pulleys and wire rope or chain used to lift equipment.

Hot oil operations means the treatment of a producing well with heated oil to melt accumulated paraffin in the tubing and annulus.

Immediately dangerous to life and health (IDLH) means conditions that pose an immediate threat to life, or conditions which are likely to result in immediate, permanent, adverse health effects.

Kelly means the hollow three-, four-, or six-sided steel members suspended from the swivel which goes through the rotary table and connects to the top-most joint of drill pipe.

Kelly bushing means a special device fitted to the rotary bushing that transmits torque to the kelly and simultaneously permits vertical movement of the kelly to make hole.

Kelly cock means a valve installed below the swivel and either above or below the kelly to keep pressure off the swivel and rotary hose.

Kelly hose means a reinforced, flexible tube on a rotary drilling rig that conducts the drilling fluid from the standpipe to the swivel; also called the mud hose or rotary hose.

Kick means an entry of water, gas, oil, or other formation fluid into the wellbore, occurring because formation pressures are greater than the pressure exerted by the column of drilling fluid.

Kill means (a) In drilling—to prevent a threatened blowout by taking suitable preventive measures (e.g., to shut in the well with the blowout preventers, circulate the kick out, and increase the weight of the drilling fluid); (b) In production—to stop a well from producing oil and gas so that reconditioning of the well can proceed.

Kill line means a high pressure line that connects the mud pump and the well annulus through which heavy drilling fluid can be pumped into the well to control a threatened blowout.

Lubricator means a special length of casing or tubing placed temporarily above a valve on top of the casing or tubing head used to run tools or substances into a producing well without having to kill it.

Manifold means an accessory system of piping that divides a flow, combines several flows, or reroutes a flow.

Mast means a portable derrick capable of being erected as a unit, as distinguished from a standard derrick, which cannot be raised to a working position as a unit.

Mist drilling means a drilling technique that uses air or gas and a foaming agent as a circulating medium.

Monkeyboard means the platform on which derrickmen work. (Also called tubing board and rod basket.)

Mousehole means an opening through the rig floor used to temporarily store a length of drilling pipe for later connection to the drill string.

Mud means the liquid circulated through the wellbore during rotary drilling and workover operations.

Mud box means a device wrapped around pipe connections to deflect fluid released when a joint or stand of pipe containing liquid is unscrewed.

Mud settling tank means the mud pit into which mud flows and in which heavy solids are allowed to settle out.

Oil saver means a device used to prevent leakage and waste of gas, oil or water around a wireline.

Perforate means to pierce the casing wall and cement to provide holes through which formation fluids may enter or to provide holes in the casing so that materials may be introduced into the annulus between the casing and the wall of the borehole.

Personnel basket means a device having waist high solid or mesh sides and an opening for access used to position personnel.

Pit means a storage container used to hold liquids that are circulated through the drill string.

Platform means any surface from which work may be performed.

Pole mast means a portable mast constructed of tubular members.

Power tongs mean pneumatically or hydraulically operated tools that serve to spin the pipe up tight, and in some instances to apply the final makeup torque.

Proppant means a granular substance carried in suspension by the fracturing fluid that serves to keep the cracks open when the fracturing fluid is withdrawn after a fracture treatment.

Pull tubing means the removal of tubing from a well.

Pulling a string means removing the entire length of casing, tubing or drill pipe from the hole.

Pump means a device to increase the pressure on a fluid, or to raise a fluid to a higher level.

Racking platform means a small platform with fingerlike steel projections attached to the side of the mast on a well servicing unit.

Ram means the closing and sealing component on a blowout preventer.

Rathole means a hole in the rig floor 30 to 35 feet deep, lined with casing that projects above the floor, into which the kelly and swivel are placed when the kelly and swivel are not in the drill string.

Reeve means to pass (as the end of a rope) through a hole or opening in a block or similar device, or over a sheave.

Rig means the derrick or mast, drawworks, and attendant surface equipment of a drilling, workover or well servicing unit.

Rig up operations mean the operations necessary to prepare a rig for drilling, servicing, workover and related activities.

Rod basket means the derrickman's work platform on service and workover rigs, in which rods are racked (see monkeyboard).

Rotary drilling means a drilling method in which a hole is drilled by a rotating bit to which a downward force is applied.

Rotating head means a sealing device usually installed above the main BOP used to close off the annular space around the kelly when drilling with pressure at the surface.

Round trip means the operation of hoisting the drill stem or other tubular material from the wellbore, and returning these to the wellbore.

Shale shaker means a vibrating sieve used to remove cuttings from the circulating fluid.

Sheave means a grooved pully.

Skidding means to move a rig with a standard derrick short distances with little or no dismantling of equipment.

Slips mean wedge-shaped pieces of metal with teeth or other gripping elements that are used to prevent pipe from slipping down into the hole or to hold pipe in place.

Snubbing means to put pipe or tools into a high-pressure well that has not been killed (i.e., to run pipe or tools into the well against pressure).

Snub line means the tong safety line.

Stabbing board means a temporary elevated platform, erected in a derrick or mast.

Standpipe means a vertical pipe rising along the side of the derrick or mast, which joins the mud or other fluid pump to the rotary hose and through which mud or other drilling fluid is pumped.

Stripping means to pull rods and tubing from a well at the same time.

Stripper rubber means: (1) A rubber disk surrounding drill pipe or tubing that removes mud as the pipe is brought out of the hole; (2) the pressure sealing element of a stripper blowout preventer.

Substructure means the foundation on which the derrick or mast sit, containing space for storage, well control equipment and in some instances, the engine.

Subsurface pump means a submersible pump placed below the level of fluid in a well.

Swab means a rubber-faced hollow cylinder mounted on a hollow mandrel used to remove fluids from a well when pressure is sufficient to support flow.

Swabbing means operation of a swab on a wireline to lift fluid from the wellbore to determine if a well will flow, or to empty the hole prior to perforating.

Swivel means a rotary tool that is hung from the rotary hook and traveling block to suspend and permit free rotation of the drill stem.

Tongs means the large wrenches used for turning when making up or breaking out drill pipe, casing, tubing, or other pipe; variously called casing tongs, rotary tongs, etc., according to the specific use.

Tool joint means a heavy coupling element for drill pipe made of special alloy steel. Tool joints have coarse, tapered threads and seating shoulders designed to sustain the weight of the drill stem, withstand the strain of frequent coupling and uncoupling, and provide a leakproof seal. The male section of the joint, or the pin, is attached to one end of a length of drill pipe, and the female section, or box, is attached to the other end. The tool joint may be welded to the end of the pipe or screwed on or both. A hard metal facing is often applied in a band around the outside of the tool joint to enable it to resist abrasion from the walls of the borehole.

Tour (pronounced "tower") means the work period of a crew.

Traveling block means an arrangement of pulleys, or sheaves, through which drilling line is reeved and that moves up and down in the derrick or mast.

Tubing means small diameter pipe that is run into a well to serve as a conduit for the passage of oil and gas to the surface.

Tubing board means the derrickman's work platform during the time the crew is pulling or running tubing into the well.

Vee-door means an opening at floor level in a side of a derrick or mast opposite the drawworks, used to bring pipe and casing from the pipe rack.

Weight indicator means an instrument that shows the weight suspended from the hooks.

Well completion means the activities and methods necessary to prepare a well for the production of oil and gas; and method by which a flow line for hydrocarbons is established between the reservoir and the surface.

Wellhead means the equipment used to maintain surface control of a well, and includes the casinghead, tubing head and christmas tree.

Well servicing means the remedial or maintenance work performed on an oil or gas well to improve or maintain the production from a formation already producing.

Well servicing rig means a portable rig consisting of a hoist, engine and a self-erecting mast. A workover rig is basically the same as a well servicing rig except it has a substructure, well rotary, mud pumps and pits and other equipment to permit handling and working a drill string.

Wireline means a metal cable usually small in diameter that is used for lowering special tools (such as logging devices, perforating guns, etc.) into the well.

Wireline services means those operations which can be accomplished by the use of tools or equipment which can be set, pulled, or operated on a wireline.

Wire rope means a cable composed of steel wires twisted around a central core of hemp or other fiber to create a rope of great strength and considerable flexibility.

(c) *General requirements for all operations.* (1) *Medical and first aid.* In addition to the requirements of Subpart K of this Part, and prior to commencement of work at the well site:

(i) At least one person who is trained and currently certified in first aid and basic rescue techniques shall be available at the well site to render first aid any time work is in progress.

(ii) An instrument of communication (telephone, two-way radio, etc.) shall be available at or near the well site and in working condition for use in establishing contact for obtaining medical assistance when work is in progress.

(iii) The employer shall arrange for transportation of persons needing prompt medical attention. The vehicle used for such transportation shall be of such size to accommodate a person on a stretcher and an accompanying person; designed or equipped to protect the injured worker and the accompanying person from the weather elements and dirt or dust and allow verbal communication between the operator of the vehicle and the injured worker or the accompanying person. If helicopters are to be used, then the requirement for verbal communication does not apply.

(iv) Either of two alternative medical contingency plans shall be developed and communicated to affected employees:

(*a*) A plan shall be developed and all rig personnel trained in operations of the plan. No employee shall be allowed to work on or about the rig until trained in the plan operation. The plan development and preparation and training of the rig personnel shall be certified in writing by the employer. Employees shall be retrained at least once each year on the medical contingency plan; or

(*b*) The employer shall develop a written medical contingency plan prescribing the procedures for obtaining prompt medical assistance for injured employees who require more than first aid treatment. This contingency plan shall prescribe the procedures to be used for establishing communications with the source of medical assistance, including the location of the instrument used for communication (telephone, two-way radio) and prescribe procedures on the arrangements made for the transportation of injured employees. All employees at the well site shall be informed of the procedures of this contingency plan. The contingency plan, or that portion of the contingency plan to be carried out by onsite employees, shall be available at the worksite for inspection by the Assistant Secretary or his designee.

(2) *Emergency planning.* (i) An emergency action plan shall be developed and implemented for all rig operations. This plan shall prescribe the emergency procedures which are to be followed in the event of a kick, fire, hydrogen sulfide release or other well emergencies which may be encountered. This plan shall meet the requirements of § 1910.38(*a*) except that a written plan is not required if the employer:

(*a*) Prepares an emergency action plan and provides all rig crew members with details of the plan,

(*b*) Permits no employee to work on or about the rig until that employee has been trained in the emergency action plan,

(*c*) Certifies (in writing) that steps (*a*) and (*b*) have been completed.

(ii) All employees shall be given instructions on the emergency procedures discussed in this emergency action plan before starting on the job, and again at no greater interval than once each year thereafter.

(3) *Employee training and education.* (i) Before new employees (or current employees reassigned to another job) begin work, they shall be instructed in the recognition of hazards peculiar to their job.

(ii) All employees who are required to use personal protective equipment shall be instructed in the proper methods of use, inspection and care of such equipment.

(iii) Employees who are required by paragraph (e)(1)(v) to use locks and tags shall be trained in the use and application of lockout/tagout procedures. As a minimum, this training shall include a discussion of the procedure, when it is to be used, and the reasons for the procedure. This training shall be conducted annually or more frequently if necessary to ensure that affected employees are aware of the procedure.

(iv) The employer shall ensure that training and education is conducted frequently enough to assure that each employee is able to perform his/her assigned duties in a manner so as not to endanger himself/herself or any other employee. In no case shall this training take place less than annually.

(v) Employees working on rigs shall be trained in operations and procedures to be followed in implementing all plans. No employee shall be permitted to work on rigs unless that employee has either:

(*a*) Received detailed training on procedures to be followed and methods of implementing all plans.

(*b*) Is made aware of locations of written plans and when these plans should be implemented.

(4) *Over water operations.* (i) Two emergency means of escape from platforms shall be provided when working over water. Controlled descent devices, which limit the employee's velocity to 15 ft/sec (4.6 m/sec) or slower, emergency escape ladders, stairs or other accessible means may be used for emergency escape.

(ii) Each continuously-manned platform shall be provided with enough lifefloats or alternatives to accommodate all persons present at any one time, but in no case shall there be less than two lifefloats. In addition, the lifefloats or alternatives must be approved by the U.S. Coast Guard. The lifefloats or alternatives shall be placed in accessible locations and mounted on the outboard sides of the working platform in such a manner as to be readily launched.

(iii) A litter capable of safely hoisting an injured person shall be available and accessible.

(iv) U.S. Coast Guard approved personal flotation devices shall be available and accessible for each employee preforming operations over water. When employees are exposed to the potential of falling into the water during specific work tasks, personal flotation devices shall be worn.

(v) At least four U.S. Coast Guard approved ring buoys or equivalent rescue flotation devices, with sufficient attached and secured line to effect a rescue, shall be conspicuously located and readily available for use in water rescue operations. Each ring buoy shall be equipped with an approved water light, or retroreflective material shall be attached to the flotation device for the purpose of locating the flotation device during other than daylight hours.

(iv) Tag lines shall be used to guide and steady equipment being loaded or unloaded from vessels.

(5) *Housekeeping.* (i) Work areas shall be kept free of slipping and tripping hazards. Loose materials, equipment or tools not immediately required for the job shall be removed from walking-working surfaces and stored.

(ii) Flammable liquids may not be used for cleaning purposes.

(iii) Hazardous leaks or spills shall be promptly cleaned up to minimize fire and slipping hazards. Hazardous liquids resulting from the pulling of wet strings of pipe, tubing or rods shall be conveyed away from the rig floor.

(iv) When employees are working in a cellar, no loose equipment or materials shall be in the cellar except those immediately required for the job.

(6) *Illumination.* (i) The lighting on the rig floor shall be at least five foot candles at all work areas.

(ii) The lighting shall be at least 5 foot candles on the derrickman's working platform, work areas around mud pumps, and catwalks.

(iii) The lighting shall be at least 2 foot candles at the shale shaker, stairway and other walking areas.

(iv) Lighting of at least 5 foot candles shall be provided when it is necessary to perform maintenance, including lubrication on the crown block, during other than daylight hours.

(d) *Specific requirements for all operations.* (1) *Raising or lowering derrick or mast and rig-up operations.* (i) Prior to commencing rig-up operations the employer shall plan the arrangement of all equipment and outbuildings to minimize hazardous conditions and to ensure the operations can be safely accomplished.

(ii) Where change rooms and outbuildings are provided, they may not be located in line with the ends of pressure vessels nor within 30 feet (9.2 m) of rig fuel tanks.

(iii) A visual inspection of the raising and lowering mechanism of the mast shall be made before operations commence. Any problems or defects detected shall be corrected before raising or lowering the mast or derrick.

(iv) Prior to raising or lowering any mast, all tools and materials which are not secured shall be removed from the mast.

(v) Employees may not be under a derrick or mast which is being raised or lowered.

(vi) During rig-up operations, the rotary table opening in the floor shall be covered and remain covered until the rotary table is ready to be moved into place. If this procedure must be changed due to unusual rig-up problems, then all employees exposed to the hazard of falling into the rotary table opening shall be instructed about the hazard and how the new rig-up procedure is to be safely accomplished.

(vii) Truck-mounted masts may not be driven over the ground while in a raised position unless specifically designed for this. This does not apply to the skidding of a drilling rig or pole mast well servicing rig.

(viii) Well operations may not be commenced until the rig is rigged up in a safe manner.

(ix) All air shall be bled from the hydraulic system and the system checked for proper operation before hydraulic cylinders are used to lower derricks or masts.

(2) *Emergency escape.* (i) The derrick or mast on all land-based rigs shall have a means of escape available upon completion of rig-up operations. Trips or pulls may not be made until the emergency escape is available. The means of escape shall be rigged and secured to provide a safe and readily accessible escape route from the derrickman's working platform (monkeyboard, rod basket, tubing board).

(ii) A means of escape shall be rigged and secured to provide a safe and readily accessible escape route before operations commence which require a crew member to be on the stabbing board.

(iii) The emergency escape route shall be kept clear of obstructions and arranged to carry the crew member away from the welihole and the drilling floor permitting a safe landing.

(iv) If an emergency escape line is used, the employer shall ensure that the tension on the emergency escape line will permit a safe landing for the user.

(v) When the emergency escape device does not have an automatic velocity limiting control, then it must be equipped with an operator controlled braking device so the operator can make a safe landing. For a manually operated braking emergency escape unit, a safe landing shall mean that the person can stop more than 20 feet (6.1 m) from the anchor point.

(vi) For the emergency escape unit that is equipped with an automatic velocity limiting device or controlled descent device, a safe landing shall mean that the person can stop at the anchor point without injury. If used, automatic velocity limiting devices may not permit speed above 15 ft/sec (4.6 m/sec) at the landing. Emergency escape lines shall have their own anchors, separate from rig guying anchors, unless a method is used to permit the safe use of guy anchors.

(3) *Fire prevention and protection.* (i) Drilling rigs shall be equipped with at least four fire extinguishers each having a minimum rating of 40 B:C. The fire extinguishers shall be distributed in those areas where Class B hazards may be present.

(ii) Well servicing rigs shall be equipped with at least two fire extinguishers, each having a minimum rating of 40 B:C. The fire extinguishers shall be distributed in those areas where Class B hazards may be present.

(iii) At least one fire extinguisher with a minimum rating of 2A shall be available on all rigs. The Class A fire protection may be provided by a fire extinguisher with the minimum ratings for A:B:C in lieu of providing an additional extinguisher.

(iv) All fire extinguishers required above shall be installed, maintained and tested in accord with subpart L of this Part.

(v) Effective January 1, 1986, on land locations, pits and open tanks used to circulate flammable liquids shall be located at least 50 feet (15.3m) from the wellhead. Where this distance is not practical, a combustible gas and vapor detection and alarm system shall be used between the wellhead and the pits and open tanks to warn employees of accumulations of flammable vapors.

(vi) On land locations, portable light plants shall be located at least 100 feet (30.5 m) from the wellhead to isolate possible sources of ignition. Equivalent safety and protective measures shall be taken where conditions do not permit maintaining spacing at 100 feet (30.5 m).

(vii) Open flame heaters may not be used in doghouses or outbuildings.

(viii) While operations are in progress at land locations, motor vehicles shall not come within the perimeter of the guy lines, or within 100 feet (30.5 m) of the wellhead if guy lines are not used, except as follows:

(*a*) When the motor vehicle is required for the operation to take place, or

(*b*) When an emergency requires a motor vehicle to come into the restricted area.

(ix) When motor vehicles must come into the restricted area, they shall be operated upwind from the wellhead. The time spent in the restricted area shall be kept to a minimum. The area within the guy line perimeter shall be posted with signs visible from normal vehicle approach directions. The signs shall be in accordance with subpart J of this Part.

(x) On land locations, flammable liquids or gases may not be stored within 50 feet (15.3 m) of the wellbore, except for fuel in the tanks of operating equipment. When terrain or location configuration do not permit maintaining this distance, equivalent safety measures shall be effected including gas detection equipment to warn employees of accumulations of flammable vapors. Tanks shall be labeled as to their contents. Drainage from any fuel storage areas shall be in a direction away from the wellhead, change rooms, outbuildings and work areas.

(xi) Iron sulfide shall be kept wet during its removal from tanks or other locations until disposed in a safe manner.

(4) *Handling drilling fluids and chemicals.* (i) Employees handling drilling fluid materials which contain hazardous substances shall be instructed in the risks involved as well as safe handling and personnel protection procedures.

(ii) Employees required to handle chemicals that may irritate or cause injury to skin, eyes, or respiratory systems shall wear personal protective equipment which will protect the hands, eyes, body skin or respiratory system from contact with such chemicals.

(iii) Eye wash equipment, with at least a 15 minute supply of water, shall be readily available at work areas when acids are being used. Where other hazardous chemicals, such as caustics, are used, a minimum of three (3) one quart squeeze bottles of eyewash solution or other treatment procedure, approved by a physician, shall be readily available.

(5) *Operation near overhead power lines.* (i) *Clearances.* Except where the electrical distribution and transmission lines have been deenergized and visibly grounded at the point of work, or where insulating barriers not a part of, or an attachment to, the derrick or mast have been erected to prevent physical contact with the lines, the derricks or masts shall be operated proximately to power lines only in accordance with the following:

(a) For lines rated 50 kv. or below, minimum clearance between the lines and any part of the derrick or load shall be 10 feet (3.1 m).

(b) For lines rated over 50 kv., minimum clearance between the lines and any part of the derrick or load shall be 10 feet (3.1 m) plus 0.4 inch (.1 m) for each 1 kv. over 50 kv., or twice the length of the line insulator but never less than 10 feet (3.1 m).

(c) In transit with no load and boom folded and/or lowered, the clearance shall be a minimum of 4 feet (1.2 m) vertically and 10 feet (3.1 m) horizontally.

(d) Materials stored near or under an electrical distribution line shall maintain the following clearance: lines rated 50 kv. or less—10 feet (3.1 m) plus maximum dimension of materials stored; lines rated 50 kv. or more—10 feet (3.1 m) plus 0.4 inch (.1 m) for each kv. over 50 kv. plus maximum dimension of material stored.

(ii) *Notification.* Before rigging up or commencing operations under or around power lines where the clearances in paragraph (d)(5)(i) are not maintained, the line owners or their authorized representative shall be notified so the power lines can be moved, relocated or deenergized.

(6) *Handling and racking pipe, drill collars and other tubular materials.*

(i) Racking foundations foundations and storage racks shall be designed to withstand the maximum anticipated load of racked pipe, drill collars and other intended loads.

(ii) Storage racks shall be designed or other means taken to prevent drill collars, pipe and other tubular material from accidentally rolling off the rack.

(iii) No employee shall be permitted to stand or walk or be between the pipe racks and a load of pipe during loading, unloading and transferring operations.

(iv) When pipe or similar material is moved to another rack, the vee-door or other location, it shall be secured. Pipe and drill collars, tubing and rods, and casing which are racked in the derrick or mast, shall be secured except when actually being worked.

(v) Drainage of the drill stem stands shall be provided to minimize the possibility of ice plug formation.

(7) *Riding hoisting equipment.* (i) Employees may not ride hoisting

equipment except as provided in this paragraph.

(a) Employees engaged in drilling operations may ride hoisting equipment under emergency conditions. When riding the travelling block, the employee shall wear a full-body harness attached to a lanyard anchored to the hoisting equipment. The lanyard shall be of such length and elasticity so that the force on the employee will not exceed 1,800 lbs (817 kilograms).

(b) Employees engaged in well servicing operations may ride the travelling block or elevator. When riding the travelling block or elevator, the employee shall wear a full-body harness attached to a lanyard tied off or anchored to the travelling block or elevator bales. The lanyard shall be of such length and elasticity so that the force on the employee will not exceed 1,800 lbs (817 kilograms).

(c) Employees engaged in wireline operations shall use a personel basket to ride the hoisting equipment.

(ii) When an employee rides the hoisting equipment the following conditions shall be met.

(a) The hoisting equipment shall be powered up and powered down, and the driller or operator of the hoisting equipment controls shall maintain visual contact with the employee at all times while the employee is riding.

(b) The travelling block or other apparatus must be equipped with an emergency stop device that cuts off or prevents power from being transmitted to the hoisting equipment, and applies brakes or other means of preventing the equipment from falling.

(c) The hoisting equipment must be brought to a full stop at the working platform to permit the employee to attach his full-body harness to the available lanyard or an anchor point at the working level before unhooking from the hoisting equipment. The reverse procedure shall be used when the employee is preparing to descend.

(iii) No employee shall be permitted to ride hoisting equipment when this equipment is carrying loads.

(8) *Hydrogen sulfide procedures.* (i) Except as provided in (d)(8)(ii) of this paragraph, the employer shall provide for a monitoring program to ensure the safety and health of those employees who may be exposed to hydrogen sulfide. The monitoring program shall include the use of detector tubes, an automatic environmental monitoring system, or other equally effective means. The surveillance areas to be monitored shall include, but are not limited to, the drilling floor around the borehole, the shale shaker and the mud setting tanks. The monitoring program and procedures shall include a written plan available at the well site for review by the Assistant Secretary or his representative.

(ii) Hydrogen sulfide monitoring is not required in the following circumstances:

(a) Drilling into or through formations that are known never to have produced hydrogen sulfide.

(b) Casing, cementing or completion of a well where hydrogen sulfide has not been detected during drilling.

(c) Workover or other treatment of a well in a formation or zone known never to have produced hydrogen sulfide in the general area.

(iii) When the employee's exposure to hydrogen sulfide gas exceeds those permitted in Subpart Z of this Part, approved respiratory protection equipment must be worn and the emergency action plan required in (c)(2) of this section must be activated. Respiratory protection equipment shall be in accordance with Subpart I of this Part. All employees working in an area of potential exposure to hydrogen sulfide shall wear or carry on their person an approved escape-type self-contained breathing apparatus, or they shall wear or carry on their person a respirator which provides equal or better protection. Those employees who must remain in or reenter the danger area in accordance with the emergency action plan shall have available, in addition to the escape units, an approved positive-pressure respirator to be worn while they remain in or return to the danger area.

(iv) Where an automatic hydrogen sulfide environmental monitoring system is used, it shall be connected to an employee alarm system which will alert employees of danger and allow them to initiate the emergency action plan.

(a) The testing of the automatic hydrogen sulfide environmental monitoring system shall be done at the time of installation to ensure proper functioning of the system, at least daily, prior to "tripping out," and after each "kick" is under control if the monitoring system did not automatically activate.

(b) The automatic hydrogen sulfide environmental monitoring system shall be maintained in operable condition except during repairs or maintenance. When the system is out of service, a manual monitoring program shall be used if work operations continue.

(v) All rigs, except those excluded by (d)(8)(ii) of this section, which are in operation on or after July 1, 1987, shall be equipped with an operable automatic hydrogen sulfide environmental monitoring system.

(9) *Confined spaces.* (i) *General.* (a) All confined spaces shall have gates, covers or other barriers to prevent inadvertent entrance into the space, unless the entrance is so located as to preclude inadvertent entry.

(b) All confined spaces into which employees may be required to enter shall be posted with signs warning of the hazards of entry and when entry is authorized. The sign shall include the name of the person responsible for authorizing entry into the confined space. In addition, the signs shall conform with the general requirements of Subpart J of this Part, and shall be in English and in other languages in common use by the employees.

(ii) *Establishing entry procedures and training requirements.* (a) The employer shall establish procedures for entry into any confined space before allowing employees to enter. All persons required to enter confined spaces (either to work or to perform rescue operations) shall be trained in these entry procedures before entering the confined space.

(b) The entry procedures shall address steps to be taken in the evaluation of hazards known to be present, or which can reasonably be predicted as being present. The procedure shall also address means to eliminate or mitigate the hazards and how to effect rescue in the event a worker within the confined space is trapped or requires assistance to escape. The procedures for communications between persons working within the confined space and those outside shall be established and means provided to maintain the communication link.

(iii) *Evaluation prior to entry.* (a) Prior to entry, the employer shall evaluate the known and potential hazards of entry into the confined space. This evaluation shall consider the reason for the entry and the feasibility of any alternative means of carrying out the work without entry.

(b) The evaluation shall consider the types of hazards which may be encountered, how the hazards may be measured or evaluated, and how the hazards may be controlled.

(c) In evaluating the atmosphere for oxygen content and for the presence of flammable materials, direct-reading instruments shall be used. Employees shall be trained in the proper use of these instruments.

(d) When toxic materials are known to be present, an evaluation of their concentration shall be made. If hand operated test methods such as detector tubes are used for this evaluation, employees shall be trained in the operation of this equipment.

(e) When the evaluations performed in (iii)(c) or (d) of this paragraph indicate the presence of a hazardous condition, steps shall be taken to eliminate or mitigate the hazardous condition, including further sampling which will be representative of the confined space atmosphere.

(iv) *Elimination or mitigation of hazards within confined space.* (a) Hazardous gases and vapors shall be removed by ventilation, purging or cleaning.

(b) Volatile liquids, which can be removed by flushing, cleaning or similar means, shall be removed prior to entry of employees.

(c) Confined spaces containing volatile liquids which cannot be readily removed, and which have toxic vapors that are IDLH, shall be provided with sufficient continuous ventilation to reduce levels of vapors below IDLH level. A warning system shall be provided to warn employees within the confined space in the event of failure of the ventilation.

(d) Where access to the exterior of the confined space allows, all pipes and lines that enter the confined space shall be disconnected and blind flanges or equally effective means used to close off the pipe or line. Where access to the exterior of the confined space is not possible, all pipes or lines entering or conveying or capable of carrying materials into the confined space shall be shut down and means taken to isolate the lines and prevent any flow.

(e) All pipes passing through confined spaces shall be inspected upon initial entry to determine if they are leaking. If leaking pipes are found, the confined space shall be vacated immediately and procedures instituted to stop the leaks before any other work is commenced.

(f) Exposed electrical circuits shall either be shut off and visibly grounded or insulated so that employees will not be exposed to contact.

(g) Mechanical parts within the confined space shall be disconnected and locked out, or otherwise rendered inoperative whenever hazards exist from exposure to moving parts within the confined space.

(h) Whenever the atmosphere within the confined space has the potential of containing or developing conditions IDLH, the employer shall:

(1) Equip each employee entering the confined space with safety lines attached to a belt or full-body harness to permit removal of the employee without rescuers entering the confined space;

(2) Provide an employee who is trained in rescue procedures as an observer outside the confined space, and who is in communication with those inside the space.

(3) Provide a lifeline system which has a mechanical advantage in lifting of at least two for vertical entry into a confined space.

(4) Ensure that whenever the entry way is smaller in diameter than the width of the entering employee's shoulders, the employee entering the space wears wristlets with separate lines to permit guidance of the hands, arms and torso through the access.

(i) In the presence of any condition known to produce (or potentially capable of producing) a cessation of breathing or of heart action, the employer shall have available a person trained and certified in cardiopulmonary resuscitation (CPR). If the person trained in CPR is not the rescuer or backup to the rescuer, means shall be available at the confined space area to summon promptly the person trained in CPR.

(v) *Additional requirements for entering inerted atmospheres.* When a confined space contains flammable materials, and has been inerted and it is decided that employees must enter this space with an inert gas atmosphere present, the employer shall, in addition to the other provisions of this paragraph:

(a) Provide sufficient flow of inerting gas into an inerted atmosphere to assure that vented air plus leakage plus external circulation into the space does not reach the upper explosive limit.

(b) Provide for warning of any reduction in the inert gas flow into the space below that reqired to maintain the inert atmosphere within a confined space.

(c) Require all employees to leave confined spaces that have been inerted whenever there is a failure of the inert gas flow or a reduction in concentration below that required to maintain the inert atmosphere.

(d) Ensure that employees do not enter any inerted space unless equipped with belts or harnesses, safety lines, and where vertical entry through restricted openings is to be made, wrist harnesses or wristlets.

(e) Ensure that no employee is permitted to work within a confined space protected by inerting unless a standby person is stationed immediately outside the confined space. The standby person may not undertake any tasks that will prevent immediate notice of any requirement to warn or rescue the employee within the space.

(f) Ensure that employees working within inerted spaces are given training and instruction on the extremely hazardous nature of the work, on how to safely undertake the work, on how to escape in event of difficulty, and the need to maintain communication with the standby person.

(g) Ensure that standby persons assigned to assist those inside the inerted confined space have been trained to carry out their immediate duties, in the need to maintain communication with employees within the space, in the procedures to warn employees in the event that situations develop that require immediate evacuation, and in rescue procedures.

(vi) *Rescue procedures.*

(a) In the event entry for a rescue is necessary, only trained rescuers shall be used to affect rescue.

(b) Rescuers may not enter a confined space until backup persons have been notified and their immediate availability assured.

(c) Any rescuer entering a confined space shall be equipped with safety lines (including a line rigged with a mechanical advantage of two), wristlets where necessary due to entryway restrictions, and either positive pressure self-contained breathing apparatus or positive pressure air-supplied respirators with backup emergency self-contained air supply, prior to entry.

(e) *Equipment requirements for all operations.* (1) *General requirements.* (i) Openings in the rotary table shall be covered when not occupied by a kelly drive bushing, pipe or other equipment.

(ii) Unless the rathole and mousehold are occupied with pipe or equipment, they shall be covered or otherwise guarded to prevent employees from stepping into them.

(iii) In accordance with Subpart D of this Part, guardrails shall be provided along the perimeter of the rig floor on all rigs where the fall height is 4 feet (1.2 m) or more above the ground. A chian used across the vee-door in lieu of guardrails shall be considered equivalent.

(iv) A ladder or stair meeting the requirements of Subpart D of this Part shall be provided for employee access and egress where employees work in a cellar 5 feet (1.5 m) or more in depth.

(v) The employer shall implement a lockout and tagout procedure to protect employees who may be exposed to hazards which is likely to cause injury while they are cleaning, servicing, adjusting or maintaining equipment on rigs.

(a) The lockout shall render the equipment inoperative and ensure that power sources may not be energized while the equipment is being cleaned, serviced, adjusted, or maintained.

(b) A tag shall be placed upon equipment controls or equipment operating parts indicating that they have been rendered inoperative; warning that

no inadvertent operation shall be carried out; and displaying the name of the person who placed the lock and tag.

(c) Each employee assigned to clean, repair, adjust, or maintain machinery or equipment shall be provided with locks and keys to be placed upon the equipment.

(d) The employee shall lockout and tagout the equipment prior to starting any or the work covered in this paragraph.

(e) All energy shall be dissipated prior to commencing work on locked out equipment.

(f) Locks shall be removed only by the employee who placed the lock. If it is necessary to remove a lock by other than the employee who placed the lock, then authorization shall be granted by the employee's supervisor, and by one other person authorized by the employer.

(vi) All employees on the rig site shall wear safety-toe footwear meeting the requirements of Subpart I of this Part.

(vii) Machinery may not be operated without all guards in proper position and in safe condition except during repair or maintenance work, or necessary testing of machinery.

(viii) All wire rope used for hoisting purposes shall be of a design strength to lift safely and to handle all anticipated loads under the conditions of service except in emergencies. The maximum working load of the hoisting line shall be based on a minimum design factor of three for all operations. All hoisting lines in use shall be usually inspected daily in accordance with Subpart N of this Part, except no written records are required. The rope shall be removed from service if found to be damaged or worn.

(ix) All pins used to secure chains, lines, clevises, etc., shall be secured.

(2) *Derricks, masts and guying.* (i) All derrick and mast platforms above the rig floor shall be constructed, maintained and secured to the structure to prevent inadvertent movement and to withstand all loads which may be placed on them.

(ii) Except for the ladder opening, no unguarded openings large enough to permit a person to fall through shall exist between the beams or main supports of the crown block.

(iii) All derricks and masts shall have a permanently mounted plate on them which displays the manufacturer's name; load rating including static hook load capacity with number of lines; and the recommended guying pattern when guying is necessary. All derricks and masts manufactured after January 1, 1986, shall display the date of manufacture.

(iv) Tools, parts, and other loose material overhead shall be in the derrick or mast only if there is occasion for their immediate use. Means shall be taken to prevent their falling.

(v) Employees may not work on the righ floor while repair work is in progress directly overhead in the derrick or mast unless their assistance is necessary for accomplishing the overhead job.

(vi) If a derrick or mast is damaged to the extent its safe use cannot be ensured, it shall be removed from service until repaired, and the adequacy of the repair shall be certified as at least equal to original specifications by a professional engineer, the manufacturer, or a repair facility whose capabilities to perform the repairs are certified by the employer in writing.

(vii) If emergency conditions make it impossible immediately to remove from service a derrick or mast that has been damaged, the derrick or mast shall be used only to the extent necessary to control the well, provided no employees are allowed to work in the derrick or mast, and all exposed employees are informed of the hazards that are present and the steps to be taken to avoid them.

(viii) Masts that require use of external guy lines to ensure stability shall have the external guy lines in place immediately following the raising and scoping of the mast.

(ix) The guying system for derricks and masts shall be erected in accordance with the pattern displayed on the mounted plate called for in (e)(2)(iii) of this paragraph. If this pattern cannot be followed due to the terrain or other conditions, then a guying pattern shall be used the provides the same degree of stability against overturning of the mast of derrick.

(x) Guy lines and auxiliary devices shall be inspected prior to each rig-up, and they shall be capable of withstanding all loads anticipated in normal service.

(xi) Tong back-up posts, kelly pull-back posts, tong back-up lines and safety lines may not be secured to the derrick or mast girts or legs unless the girts and legs are so constructed, and the lines so attached, that the stress loads imposed will not result in structural damage to the derrick or mast.

(3) *Derrick or mast ladders.* (i) All fixed ladders over 20 feet (6.1 m) in length mounted on a derrick or mast shall be equipped with a ladder safety device or other device which meets the requirements of Subpart D of this Part.

(ii) Those climbing assist systems which do not limit the maximum descent velocity of the employee to 15 ft/sec (4.6m/sec) or to automatically arrest the fall of an employee are not acceptable as a ladder safety device.

(iii) Where a climbing assist device is used along with an automatic control descent device, such an arrangement shall be acceptable as a ladder safety device.

(iv) Climbing assist devices shall be adjusted to the weight of the user prior to use, but in no case shall the counterweight exert an upward force greater than 90 percent of the user's weight.

(v) When a climbing assist device is used, provision shall be made to prevent the counterweight from falling in case of sheave or line breakage.

(4) *Foundations and anchors.* (i) Foundations shall be capable of safely distributing the gross weight of the derrick or mast under maximum anticipated hook load as well as all other loads imposed during raising and lowering of the structure.

(ii) Foundation pads shall be graded and adequately drained.

(iii) All installed ground anchors, permanent or temporary, shall meet the pull-out resistance requirements for the conditions of service.

(iv) All permanent ground anchors installed after July 1, 1986, shall be designed to resist the anticipated forces for the conditions of service, and be able to resist the most severe wind loads anticipated once each 100 years.

(v) Trees, rocks, or other naturally occuring items may not be used as anchors.

(vi) The anchor spacing used shall be in accordance with the guying pattern specifications on the permanently mounted plate on the derrick or mast, or in accordance with other arrangement that ensures the stability of the rig.

(vii) The employer shall establish an anchor pull test program for all permanent ground anchors to ensure their safe use. Pull test program results made available to the employer may be used to meet this requirement.

(viii) Permanent anchors shall be visually inspected by the user prior to each use. If damage or deterioration is apparent on inspection, and is such that safe use is not assured, the employer or his designee shall perform a pull test.

(ix) Boomers or load binders may not be used after July 1, 1986, to fasten or tension guy lines or back stays. *Exception:* Boomers may continue to be used until July 1, 1987, provided equipment is available and used to relieve tension prior to release of the boomer.

(5) *Drawworks.* (i) The drum of the drawworks shall be guarded or located

to prevent employees from falling into the drum or lines.

(ii) The shut-down switch or switches for drawworks shall be readily identifiable and easily accessible in the event of an emergency.

(iii) Moving parts of the drawworks machinery may not be lubricated or adjusted while in operation, unless lubrication or adjustment can be accomplished with certainity without hazard to the employee.

(iv) A visual inspection of the drawworks shall be made on a daily basis to ensure all guards are in place and wire rope is spooled correctly.

(v) The brakes and brake linkage shall be visually inspected on a daily basis for condition and operation. Any defects detected shall be corrected before use.

(vi) The operator in charge of the drawworks shall secure the brake when he leaves the immediate area of the control panel unless the drawworks is equipped with an automatic feed control.

(6) *Drill pipe, casing and tubing slips and tongs.* (i) The handles on slips used for drill pipe, casing and tubing shall be of sufficient length to avoid pinch points for the hands.

(ii) All tongs shall be securely attached to the derrick, mast or a back-up post in accordance with paragraph (e)(2)(xi) of this section, and anchored by a wire rope line or equivalent device having a minimum breaking strength greater than the breaking strength of the pulling line or chain.

(iii) tong safety lines (snub lines) shall be short enough so that the tongs cannot rotate far enough to hit employees working on the side opposite the safety line, and shall have a minimum breaking strength greater than the force of the makeup or breakout torque.

(iv) All fittings and connections shall have a minimum breaking strength greater than the force of makeup or breakout torque. Knots may not be used to fasten line, chain or wire rope.

(v) Power tong pressure systems shall be equipped with a safety relief valve and the operating pressure of the safety relief valve shall never be higher than the maximum working pressure for which the tong pressure system is designed.

(vi) When working on power tong heads, the pressure inside the system shall be completely relieved before starting repair or other work.

(vii) Counterweights suspended above the rig floor shall be fully enclosed or fitted with safety lines or devices to prevent falling in the event of line or sheave failure.

(7) *Catheads, lines, ropes and chains.* (i) There shall be adequate clearance or working area to allow a person to pass without being struck or wedged between the outer flanges of a cathead and any structure such as a guardrail or wall.

(ii) Each cathead on which a rope is manually operated shall have a smooth surface and be free of projections on which employees' clothing may be caught. Catheads shall have a rope guide to hold the on-running rope in alignment with its normal running position against the inner flange.

(iii) A headache post or guard shall be provided to deflect cathead lines away from the driller's position. Where headache posts are of the rotating type, the top and bottom ends shall be guarded to restrain the post if the shaft fractures.

(iv) Each cathead using a chain shall be equipped with a manually operated cathead clutch or similar device to keep the rotation of the cathead under control. The clutch or device shall be of the fail-safe or "nongrab" type, and shall release automatically when not manually held in the engaged position.

(v) All ropes, lines and chains in use shall have a minimum breaking strength at least three times greater than the loads or stresses occurring in regular service. They shall be maintained in safe working condition.

(vi) When a rope or line is in use on a cathead, all other ropes, lines, or hoses shall be placed so that they cannot contact the cathead or the rope or line used on the cathead.

(vii) No rope or line shall be left in contact with the cathead when a cathead is unattended.

(viii) The drawworks controls shall be attended at all times when a manually operated cathead is in use.

(8) *Traveling blocks, crown blocks, hooks and elevators.* (i) The hook assembly shall be equipped with a safety latch or other device to prevent accidential release of the load to be hoisted or lowered.

(ii) Traveling blocks shall be equipped with securely attached sheave guards.

(iii) Effective January 1, 1986, an upward travel limiting device shall be installed on every new derrick or mast hoisting system. The upward travel limiting device shall disengage the power to the hoisting drum and apply the brakes to prevent the travelling blocks from contacting the crown block assembly.

(iv) Elevators shall be equipped with a positive latching and locking device designed to prevent drill pipe or casing from being accidentally or prematurely disengaged.

(v) Traveling blocks, crown blocks and related equipment may not be subjected to any load in excess of its rated design capacities.

(vi) Adequate clearance shall be maintained between the travelling block and any platform in the derrick or mast to prevent the travelling block from having contact with the platform.

(vii) Crown block assemblies shall be secured in place. This applies to gudgeon caps used to prevent the sheaves from jumping out of bearings and falling to the rig floor. Where bumper blocks are attached to the underside of crown beams, a wire rope safety line or other arrangement shall be fastened along their full length and attached to the derrick at both ends of the bumper block.

(viii) Traveling blocks may not be moved while the crown block is being lubricated.

(ix) The hoisting line may not be removed from the drum until the traveling block is laid on the derrick or mast floor, or until the travelling block is suspended by a separate line or chain.

(x) The deadline anchor for the hoisting line shall be constructed, installed and maintained so that its pullout strength shall be equal to or greater than the working strength of the hoisting line. The anchor shall be so designed that it will not weaken the hoisting line.

(xi) Elevators shall be visually inspected prior to a trip or pull. Elevators with worn or damaged hinge pins or latches which may cause malfunction or failure, shall be removed from service and shall be repaired before use. Replacement hinge pins and latches shall be of the same or greater strength as the originals.

(9) *Weight indicators.* (i) Every drilling and well servicing rig in use shall be equipped with a weight indicator in operating condition.

(ii) The weight indicator shall be mounted so that the display can easily be read by the operator standing at the brake position.

(iii) When the weight indicator is installed at a position 6 feet (1.8 m) or more above the rig floor, it shall be secured to the derrick or mast, and a separate safety line or chain shall also be installed to prevent the indicator from falling in case of failure of mast connections.

(10) *Blowout prevention equipment.* (i) Blowout prevention equipment shall be provided and used when well surface pressures are encountered that present the hazards of a blowout; when such well surface pressures are anticipated to be present at the well site; or when drilling in an area where there is no

prior knowledge of the kinds of well surface pressures to be encountered.

(ii) All blowout preventers, choke lines, kill lines and manifold shall be installed above ground level except where rig structure makes subsurface installation necessary. Casing heads and optional spools installed below ground level shall be readily accessible.

(iii) All pipe fittings, valves and unions placed on or connected to the blowout prevention systems shall have a working pressure capability that exceeds the anticipated well surface pressures.

(iv) The choke lines and kill lines shall be anchored, tied or otherwise secured to prevent whipping resulting from pressure surges.

(v) All ram type blowout preventers and related equipment shall be completely tested before being placed in service. Annular type blowout preventers shall be tested prior to being placed in service in conformance with the manufacturer's published instructions or those of a professional engineer.

(vi) Blowout prevention equipment shall be visually inspected daily while in service. A test which assures proper operation shall be performed at least daily on all the blowout prevention equipment except the blind rams. The blind rams shall only be tested on each round trip with the pipe out of the hole.

(vii) At least one person who is trained in blowout prevention and well control procedures shall be on the well site while employees are present.

(viii) All employees on the rig shall be able to operate the blowout preventer system properly. New employees shall be trained in the operation of the blowout preventer system.

(ix) Blowout prevention and related equipment shall be maintained in serviceable condition. When repairs or other work must be performed on the blowout prevention equipment, drilling and well servicing operations must stop until the blowout prevention equipment is returned to service.

(x) The kelly cock or equivalent shall be used for all drilling operations on new drilling rigs after July 1, 1985. A kelly cock or equivalent shall be accessible and shall be installed between the kelly and the swivel, or between the lower end of the kelly and the topmost section of drill pipe, or both, on all wells where blowout prevention equipment is required. The kelly cock or equivalent shall be capable of withstanding the same well surface pressures as the blowout preventers that are used.

(xi) The kelly cock or equivalent shall be maintained in a serviceable condition and shall be tested concurrently with the blowout preventers.

(xii) The wrench or other tool used to close the kelly cock or equivalent shall be kept in an accessible place, and its purpose and use made known to all employees who may be expected to use it.

(xiii) The kelly hose shall have a safety line attached at each terminal fitting to prevent the hose from whipping, thrashing or falling to the rig floor.

(11) *Kelly bushing and rotary table.* (i) Rotary equipment, including the rotary table and the kelly bushing, shall be guarded unless the construction and installation prevents the catching or snagging of employees or their clothing or ropes, lines, hoses, chains and similar materials.

(ii) The rotary table may not be used to break connections except under emergency conditions. When the rotary table is used to break a connection, the tongs must be in place on the tool joint, all employees must stand outside of the swing line of the tongs and the snub line, and a stand of pipe shall be positioned high enough in the mousehole to catch the tongs in case the tongs safety line (snub line) breaks. Tongs must be placed so that the snub line has no slack before the rotary is engaged.

(iii) The operator may not engage the power to begin rotation until rotary table is clear of all employees and unsecured materials.

(f) *Additional requirements.* (1) *Well servicing.* (i) The well shall be checked for pressure prior to initiating well servicing operations. If any pressure is found in the well, the pressure shall be safely relieved or procedures shall be established to operate safely under the detected pressure before commencing well servicing operations.

(ii) When well servicing operations are to be performed on a producing well, the pumping unit power shall be turned off and locked out, and the brake set before well servicing operations begin. If the counterweights are not in the down position when the pumping unit is stopped, the counterweights shall be positively secured against movement.

(iii) Employees shall be out of the derrick or mast and cellar when the subsurface pump is being unseated, or when an initial pull on tubing is made.

(iv) Precautions shall be taken upon completion of well servicing operations, to assure that all personnel and equipment are clear of the pumping unit, counterweights and related equipment before the pumping unit is actuated.

(2) *Cementing.* (i) Pump discharge lines shall be tested to a pressure no less than 1,000 psi (6.9×10^6 n/m^2) over the maximum anticipated cementing pressure prior to commencing any cementing operation.

(ii) All valves in the discharge lines shall be open before allowing pumping operations to begin.

(iii) Pump operators or their designees shall remain at their operating position while the pump is in operation.

(iv) Cementing pressure may not exceed the manufacturer's maximum safe working pressure of the equipment.

(v) The lead-off connection to the cementing head shall be secured with a safety chain or other device to prevent the lead-off connection and discharge line from falling. The sections of high pressure line from pump to well shall be secured together in case a connection breaks.

(vi) The valve and any sections of cementing line left after completion of cementing operations shall be secured to prevent whipping when pressure is bled off.

(3) *Wireline services.* (i) *Placement and handling of wireline services untis.* (*a*) Land based mobile service units shall be chocked and/or spaded. If chocked, a minimum of two (2) chocks shall be used, one behind each rear wheel toward the wellhead.

(*b*) Portable or skid mounted wireline service units shall be secured to prevent any unwanted movement of the unit when a load is taken on the lines.

(*c*) A wireline service unit shall be located in such a manner that it minimizes interference with the entrance or exit of employees from that unit or other service units.

(*d*) When handling a wireline which could recoil when released, the loose end shall be secured.

(ii) *Gin poles (telescoping and single post).* If a gin pole is used, it shall be attached to the wellhead or christmas tree to prevent movement when the load is being handled. Devices used to attach the ginpole to the wellhead or christmas tree shall be of such size and strength to support the anticipated load to be handled.

(iii) *Rope falls (block and tackle).* (*a*) Blocks and nonmetallic rope shall be of such size and strength to support the anticipated load to be handled with a safety factor of three (3).

(*b*) Splices through the length of the rope may not be used except where the dead end is tied off.

(*c*) Rope which has been cut, frayed or in any way weakened may not be used.

(*d*) Damaged or worn blocks may not be used.

(*e*) Pins used in makeup of sheave wheels shall be secured to avoid displacement.

(iv) *Swabbing, performing, and other wireline operations.* (*a*) All swab lines, blowdown lines or flow lines to pits or tanks shall be securely anchored to prevent whipping and thrashing. Whenever hydrocarbons or other volatile fluids may be expected, these lines shall extend a minimum distance of 75 feet (22.9 m) from the well and away from any source of ignition. If this is not feasible, detection equipment for flammable atmospheres or procedures using manual detection methods shall be implemented to warn employees of hazardous conditions.

(*b*) There shall be a lubricator or some other means of controlling well pressure in use on wells where there is a possibility of flow, that will allow the removal of the swab or other tools without turning the well loose to the atmosphere.

(*c*) While swabbing operations are being conducted, all engines, motors, and any other potential source of ignition not essential to the operation shall be shut down.

(*d*) Swabbing operations shall be restricted to daylight hours when practicable where flammable gases or liquids may be present in the well or will flow into the well. If it is necessary to conduct swabbing operations under artificial light, then light levels shall be sufficient for employees to conduct the test safely.

(*e*) The swab line shall be packed off at the surface when swabbing so that fluids are routed through a closed flow system to control flammable emissions to the maximum extent possible.

(*f*) No employee shall be permitted in the derrick or in the immediate proximity of the wellhead during the time the swab line or other wireline is being run in the hole.

(*g*) All oil savers shall be of the type that do not require an employee or person to be near the lubricator or wellhead to control the oil saver.

(*h*) Radio transmitters or receivers may not be operated where perforating operations are in progress, and warning signs warning against the use of radio equipment shall be posted. Such signs shall be conspicuously placed at entrances to the worksite, and at least 200 feet (61 m) from the perforating operation. Signs shall conform to § 1910.145 of this Part.

(*i*) Devices containing explosives and/or radioactive material, such as perforating guns, logging tools, etc., shall be handled only by qualified employees.

(*j*) The work area shall be inspected upon completion of perforating operations, and all explosive material and scraps shall be placed in a container designed for this use and removed from the site.

(*k*) Electrical grounding and bonding between the wellhead, service units, and rig structure shall be made prior to operating tools using explosives.

(4) *Stripping and snubbing.* (i) An emergency escape system shall be provided and available for each employee working atop hydraulic snubbing equipment.

(ii) The snubbing tower shall be guyed or otherwise supported prior to commencing snubbing operations to prevent it from collapse or turnover.

(iii) Flow lines or bleed-off lines shall be located away from areas frequented by employees such as doghouses, tool boxes etc., or where it is not feasible to so locate these lines, they shall be secured to prevent whipping around if these lines should rupture.

(iv) Two-way communications shall be provided between the snubbing operator and the pump operator. This may be accomplished by hand signals, voice communication of other equally effective means.

(v) Well surface pressure shall be monitored at all time during stripping and snubbing operations.

(vi) All employees involved in the stripping or snubbing operations shall be informed of the maximum working pressure limit of the equipment. The employer shall provide blow down lines with remote control valves to relieve pressure from the wellhead equipment where the working pressure may exceed the established maximum limit of the equipment.

(vii) Gasoline engines may not be used on snubbing operations. Other possible sources of ignition shall be located at least 100 feet (30.5 m) from the wellbore during snubbing operations.

(5) *Drill stem testing.* (i) A fillup line shall be installed exclusively to keep the casing full of drilling fluid. The kill line shall be installed exclusively to provide complete well control. The kill line shall be separate from the fillup line.

(ii) Every test plug used above the rig floor shall be secured by a safety line or chain.

(iii) A reversing valve shall be incorporated in the test tool assembly for test assemplies used after July 1, 1986.

(iv) The swivel and kelly hose may not be used as any part of the test line.

(v) A safety valve of proper size and thread configuration to fit the test string shall be readily available on the rig floor for emergency use.

(vi) Blowout preventers, kill line and fillup line shall be inspected in accordance with § 1910.270(e)(10) to assure that each is in proper working condition before drill stem test tools are started in the hole. The blowout preventer shall be tested immediately before a drill stem test.

(vii) The mud box shall be hooked up and ready for use before the drill stem test tool is pulled out of the hole.

(viii) A mud can and test plug shall be used on every joint of pipe disconnected when oil and/or gas if found during a drill stem test, unless the drill stem oil and gas contents have been pumped out and replaced with drilling fluid.

(ix) Drill stem testing shall be done during daylight hours whenever practical. If it is necessary to work under artificial light, levels shall be sufficient to allow employees to conduct the test safely.

(x) All ignition sources (including artificial lighting) within 100 feet (30.5 m) of the wellbore shall be controlled to prevent ignition of any gas or liquid vapors that may be released during the testing effort.

(xi) A person with training in the hazards of these tests and their control shall remain at the rig and shall continually supervise the operation during drill stem testing and the removal of pipe after a drill stem test.

(xii) A test line shall be laid to a reserve pit or test tank and shall be effectively anchored. The test line connection to the control head shall be secured.

(6) *Acidizing, fracturing and hot oil operations.* (i) All lines connected from the pumping equipment to the christmas tree or wellbore shall have a check valve installed as close to the wellhead as possible. A check valve shall be placed in each discharge line when a multipump manifold is used, as near the manifold as possible.

(ii) An inspection shall be made before pumping operations begin to ensure that all valves in the discharge lines are open and discharge line connections are in proper position.

(iii) All blending equipment shall be electrically grounded, and all equipment unloading sand or other proppants into a hopper shall be bonded to the blending equipment.

(iv) If charged hoses develop a leak while flammable or combustible liquids are being pumped through them, they shall be covered to prevent the liquid from spraying into the air. All leaking hoses shall be removed from service as soon as practicable.

(v) A pre-treatment pressure test on pump discharge lines shall be made at a pressure at least equal to the maximum expected treating pressure, plus 1,000 psi.

(vi) All ignition sources shall be controlled while pumping flammable or combustible liquids, to prevent ignition of any flammable vapors that may be released.

(vii) All spilled oil or acid shall be disposed promptly by persons wearing rubberized protective clothing or other clothing with equivalent resistance to oil and/or acid penetration.

(7) *Freezing, valve drilling and pipe tapping operations.* (i) Pipe tapping and other similar operations shall be performed during daylight hours whenever practicable. If it is necessary to use artificial light, levels shall be sufficient for employees to perform their work safely.

(ii) The test pressure of all equipment which may be pressurized and used in valve drilling and pipe tapping operations shall be at least twice the known maximum pressure of the well on which the work is being performed.

(iii) After equipment has been rigged up to perform valve drilling or pipe tapping, the equipment shall be pressure tested for a minimum of three (3) minutes to at least one and one-half (1-½) times the expected maximum pressure but not to exceed the rated working pressure of either the equipment being tapped or the tapping equipment. A reduction in test pressure shall be made to prevent the possibility of pipe collapse provided that expected pressure does not exceed working limits of the equipment. Any leaks that are found shall be controlled before starting valve drilling or pipe tapping operations.

(iv) Pressure inside the lubricator during the valve drilling and pipe tapping operations shall equal as near as possible the pressure inside the equipment being penetrated.

(v) Frozen plugs shall be pressure tested for at least five minutes from above the plug to a pressure greater than the known wellhead pressure. After the pressure test, all pressure above the plug shall be bled off the pipe and period of at least 15 minutes shall be observed before breaking out the pipe and installing a new valve.

(vi) Frozen plugs may not be thawed using steam or hot water.

(8) *Fishing.* The employer shall review the history of the well and any available geological information (including prediction of high pressure gas and/or hydrogen sulfide) before initiating recovery of fish from a wellbore. Steps shall be taken to control flows if there is any record which indicates that the well may contain high pressure or may flow as a result of the swabbing coincidental to the fish recovery.

(9) *Gas, air or mist drilling.* (i) All compressors used after July 1, 1985, shall be equipped with pressure relief valves, discharge temperature and pressure gauges and engine shut-off valves.

(ii) The discharge line form each compressor shall be equipped with a check valve and a block valve after July 1, 1985.

(iii) After July 1, 1985, a rotating blowout preventer or pipe-wiper-type dust deflector shall be used on the blowout preventer assembly on those wells with well surface pressures less than 500 psi (3.5×10^6 n/m²). Wells with surface pressures of 500 psi (3.5×10^6 n/m²) or higher shall use a rotating blowout preventer on the blowout preventer assembly. The rotating head shall be equipped with an automatic lubricator, or a lubrication procedure and schedule shall be implemented to keep the rotating head properly lubricated.

(iv) The blooey and bleed-off lines shall be located and securely anchored from the rig so as not to endanger the employees. The blooey line shall be the same diameter or larger than the rotating head outlet.

(v) After July 1, 1985, there shall be two valves installed in the standpipe; one readily accessible on the rig floor, and the other at ground level below the rig floor, with which to control the gas, air or mist supply to the borehole.

(vi) After July 1, 1985, in gas drilling operations, a shut-off valve shall be installed on the main feeder line remote from the wellbore.

(vii) Natural gas fuel lines shall have a master valve located on the main fuel line upstream and away from any compressor.

(viii) A complete operable system for killing the well with drilling fluid shall be readily available before drilling is started.

(ix) Kill switcher shall be provided for the drilling engines and shall be accessible, mounted on or near the driller's console for immediate use.

(x) Employees involved in gas, air or mist drilling operations shall be informed about the proper working procedures for the gas, air or mist supply and circulating system and how to use the emergency shut-off valves.

(xi) The stripper rubber in the circulating head shall be inspected at least once each tour. When leaks are detected they shall be promptly repaired.

(xii) An effective pilot light or other continuous ignition device shall be kept burning at the end of the flow line at all times during the drilling operation, except when making trips. An effective means of reignition shall be available in event of failure of pilot light or ignition device.

(xiii) The standpipe valve shall be closed when making a connection and the bleed-off line opened before breaking out the tool joint.

(xiv) Upon returning to the bottom of the hole at the conclusion of a trip in gas drilling operations, all air shall be purged out of the circulating system before lighting the flare.

(xv) Ignition sources in the area around the wellbore shall be controlled to prevent ignition of flammable gas or vapor that may be present.

(xvi) Valves on choke lines or relief lines below blind rams shall be opened to bleed off any pressure that may have accumulated before opening the blind rams.

Note.—The following appendices to § 1910.270 serve as non-mandatory guidelines to assist employers and employees in complying with the requirements of this section in Subpart R, as well as to provide other helpful information.

Appendix A to § 1910.270

Oil and Gas Well Drilling and Servicing

1. *Medical and first aid.* The training programs provided by the American Red Cross or the American Petroleum Institute, which provide certification upon successful completiuon, are examples of acceptable first aid and rescue training.

At well sites where employees of more than one employer are present at the same time, it is not necessary that each employer assure that at least one person (with a current first aid certification) remain on the site. Instead, it is suggested that the employers make arrangements with each other to ensure that this requirement is met. For example, if three employers are working on the same site at the same time, only one of the three employers need designate a person to meet the first aid requirement.

A contingency plan needs to be developed and implemented for each rig to be used in the event of a medical emergency. This plan should be based on consultation between employers and local providers of medical and emergency services to determine the most efficient means of contacting sources of assistance in case help is needed to provide transportation or medical care for injured employees. The contingency plan needs to address specifically what arrangements have been made for communications with the source of medical assistance and for transportation of injured employees.

An operational two-way radio or a telephone located at the well site are examples of acceptable arrangements for communications. If these are not feasible, OSHA suggests that an alternate instrument of communication be located close to the well site. If the choice is to use locally-provided pay telephones, then the employer must ascertain that the new telephone is in working condition.

OSHA is not requring the employer to have an ambulance on site during operations. OSHA does intend that preplanned

arrangements via the contingency plan be made for the transportaton of injured personnel requiring more than first aid treatement. These requirements can be met in several ways. The employer can choose to make arrangements with local providers of emergency services to supply a vehicle, such as an ambulance or helicopter, which meets the stated requirements on an "as needed" basis. If local emergency care is not available or suitable, then another acceptable option would be for the employer to supply and/or designate an appropriate vehicle, such as a pickup truck with an enclosed rear compartment (a camper shell covering the bed) or a suitable station wagon, as the transport vehicle. If this option is used then the vehicle must meet the other requirements of this paragraph, and the employer would need to designate the appropriate people to operate the vehicle and render assistance.

Due to the high mobility of a rig involved in servicing and special services operations, OSHA does not require a specific contingency for each well site, but rather an outline of the procedure to be followed under the plan, no matter where the rig is operating. In the event a rig is moved to an area where some of the details of the contingency plan become invalid, the plan must be modified to reflect the circumstances at the new location. The main components of the plan in most cases will still be valid, but other details such as telephone number or radio call signs may have to be changed.

2. *Emergency planning.* The emergency action must address emergency situations which the employer may reasonably expect at the well site. Issues which need to be discussed in the emergency action plan include emergency escape procedures and escape routes; procedures to be followed by employees who remain or return to the site; accounting for employees after evaluation assignment of rescue, medical, and other necessary duties; reporting emergencies; and who to contact for more information or an explanation of the plan. Additionally, the employer must designate in the emergency action plan the type of evacuation (total or partial) to be used in each type of emergency that is being considered.

Special attention should be given to the procedures to be followed by employees remaining in or returning to the danger zone. In this section of the emergency action plan, the employer needs to specify such things as what is to be accomplished before the employee evacuates the area, and how long the employee can remain in the danger zone. Additionally, if employees return to the area, the plan must specify what types of personal protective equipment are to be used, communications requirement (e.g., check in every 10 minumte) or if employes are to work alone or in pairs, etc.

Details of this plan need not be elaborate or complicated. For example, evacuation instructions for a derrickman during a blowout could be as simple as "use the emergency escape (geronimo, slide, etc.) to get out of the derrick. Once on the ground, move at least 100 feet up wind and remain there until further instructions are received."

Alarm systems which meet the provisions for employee alarm systems detailed in § 1910.165 are acceptable for use on drilling and servicing rigs.

As with the medical contingency plan, the employer has the option of providing a written plan available on site *or* of developing a plan, training employees in all aspects of the plan and certifying that the development and training required has been done.

The employer needs to review the plan with each employee upon initial assignment, when the plan is initially implemented, whenever the employee's responsibilities or designated actions change, and whenever the plan is changed. The contingency plan, which is for medical assistance, may be made part of the emergency action plan if desired.

OSHA recommends the use of written plans which are available at the worksite. The Agency believes these will be more beneficial to employee safety for several reasons. Due to the highly transient nature of the workforce in this industry, a written plan, available at the worksite would immediately enable even newly hired employees to get accurate information concerning these plans. The same would apply to contract employees working on the site. Further, each shift or tour would get the same information and have the plan available for reference should a question or problem arise. Additionally, this would allow for easier implementations of any changes in the plans. Finally, in emergency situations it may be more advantageous to have a written plan available to use as a guide than to attempt to implement a plan from memory.

3. *Employee training and education.* OSHA is not requiring the employer to provide formal classroom instruction for rig employees. Informal presentations by a knowledgeable person outlining hazards which can be encountered by the employee are considered to be acceptable. OSHA recommends that new employees be given a thorough overview of hazard recognition as it applies to the whole rig and the entire crew. This has the potential of bringing about detection and correction of hazardous conditions before an accident can occur.

It is OSHA's intent that the employees fully understand the training they receive. An employer whose workforce has non-English speaking employees will need to provide effective training for these employees in their own language.

The initial training an employee receives must not be the only training the employee receives. OSHA's intent is that training is to be conducted often enough to enable the employees to perform their jobs or duties in a safe manner. A series of informal presentations such as "tailgate sessions" delivered on a regular basis to review the principles of hazard recognition and avoidance are acceptable as meeting the retraining requirements of this section. In these types of presentations, the employer might want to initiate a discussion of recent "near misses" or "close calls" or incidents that happened at other sites. Using these incidents as examples, the discussion leader can talk about the causes and what could have been done to prevent the incidents.

Employee training in the proper use, inspection and care of personal protective equipment is essential. This training also needs to emphasize that the personal protective equipment is necessary because of the hazards which are present, and should specify the possible consequences of not using or improperly using the equipment. Types of personal protective equipment that may require training include respirators, hearing protectors (muffs and plugs), eye and face protection, head protection, foot protection and safety belts and body harnesses. This training must emphasize that personal protective equipment including respirators must be cleaned after each use and properly stored to prevent contamination.

As stated earlier, OSHA is not requiring formal classroom training for employees, but this does not limit employers from using this method of training. Acceptable training materials designed for use in a classroom setting are available from several sources, including the University of Texas at Austin, the American Petroleum Institute, and the International Association of Drilling Contractors. Additionally, some sources such as Louisiana State University maintain their own training facilities and offer courses directly related to this industry.

Throughout this standard, OSHA emphasizes specific subjects which need to be addressed through training. For convenience, these are listed and include: the application and use of lockout and tagout procedures; medical contingency plan procedures; hazards related to procedural changes in rig-up operations; safe handling procedures and personal protective procedures for use with hazardous materials; emergency escape procedures and emergency action plans; confined space entry and rescue procedures; operation of the blowout prevention system; and well control procedures.

4. *Over water operations.* Rigs meeting the requirements of the U.S. Coast Guard for over water operations are considered to be in compliance with the provisions of this standard.

Depending on the location and height of the platform above the water, and the depth of the water in the area of the rig, being able to jump safely from two different locations on the platform could meet this requirement. For example, a 15 foot jump in 25 feet of water would be acceptable.

The employer needs to supply a sufficient number of lifefloats to accommodate all persons aboard the rig at any given time. Life vests are not considered lifefloats.

It is suggested that at least one extra lifefloat be available on each continuously manned platform in case one of the primary lifefloats is damaged or cannot be launched.

U.S. Coast Guard approved lifefloats are equipped with painters (bow lines), water lights and paddles in addition to other required equipment.

OSHA recommends that extra personal flotation devices be available on rigs performing operations over water in case an emergency situation precludes employees from reaching their assigned flotation devices. These extra flotation devices should be located in conspicuous storage areas

which are readily accessible from "common" areas such as dining halls, recreation areas, regular work stations, etc.

OSHA recommends that more than one rescue flotation device be placed on each side of the rig to speed up any rescue required and/or to allow for multiple rescues if needed.

A standby vessel equipped with a radio and capable of rendering immediate rescue assistance should be in attendance near offshore installations while the installation is manned.

Training for crews of over water rigs is to include proper water entry procedures. This discussion should cover the correct way to put on personal flotation devices and proper procedures for launching lifefloats. OSHA recommends extensive hands-on training in these areas.

OSHA recommends additional fire fighting equipment be placed on all over water rigs. These facilities are usually isolated from customary response units, and equipment in excess of the requirements of this standard may be necessary to contain large fires.

5. *Housekeeping.* Each employer needs to establish a housekeeping program designed to eliminate tripping and slipping hazards. This program must provide for removal and storage of loose materials found in work areas, the doghouse, change rooms, and on stairs and ramps. This program must also ensure the prompt cleanup of leaks or spills which pose slipping or fire hazards. The program also needs to establish a schedule for the entire drill floor to be washed and hosed down to remove any residue left from spot cleanups. Flammable liquids, those with a flashpoint less than 100° F (such as gasoline, acetone, etc.), are not to be used for cleaning purposes.

OSHA recommends that non-slip floor covering be used on rig floors. Additionally, the employer needs to make sure that elevated work platforms, such as tubing boards, stabbing boards, etc., are designed, equipped, and/or maintained so as to provide good footing for employees required to work on these platforms. Slipping hazards are a major concern, and the employer might want to consider using metal grating or metal floors which are corrugated, knurled, dimpled, or coated with skid-resistant material, in these areas to eliminate the possibility of slipping.

6. *Illumination.* The illumination requirements of this standard represent the minimum acceptable level of rig lighting. OSHA recommends higher levels of illumination to minimize shadows and darkened areas at work stations and other areas on the rig. Since wiring and lighting fixtures are usually present, providing additional illumination would enhance productivity and would provide safer conditions.

All lighting on rigs needs to be of the type approved for use in accordance with the National Electrical Code and Subpart S of Part 1910.

7. *Raising or lowering derrick or mast and rig-up operations.* Employers need to preplan the layout of equipment and outbuildings at the well site. Not only will this preplanning identify potentially hazardous conditions, but it will facilitate meeting the spacing requirements of other parts of this standard, help to minimize materials handling problems, and allow control of vehicle movement patterns. For example, the fire prevention and protection section of this standard specifies spacing requirements for certain pieces of equipment and for storage of flammable liquids. The same section also restricts motor vehicle access within 100 feet of the wellhead.

Proper preplanning will identify these requirements, and the layout of the site can be made to conform to the standard for less cost. In some circumstances, the preplanning will show that it is not feasible to meet the distance requirements of the standard due to terrain or other restrictions. In these cases, the employer is alerted to the fact that other means, as permitted by the standard, will have to be used to ensure the safety of the workers. Acceptable options for these requirements are discussed later in the appendix.

The employer must require that all employees who are near or involved in the raising and lowering operations wear hard hats. This precaution is necessary in case secured materials come loose or an unsecured tool or other object was inadvertently left in the derrick or mast.

Manufacturers' specifications should be consulted when establishing rig-up procedures to ensure that the employers' procedures are sufficient to allow rigging up in a safe manner.

8. *Emergency escape.* OSHA does not specify any particular means of emergency escape from either the derrickman's work platform or the stabbing board. These requirements can be met in a number of ways including a "geronimo line," a slide, a controlled descent device, a slide sock or any other arrangement which will quickly carry the crew member away from the well hole and the rig. It is OSHA's intent that employees required to use the emergency escape device be thoroughly familiar with it and its proper use, and be required to practice with the device on a regular basis.

The employer needs to make sure the path of the emergency escape device does not endanger the user by crossing vehicle traffic paths, or by coming too close to power lines, fences, pipe racks, or other machinery and equipment. This is another example of how preplanning can prevent hazards.

The automatic velocity limiting device used for emergency escape may permit speeds faster than 15 feed per second at take off and during descent to permit as rapid as evacuation as possible, but the device must slow the user to 15 feet per second or less at the time of landing. This speed is equal to about 10 mph, and OSHA believes landings at this speed or slower can be accomplished safely. Landings at speeds in excess of this requirement could cause the crew member to be injured and thus prevent escape.

9. *Fire prevention and protection.* The requirements of this standard for fire extinguishers with a minimum rating of 40 B:C can be met in several ways. For example, a typical 20 pound ABC dry chemical fire extinguisher with a charge of ammonium phosphate will not only meet the requirement for a 40 B:C rated fire extinguisher, but may also meet the additional proposed requirements to have at least one extinguisher with a minimum rating of 2A. Additionally, a typical 10 pound B:C dry chemical fire extinguisher with a charge of potassium bicarbonate, or a typical 20 pound charge of sodium bicarbonate, will usually meet the requirements for the minimum 40 B:C rating.

It is OSHA's intent that all fire extinguishers required by this standard be installed, maintained, tested, recharged, etc., in accordance with Subpart L of this Part. These operations may be performed by a contractor or by qualified employees of the rig owner.

The equivalent safety and protective measures required when portable light plants are located with 100 feet of the well should include, but are not limited to, locating the light plant upwind from the wellhead or hidden behind hills, and the use of spark arrestors on the exhaust pipe of the generator's power unit.

The equivalent safety measures required when storage of flammable liquids are within 50 feet of the wellbore should include, but are not limited to, storing the flammable liquids behind a nearby hill, storage in a cool place to minimize vapor production, and locating storage areas according to prevailing wind patterns.

10. *Handling drilling fluids and chemicals.* Depending on the contents and physical state of the drilling fluid materials and/or drilling fluids additives to be handled, the employee may be required to wear a respirator in addition to other personal protective equipment. For example, additives used to control the pH of the mud may include calcium oxide (lime) and sodium hydroxide (caustic soda). Both of these chemicals are body tissue irritants due to their alkalinity. Dermatitis can result from repeated skin contact, and pulmonary irritation may result from inhalation of dust or mist. These types of chemicals would require the use of appropriate respiratory protection in addition to other personal protective equipment including clothing.

The area with the greatest potential for exposure to toxic substances is around the mud mixing hopper. In this area, bags or containers of mud ingredients or additives are opened and dumped into the fluid. This process can lead to high levels of airborne dust or liquid spills. If toxic substances are present in the materials, this could present a potential exposure situation.

Personal protective equipment which needs to be used when handling drilling fluids and chemicals can include, but is not limited to, gloves, aprons, safety goggles, chemical resistant boots and respirators.

It is OSHA's intent that the eye wash equipment needed in work areas where acid is used be self-contained and portable. This would allow the units to be transferred from one rig to another as job requirements dictate. OSHA believes these units are a necessary precaution when the work involves the use of acids. Acid splashed in the eyes could easily result in total loss of sight. The best treatment for this type of accident is

immediate and continuous irrigation of the eyes with potable water, saline solution or a specially prepared eyewash permitted by a physician. It is essential that this treatment be started immediately and that the flushing continue for some time to insure that the acid is completely washed away. After this is completed, the victim should receive expert medical assistance promptly.

Other ingredients used in drilling fluid can also pose a hazard to the eyes. The problems caused by these ingredients vary, but are usually not as severe as those posed by the use of acids. Because of this, OSHA feels that three one-quart bottles of an approved eyewash solution will be sufficient initially to counteract any anticipated problems which could be caused by eye contact with these ingredients. The affected employee should then proceed to a source of potable water and continue to flush the eyes for at least 15 minutes before being taken to receive expert medical attention.

Additional information on emergency eyewash equipment is available in ANSI Z-358.1-1981.

OSHA also strongly recommends that a regular washing facility be available to allow employees to remove any contaminants which may have contacted exposed areas of the skin.

11. *Handling and racking pipe and drill collars.* Securing pipe means that the pipe is retained or controlled in such a manner to prevent inadvertent or unwanted movement. For example, a length of pipe temporarily stored in the vee-door and tied off to the railing is considered secured. An acceptable means for securing the pipe on the rack is where pins are used to prevent unintentional rolling of pipe.

12. *Riding hoisting equipment.* Emergency conditions are those conditions which are life threatening or potentially life threatening, and which necessitate riding hoisting equipment as a means of escape, access or rescue.

Full body harness means a design of straps which can be secured about the user in a manner to distribute the arresting forces over at least the thighs, shoulders, and waist or chest. These harnesses also have provisions for attaching a lanyard or deceleration device or both. OSHA is requiring full body harnesses instead of body belts because these harnesses distribute arresting forces to the entire body through the skeletal structure and, therefore, are less likely to cause injury when compared to a body or safety belt under the same fall conditions.

A one-half (½) inch nylon rope in serviceable condition is acceptable for use as a lanyard, but manila rope regardless of diameter is not permitted.

Under conditions where riding hoisting equipment is permitted, OSHA is requiring the equipment to be powered up and powered down. It is OSHA's intent to curtail the practice of letting the equipment drop (free wheeling) and using the brake to control the descent. OSHA believes this is a dangerous practice. This practice puts excessive strains on the braking system, which increases the chances of a brake failure. Brake failure under these conditions could result in death or serious injury to the employee riding the hoisting equipment. When the operator "powers down," the equipment is under full control of the operator using the mechanical moving system, and reliance is not placed solely on the brake. The brake can then serve as an emergency backup system.

OSHA also requires an emergency stop device to be used when employees are permitted to ride hoisting equipment.

Finally, OSHA prohibits employees from riding equipment when the equipment is carrying a load. For example, an employee may not ride hoisting equipment to reach the monkeyboard while that equipment is being used to pull rods or tubing.

13. *Hydrogen sulfide procedures.* It is OSHA's recommendation that the hydrogen sulfide monitoring be accomplished primarily by the use of an automatic environmental monitoring system. Detector tubes and badges should be used to supplement the automatic system by providing concentration data for areas not monitored by the system. It is not OSHA's intent to limit the use of any new technology which can be used to meet the monitoring requirements as long as the new technology will provide the same or greater protection for the worker.

Hydrogen sulfide monitoring is required for operations in areas where there is known potential for exposure to this gas, where there is no information or inconclusive information as to the presence of hydrogen sulfide.

The escape-type self-contained breathing apparatus required by OSHA is a compact, lightweight, NIOSH approved device which has at least a five minute supply of air. These units can be carried on the pants belt or on a strap over the shoulder. Activation of these units is usually accomplished by either biting into the mouthpiece or by pulling a hood over the head. These units are strictly escape units and are designed to be put on quickly and activated while on the run.

The alarm system used to alert employees of a hydrogen sulfide breakout or concentrations above a predetermined level must have an audible signal or other means which will promptly alert employees to the hazardous conditions.

The manual monitoring required when the automatic system is out of service can include, but is not limited to, the use of detector tubes or the use of badges treated with lead acetate which change colors when exposed to hydrogen sulfide above 5 ppm. The major drawback of these badges is that they give no indication of exact concentration when it is above 5 ppm. By the time a condition is noticed, it could be fatal.

Practices which OSHA suggests to control or limit hydrogen sulfide exposure includes.

- —automatic igniters on flare from the degasser, chock manifold and mud-gas separator to burn off hydrogen sulfide.
- —all internal combustion engines in known or suspected hydrogen sulfide areas should be fitted with spark arrestors to lessen the chances of the engine acting as a source of ignition in the event of blowout.
- —drilling mud should be checked on a regular, predetermined basis to assure that it is of the right constituents and pH to counteract hydrogen sulfide.
- —hydrogen sulfide neutralizer can be added to the drilling mud to prevent the gas from reaching the surface. These neutralizers make the mud more alkaline or basic which reacts with acidic hydrogen sulfide and causes the hydrogen sulfide to become a harmless salt.
- —installation of hydrogen sulfide monitoring systems on all rigs working within 1000 feet of known or suspected hydrogen sulfide zones.

14. *Confined space entry.* Although the scope of this problem is small because entry into confined spaces is normally not permitted by the employer in this industry, the consequences which result from employee entry without using proper equipment and/or procedures are frequently catastrophic. Therefore, the employer needs to make sure that entry is addressed in the regular safety training program and to take certain actions to protect those employees who may be expected to work in these spaces. First, the employer needs to limit access to confined spaces and to post warning signs. The employer also needs to establish entry procedures to be used by employees if the employer is going to require them to work in confined spaces. These provisions need to include requirements for evaluating the environment before entry, and for periodic evaluation during the time employees are in the confined space. Other issues which need to be addressed in these procedures include what instruments are to be used to evaluate the confined space environment; how often to sample; and what steps are to be taken to reduce any hazards detected. The employer also needs to address rescue procedures for confined spaces. The most appropriate place to do this is in the emergency action plan required by this standard.

When toxic chemicals cannot be completely purged from a confined space, OSHA is requiring that their concentrations be reduced to, and maintained at, a safe level while employees are working in the confined space. The definition of "safe level" will depend on the contaminant involved and the specific exposure situation. Generally speaking, a safe level will be one which is below the IDLH level and will permit exposure for the time required to complete the work to be done. For example, consider a chemical that has permissible exposure limit of 200 parts per million, 8-hours time weighted average, with no ceiling value, and an IDLH level of 5,000 parts per million. An exposure to a concentration of 500 parts per million for five minutes would be safe.

A short term exposure to contaminants at concentrations at or below the published 8-hour time weighted average permissible exposure limits is considered safe.

The employer can determine if an exposure level is safe in several ways. The employer may choose to conduct with a consulting firm on an as needed basis to make this determination. Secondly, if the employer is located in a state(s) which provides a safety and health consultation service, the employer may choose to use that service. Finally, the employer may choose to make the

determination. To make this determination, the employer needs to consider several factors including the time necessary to complete the required work (exposure time); the characteristics of the contaminant (toxicity); and the exposure situation (characteristics of the confined space). The employer also needs to consult various published sources of permissible exposure levels, or recommended ceiling levels. Several of these sources are listed in Appendix C of this proposal.

Finally, the employer needs to provide training for employees required to enter confined spaces. This training needs to address the procedures required for confined space entry; evaluating the environment, including proper operation of sampling instruments; steps to reduce any hazards detected; and proper rescue procedures for use in confined spaces.

15. *Equipment.* Lining the mousehole and rathole with casing that extends two (2) feet above the drill floor is considered an acceptable way to prevent employees from stepping into these holes.

It is not OSHA's intent to require a permanent ladder or stairs be installed in all cellars which are five feet or more in depth. A portable ladder meeting the requirements of Subpart D of this Part is acceptable as a means of ingress and exit.

The employer needs to implement a lockout and tagout procedure which renders equipment inoperative when maintenance and similar work is being conducted.

16. *Derricks, masts and guying.* Tools, parts and other materials immediately required for use in the derrick or mast need to be fastened to a solid object such as a girt by a sufficient amount of rope to allow easy use, or installation, but which will not allow the tool or part to fall to the rig floor if dropped.

When a rig is in need of major repair, it is OSHA's intent to allow employers to use their own repair facilities or other local repair facilities instead of bringing in a professional engineer or manufacturer's representatives. The main requirement of this provision is that the employer must certify in writing that the facility is capable of repairing the equipment to a condition which will at least equal original specifications.

The inspection of the guyline and auxiliary devices prior to each rig-up are meant to be visual inspections to detect weak or broken wires, kinks, or other obvious trouble spots. No written records are required, but any defects detected must be corrected before rigging up.

OSHA recommends that periodic checks of the hook be made to ascertain if any deterioration of structural integrity has occurred.

17. *Derrick or mast ladders.* These ladders need to have a fall control system which could be a fall arrest system (a ladder safety device which stops the fall almost immediately by a belt attached to slide mechanism on the ladder or a cable) or a control descent device, which limits the velocity of the falling person. Additionally, offset platforms may be used which limit the length of a ladder section to 20 feet or less. A climbing assist device may be used with any of these systems, but it will not be acceptable by itself as the fall control system. By adjusting the climbing assist device to 90 percent of the weight of the lightest user, it will not have to be adjusted again for all who use it. Counterweights need to be fully enclosed of fitted with safety devices to prevent falling in the event of line or sheave failure.

18. *Foundations and anchors.* The employer needs to develop and establish an anchor pull test program. This program should be based on a representative sample of the various sizes and types of anchors in use and the soil types in which they are used. It is OSHA's intent to allow the employer to use results of valid pull tests performed by the well owner to meet the requirements of the standard, provided the results are available to the employer.

A "come-along" can be used to relieve tension on the boomer before release and will meet the requirements of the exception allowed in § 1910.270(e)(4)(viii).

19. *Drawworks.* It is not OSHA's intent to require elaborate machine guarding measures to be used to guard the drawworks. Proper location and/or normal machine guarding techniques, which may include guardrail systems or other physical restraints combined with the establishment and implementation of work rules or work practices to keep employees out of danger areas, will meet these requirements.

The employer needs to make sure that shut-down switches for the drawworks are easily identifiable. Also, the employer needs to initiate a daily inspection program to check visually for such things as guards being in place, correct spooling of wire rope, and condition and operation of the brakes and brake linkage.

20. *Drill pipe, casing and tubing slips and gongs.* The handles on the drill pipe, casing and tubing slips should not be any longer then necessary for the work because of the potential danger of employees being hit by the handles if the slips swing. However, the handles must be sufficiently long to enable employees to use this equipment without catching their hands or fingers.

OSHA recommends that all tong lines be inspected daily and replaced as needed.

21. *Catheads, lines, ropes and chains.* Ropes, lines, and chains inspected and maintained in accordance with the requirements of Subpart N of this Part for derrick ropes are considered to be maintained in safe working condition.

Preplanning of rig layout will help to ensure sufficient clearance for safe movement between the cathead and other surrounding structures.

The employer needs to initiate an inspection and maintenance program which includes periodic visual inspection of the cathead to ensure that the surface is smooth and free of objections to prevent fouling. If the surface is found to be defective, the cathead should be rebuilt and turned to eliminate defects. The rope guide on the cathead also needs to be checked periodically and realigned if necessary.

All employees who use the cathead must be familiar with the correct operatioin. The employer also needs to establish effective work practices which will eliminate the likelihood of accidents related to cathead operations. For example:

—prohibit line or rope to be left in contact with an unattended cathead.
—Require drawworks control to be attended while a cathead is in use.
—require precautions to be taken to prevent entanglement of other lines, ropes or hoses with a line in use in the cathead.

22. *Traveling blocks, crown blocks, hooks and elevators.* A retaining device or tie, known as a mouse, is acceptable in lieu of a safety latch.

It is OSHA's intent that the traveling block not be operated unless it is equipped with proper guards and the guards are in place.

23. *Blowout prevention equipment.* The requirement for a person to be trained in blowout prevention and well control procedures can be met by having the designated person attend the appropriate course(s) at recognized training institutions as well as by on-the-job experience, or training conducted by another qualified person. Examples of institutions which offer well control training are Louisiana State University, Texas A and M University, the University of Oklahoma, Alaska Skill Center, Cape Cod Community College, Penn State University and Ventura College.

OSHA recommends that at least one employee be sent to well control school, and that employee to train his fellow employees. All personnel should receive well control training in addition to being trained in the operation of the blowout prevention system. This could prove to be beneficial in case the primary person responsible for well control is injured or is unavailable during an emergency situation.

It is OSHA's intent that the required visual inspection be done during normal drilling, for example, with a few feet of kelly still to go. The inspection should include a check for such things as positive pressure on the valves and accessibility to manual controls.

The operational test should be performed at the time of adding a joint of pipe, after the kelly is pulled and the slips are in place. At this time, for testing purposes, the driller should actuate the annular rams, etc. The complete test should only take a few minutes.

24. *Kelly bushing and rotary table.* It is OSHA's intent to exclude from the guarding requirements kelly bushings whose construction or installation prevent catching or snagging employee clothing or ropes, lines, hoses, chains or similar materials. Information concerning alternate abatement measures may be obtained from OSHA Regional Offices.

25. *Well servicing.* The employer needs to establish work practices which will reduce the chances of accidents occurring during all servicing operations. For example:

—requiring that all wells be chicked for pressure before beginning operations.
—requiring that any pressure found in a well be relieved or other precautions taken before servicing begins.
—prohibiting employees from being in the derrick, mast or cellar during the unseating of the pump or initial pull on tubing.

—requiring all personnel to be clear of the pumping unit, etc., before the pump is restarted.

Each of these work practices should be incorporated into the initial training each employee receives and should be reinforced at subsequent training sessions.

26. *Special services operations.* Employers engaged in special services operations need to establish effective work practices which address hazardous conditions peculiar to their operations. These work practices need to be brought to the employees' attention during initial traning and reinforced through subsequent training. The employer should not only explain the safety procedures that are expected to be followed, but should also explain the hazard it is intended to reduce and the consequences of not using the required work practices.

It is OSHA's intent to restrict swabbing operations and drill stem testing to daylight hours whenever practical. If these operations must be performed in other than daylight, using artifical light, the employer needs to make sure the lighting meets all requirements for Class I Division I locations of Subpart S of this Part.

When terrain or other limitations make it impossible to extend swab lines, blow down lines or flow lines at least 75 feet from the well, other acceptable safety precautions which could be taken include positioning lines to discharge down wind from the well and/or other sources of ignition, and flaring off any volatiles.

Employers engaged in acidizing operations need to assure that the requirements for personal protective equipment are being followed by their employees and that eye wash equipment is readily available.

During freezing operations performed in order to drill out and replace a valve, after the new valve is installed, the void space between the frozen plug and valve should be filled with water.

All compressors used for gas, air or mist drilling operations need to be equipped with properly set pressure relief valves, and pressure gauges and engine shutoff valves. Additionally, OSHA recommends discharge temperature gauges.

27. *Rig electrical systems.* Rigs which meet the requirements of the American Petroleum Institute's RP 54, Section 9 (January 1981) will be considered to be in compliance with the requirements of Subpart S of this Part.

Appendix B to § 1910.270

Other OSHA Regulations and General Industry Standards which may be applicable to the Oil and Gas Well Drilling and Servicing Industry are:

Part 1903 Inspections, Citations and Proposed Penalties

Part 1904 General and Reporting Occupatioal Injuries and Illnesses

Part 1910 General Industry standards

Subpart C This subpart deals with Employee Exposure Records.

Subpart D This subpart deals with Guarding Floor and Wall Openings and Holes, Portable Wood and Metal Ladders, Fixed Ladders, Scaffolding and other Walking-Working Surfaces.

Subpart E This subpart deals with Means of Egress, Emergency Plans and Fire Prevention Plans.

Subpart G This subpart deals with Occupational Health and Environmental Control Issues such as Ventilation, Noise and Radiation.

Note.—Section 1910.95 items (c) through (p) do not apply.

Subpart H This subpart deals with Hazardous Materials such as Compressed Gases, Acetylene, Flammable and Combustible Liquids. Under this subpart the following sections may apply:

§ 1910.101
§ 1910.102(a)
§ 1910.106 (a) through (e)
§ 1910.109
§ 1910.110

Subpart I This subpart deals with Eye and Face Protection, Respiratory Protection, Head Protection and other types of Personal Protective Equipment.

Subpart J This subpart deals with General Environmental Controls such as Sanitation. Under this subpart the following sections may apply:

§ 1910.141
§ 1910.142
§ 1910.145

Subpart K This subpart deals with Medical Services and First Aid.

Subpart L This subpart deals with Fire Protection Issues. Under this subpart the following sections may apply:

§ 1910.157
§ 1910.165

Subpart M This subpart deals with Compressed Gas and Compressed Air Equipment. Under this subpart the following section may apply:

§ 1910.169

Subpart N This subpart deals with Materials Handling and Storage. Under this subpart the following sections may apply:

§ 1910.176 (a), (b), (c) and (g)
§ 1910.179
§ 1910.180
§ 1910.183
§ 1910.184

Subpart O This subpart deals with Machinery and Machine Guarding. Under this subpart the following sections may apply:

§ 1910.211
§ 1910.212
§ 1910.215
§ 1910.219

Subpart P This subpart deals with Hand and Portable Power Tools and other Hand-Held Equipment and Guarding Requirements for these Tools and Equipment.

Subpart Q This subpart deals with Welding, Cutting and Brazing.

Subpart S This subpart deals with Electrical Systems and Equipment.

Subpart T This subpart deals with Commercial Diving Operations.

Subpart Z This subpart deals with Toxic and Hazardous Substances.

Appendix C to § 1910.270

Oil and Gas Well Drilling and Servicing References

General References. The following references provide information which can be helpful in better understanding the requirements contained in § 1910.270.

1. A Primer of Oilwell Drilling; Petroleum Extension Service, The University of Texas at Austin, Texas 78758.

2. A Primer of Oilwell Service and Workover; Petroleum Extension Service, The University of Texas at Austin, Texas 78758.

3. Comprehensive Safety Recommendations Land-Based Oil and Gas Well Drilling; National Institute for Occupations Safety and Health, U.S. Department of Health and Human Services, Morgantown, West Virginia 26505.

4. Recommended Practices for Occupational Safety and Health for Oil and Gas Well Drilling and Servicing Operations, API RP-54 American Petroleum Institute, 300 Corrigan Tower, Dallas, Texas 75201.

5. Recommended Safe Procedures and Guidelines for Oil and Gas Well Servicing; Association of Oil Well Servicing Contractors, 6060 North Central Expressway, Suite 538, Dallas, Texas 75206.

6. Drilling Manual; International Association of Drilling Contractors, 3737 Westcenter Drive, Houston, Texas 77042.

7. Blowout Prevention; Louisiana State University, Baton Rouge, Louisiana 70803.

8. Safety and Health for Oil and Gas Well Operations; U.S. Department of Labor, OSHA, Washington, D.C. 20210.

9. Health and Safety Guide for Oil and Gas Well Drilling and Servicing; National Institute for Occupational Safety and Health, Publication No. 78-190, Cincinnati, Ohio 45226.

10. Drilling Technology Series; Petroleum Extension Service, The University of Texas at Austin, Texas 78712.

11. Lessons in Rotary Drilling; Petroleum Extension Service, The University of Texas at Austin, Texas 78712.

12. Lessons in Well Servicing and Workover; Petroleum Extension Service, The University of Texas at Austin, Texas 78712.

13. NIOSH/OSHA Pocket Guide to Chemical Hazards; National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, Publication 78-210, Cincinnati, Ohio 54226.

14. Threshold Limit Values for Chemical Substances and Physical Agents in the Workroom Environment with Intended Changes for 1982; American Conference of Governmental Industrial Hygienists, Cincinnati, Ohio 45201.

15. American National Standard for Emergency Eyewash and Shower Equipment; (ANSI Z358.1-1981), 1430 Broadway, New York, New York 10018.

16. OSHA Instruction STD 1-12.28, CH-1, Dated February 14, 1983, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210.

State Standards

Alaska—Subchapter 8, Petroleum Code Occupational Safety and Health Standards, Alaska Department of Labor, Division of

Occupational Safety and Health, Juneau, Alaska 99811.

California—Petroleum Safety Orders Drilling and Production, California Department of Industrial Relations, Division of Occupational Safety and Health, 525 Golden Gate Avenue, 3rd Floor, San Francisco, California 94102.

Michigan—Oil and Gas Drilling and Servicing Operation, Department of Labor, 309 West Washington, Box 30015, Lansing, Michigan 48909.

New Mexico—Recommended Practices for Oil and Gas Well Drilling and Servicing Operations, 1982. Environmental Improvement Division, P.O. Box 968, Santa Fe, New Mexico, 87504.

Texas—Draft Occupational Safety Standard for Oil and Gas Well Drilling and Servicing, Texas State Department of Health and Resources, 1100 West 49th Street, Austin, Texas 78756.

Utah—Rules and Regulations for Oil, Gas, Geothermal and Related Services Standards, Utah State Industrial Commission, 160 East South, P.O. Box 5800, Salt Lake City, Utah 84110–5800.

Wyoming—Rules and Regulations for Oil and Gas Well Servicing, Wyoming Department of Occupational Safety and Health; 200 East 8th Avenue, Cheyenne, Wyoming 82001.

Wyoming—Rules and Regulations for Oil and Gas Well Drilling, Wyoming Department of Occupational Safety and Health; 200 East 8th Avenue, Cheyenne, Wyoming 82001.

Appendix D to § 1910.270

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[FR Doc. 83-34326 Filed 12-27-83; 8:45 am]

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Federal Register

Wednesday
December 28, 1983

Part III

Environmental Protection Agency

Review of Standards of Performance for New Stationary Sources; Petroleum Refinery Claus Sulfur Recovery Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2410-7]

Review of Standards of Performance for New Stationary Sources; Petroleum Refinery Claus Sulfur Recovery Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review of standards.

SUMMARY: The EPA has reviewed the standards of performance for petroleum refinery Claus sulfur recovery plants. The review is required under the Clean Air Act, as amended August 1977. This notice presents the findings of the review. The EPA has concluded that the level of control required by the standards of performance reflects best demonstrated technology, considering economic, energy and non-air environmental impacts. Minor revisions to the testing and monitoring requirements of the standard appear to be warranted; however, the EPA has concluded that the proposal of such revisions would be more appropriate following completion of related ongoing studies at the EPA.

DATE: *Comments.* Comments must be received on or before February 27, 1984.

ADDRESS: *Comments.* Send comments (in duplicate if possible) to the Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Attention: Docket No. A-83-16.

Docket. Docket No. A-83-16, containing supporting information used in conducting the review, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

Document. The document "A Review of New Source Performance Standards for Petroleum Refinery Sulfur Plants" (EPA report No. EPA-450/3-83-014) may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina, 27711, telephone number (919) 541-2777.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth R. Durkee, (919) 541-5596, concerning technical aspects of the industry and control technologies, and Ms. Susan Wyatt, (919) 541-5578, concerning regulatory decisions and the standard. The address for both parties is Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

New source performance standards (NSPS) for Claus sulfur recovery plants in petroleum refineries were promulgated by the EPA on March 15, 1978 (40 CFR 60.100, Subpart J). A Claus plant is a refinery process for converting hydrogen sulfide (H_2S), which is a contaminant created in petroleum refining, to marketable liquid sulfur. Claus plants are not able to convert 100 percent of the H_2S to liquid sulfur. The unconverted sulfur is incinerated and emitted as sulfur dioxide (SO_2) from the tail gas of an uncontrolled Claus plant. The NSPS limits these SO_2 emissions. To meet the emission limits, the tail gas must be treated in one of several types of control systems commonly called a tail gas treater. The residual emissions after the tail gas treater can be either SO_2 or reduced sulfur, depending on the type of control system. Consequently, emission limits exist for both cases. Specifically, the emission limits are:

- For an incinerated gas stream, 250 parts per million by volume of sulfur dioxide corrected to a dry, oxygen-free basis; or
- For an unincinerated gas stream, 300 parts per million by volume of reduced sulfur compounds and 10 parts per million by volume of hydrogen sulfide, both corrected to a dry, oxygen-free basis.

The standards apply to any Claus plant which commenced construction or modification after October 4, 1976. Claus plants with capacities less than 20 long tons per day (LT/D) are exempt from the emission limits.

As required by Section 111(a)(1) of the Act, the promulgated standards reflected application of "the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." For convenience, this is referred to as "best demonstrated technology" or "BDT."

Section 111(b)(1)(B) requires the EPA to review and, if appropriate, revise NSPS, at least every 4 years. The principal purpose of such review and revisions is to ensure that the standards reflect a current assessment of best demonstrated technology.

The review of the refinery Claus plant standard has been conducted by contacting EPA regional offices, State agencies, the American Petroleum Institute, companies with Claus plants subject to NSPS, and control equipment vendors. Information was collected on the number and location of facilities subject to the NSPS, control equipment performance and costs, and testing and monitoring. From these sources, a background document was prepared covering the current status of control technology with emphasis on operation and maintenance associated with NSPS units, compliance test data, monitoring systems employed, and cost and cost effectiveness for a representative control system on different sizes of Claus plants. This notice announces that the EPA has completed the review and invites comments on its results.

Findings

Industry Growth Rate

In April 1973, the total sulfur plant capacity of refinery sulfur plants was 8,000 long tons per day (LT/D). The average size facility at that time was 65 LT/D. The growth rate for 1974 was estimated at 13 percent. In 1982, the total domestic sulfur plant capacity with emission controls was estimated at over 12,300 LT/D with the average size unit at 162 LT/D. Although this figure includes only controlled capacity, the quantity of uncontrolled capacity is expected to be little. Planned units for 1983–1985 total over 5,000 LT/D, representing a greater than 10 percent annual growth rate. The average size new plant is around 200 LT/D capacity. This information shows continuing industry growth and a trend toward larger sized plants.

Control Technology

A typical uncontrolled Claus plant in a petroleum refinery converts approximately 96 percent of input H_2S to salable liquid sulfur; however, the remaining 4 percent of input H_2S is converted to a mixture of sulfur gases which, when incinerated, results in SO_2 emissions of about 10,000 parts per million by volume (ppmv). At least three types of control systems have been demonstrated to improve overall sulfur recovery to 99.9 percent, and thereby reduce sulfur emissions. For example, a typical uncontrolled Claus plant of 100 LT/D would emit 4 LT/D sulfur or 8.96 tons of sulfur dioxide gases per day. With one of these emission control systems, the emissions from the plant would be reduced to about 0.22 tons per day.

One type of control system incinerates sulfur species to sulfur dioxide and then uses an absorption process to take the sulfur dioxide out of the gas. Residual

sulfur emissions as SO_2 are exhausted to the atmosphere. The other two types are reduction systems. One of these first converts sulfur species to hydrogen sulfide, then absorbs the hydrogen sulfide and recycles it to the Claus plant. The residual emissions are incinerated and exhausted to the atmosphere as sulfur dioxide. The other reduction process converts sulfur gases to hydrogen sulfide and then oxidizes hydrogen sulfide directly to liquid sulfur in a separate sulfur plant. The residual emissions are reduced sulfur species, with carbonyl sulfide (COS) the most prevalent. The oxidation system is employed in a few existing plants, but the reduction systems are presently the ones predominantly used. All units planned for 1983–1985 will use reduction control systems.

The review did not find any demonstrated technologies for controlling emissions that achieve more control than the technologies just described. Analyses of the cost of the technologies upon which the standard is based showed that the costs remain reasonable. Therefore, the EPA concluded that the technology on which the standard is based is still appropriate.

Levels Achievable With Demonstrated Control Technology

The compliance test results for the four facilities subject to the limit of 300 ppmv of reduced sulfur compounds ranged from 2 to 161 ppmv and averaged 60 ppmv. The compliance tests for hydrogen sulfide from the facilities ranged from less than 1 to 8.5 ppmv and averaged 4.5 ppmv. Six facilities are subject to the 250 ppmv emission limit for sulfur dioxide; their compliance test results ranged from 80 to 210 ppmv and averaged 160 ppmv. The current performance levels of these technologies are similar to the performance levels on which the original standard was based. The compliance data for facilities subject to the emission limit for reduced sulfur compounds suggest the possibility of lowering the emission limit. However, with the present emission limit, owners and operators will continue to use the technology design on which the standard is based in order to stay below the limit. In addition, inefficient operation of the control device results in increased chemical consumption and cost; the owner or operator has no incentive to operate the control device so that the emissions are higher than those measured during the compliance tests. Therefore, lowering the emission limit would not decrease the emissions to the atmosphere. Consequently, the EPA concluded that retaining the current NSPS emission levels is appropriate.

Cost Considerations Affecting the NSPS

A cost analysis of the more prevalent reduction control system was done for three model Claus plants of 10, 50, and 100 LT/D. [Note that the planned facilities for 1983–85 average 200 LT/D.] This cost analysis concentrated on the range of plant sizes for which the cost effectiveness would be worst. For most of the new NSPS units, the costs of control per unit of sulfur dioxide removed will be less than those discussed in this section.

For a 100 LT/D plant, the uncontrolled Claus with incinerator and stack would have a capital cost of $\$6.26 \times 10^6$, while the Claus (including incinerator and stack) with control system would have a capital cost of $\$10.60 \times 10^6$; emission control would thus be 41 percent of total capital expenditure. For a 10 LT/D facility Claus plant, cost is estimated at $\$2.54 \times 10^6$ and total controlled facility would cost $\$4.96 \times 10^6$; emission controls for the 10 LT/D case would represent 49 percent of total investment.

With credits for steam and sulfur included, and an assumed 10 percent interest rate for capital, the cost effectiveness, in dollars per megagram ($/Mg) of SO_2 removed for NSPS control systems is $ 654/Mg at 100 LT/D and $2,126/Mg at 10 LT/D. At the current 20 LT/D exemption from NSPS, the cost of control is estimated at $1,378/Mg. While there may be growth in units under 20 LT/D, these units in total represent a very small fraction (Approximately 2 percent) of projected growth in capacity. This small percentage of projected capacity growth does not warrant a revision in the capacity exemption of 20 LT/D at this time.

Testing and Monitoring

The review found that several of the NSPS requirements for compliance testing and monitoring should be clarified. Possible revisions relate to the monitoring of H_2S and total reduced sulfur (TRS). The regulation requires facilities subject to the limits for total reduced sulfur and H_2S to monitor both of these pollutants. These requirements, however, are not presently in effect because there are no EPA performance specifications for reduced sulfur and H_2S monitors. Performance specifications applicable to petroleum refineries for reduced sulfur monitors are being investigated in an ongoing EPA study. The study was initiated in December 1982 and field testing is expected to be completed by the end of 1983. Another study, recently completed by the EPA, has found no acceptable H_2S monitors, and consequently, the Agency is not presently developing performance specifications for them. Therefore, the standard needs to be revised to delete the requirement for H_2S monitoring. In lieu of H_2S monitoring for the reduction control systems, data suggest that TRS monitoring may be used as a surrogate for H_2S. The EPA has, therefore, concluded that this revision should await development of reduced sulfur monitoring specifications.

Some of the facilities subject to the SO_2 emissions limit use a reduction control system followed by an incinerator. The present standard requires only monitoring of SO_2. However, if the incinerator does not convert all of the reduced sulfur to SO_2, the SO_2 monitor will not achieve an accurate measurement of the sulfur compounds leaving the stack. The standard should include provisions for insuring that monitoring adequately reflects sulfur emissions from the stack. Possible options include monitoring of the temperature and oxygen content of the incinerator to insure that essentially all reduced sulfur be converted to SO_2, or to limit the amount of reduced sulfur emitted from the stack. The EPA concluded that such a revision should be considered when other monitoring and testing revisions are made.

The regulation does not presently specify the use of oxygen monitors, although they are necessary to convert monitoring data to the units of the standards, which are on a dry, oxygen-free basis. In addition, the regulation does not include the formula for the conversion of emission data to the units of the standard. Therefore, the NSPS should be revised to specify more clearly the methods for converting emission data to a dry, oxygen-free basis when the other monitoring and testing revisions are made.

The Agency has an ongoing study, separate from the review, related to Reference Method 15, determination of hydrogen sulfide, carbonyl sulfide, and carbon disulfide emissions from stationary sources. The Agency is developing a modified method, which would be an equivalent, to Reference Method 15. Most recent emission tests of refinery Claus plants have been performed using another modification of Reference Method 15, where acetate buffer and improved chromatographic separation columns have simplified the sample conditioning requirements of Reference Method 15. Approval of this method for compliance testing is determined on a case-by-case basis.

Conclusions

Based on the above findings, the EPA concludes that the level of control required by the NSPS for Claus plants in petroleum refineries reflects best demonstrated control technology, considering economic, energy, and non-air environmental impacts. Any change in the lower capacity exemption would have minimum environmental impact; therefore, no action is being taken at this time. Although minor revisions to the testing and monitoring requirements of the standards appear to be warranted, the EPA has concluded that such revisions would be more appropriate if proposed with the anticipated revisions resulting from the ongoing studies on reduced sulfur monitor specifications and Reference Method 15.

Miscellaneous

Publication of this review was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the review, including economic and technological issues, and on the proposed test methods.

This regulation will be reviewed again in 4 years as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

The reporting and recordkeeping associated with the reviewed standards have current approval of the Office of Management and Budget (OMB) under Section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0022.

The Regulatory Flexibility Act of 1980 requires that the adverse impact of Federal regulations on small businesses be identified. The Act requires the completion of a Regulatory Flexibility Analysis in those instances when small business impacts are possible. None of the refineries presently subject to the Claus plant NSPS are unreasonably affected by the standard. Based on the cost analysis, economic impacts on new small refineries are expected to be small. In addition, little construction is anticipated at small refineries and it would be unlikely that a small refinery would install a Claus plant that is larger than 20 LT/D. It is the Administrator's determination that the standard would not have a significant economic impact on a substantial number of small businesses. Accordingly, a small business impact analysis has not been prepared.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

Dated: December 19, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-34359 Filed 12-27-83; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Wednesday
December 28, 1983

Part IV

Department of Education

Pell Grant Program; Schedule of Expected Family Contributions; Family Size Offsets; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program; Schedule of Expected Family Contributions; Family Size Offsets

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the final regulations for the Pell Grant Expected Family Contribution Schedule for the 1984–85 award year. These regulations are amended by setting forth the family size offsets in accordance with Section 5 of the Student Financial Assistance Technical Amendments Act of 1982, as amended by Section 4 of the Student Loan Consolidation and Technical Amendments Act of 1983, Pub. L. 98–79. The family size offset tables are part of the formulas used in determining student eligibility for Pell Grants on the basis of financial need.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later, if Congress takes certain adjournments. It should be noted, however, that these regulatory amendments apply only to the award of student financial assistance under the Pell Grant Program for periods of enrollment beginning on or after July 1, 1984. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Brian Kerrigan, Chief, Pell Grant Policy Section, or Deborah Cohen, Pell Grant Program Specialist, Office of Student Financial Assistance, U.S. Department of Education, [ROB–3, Room 4318], 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION:

Background

The Family Contribution Schedule includes "offsets" based on family size which are used in computing the size of the Pell Grant. These offsets are updated each year to reflect the change in the Consumer Price Index (CPI) for Wage Earners and Clerical Workers, published by the Bureau of Labor Statistics of the Department of Labor. The offsets, which represent basic subsistence costs for families, are subtracted from the income of the student and his or her family along with other deductions to derive "discretionary income." A portion of discretionary income is assessed as the student's expected family contribution.

On August 30, 1983, the Secretary issued the final regulations for the Pell Grant Expected Family Contribution Schedule for the 1984–85 award year. The regulations were published in compliance with Section 4 of the Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98–79). However, the family size offset tables were not published at that time; Section 4 of Pub. L. 98–79 directs the Secretary to publish the family size offset tables for the 1984–85 award year schedule, rounded to the nearest $100, immediately after the CPI is published for September, 1983. Therefore, these tables now are being published. Because the CPI was increased by 3.4 percent, the offsets used in 1983–84 were multiplied by 103.4 percent and the result was rounded to the nearest $100.

Waiver of Notice of Proposed Rulemaking

In accordance with Section 4 of the Student Loan Consolidation and Technical Amendments Act of 1983, (Pub. L. 98–79) the Secretary is required to publish the family size offsets used in the 1983–84 award year schedule, adjusted by the percentage increase or decrease in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor. Accordingly, the Secretary finds that publication of a proposed rule in this instance would be unnecessary within the meaning of 5 U.S.C. 553(b), and is publishing these rules as final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations set forth the family size offsets for the Pell Grant Family Contribution Schedule. They do not have an impact on small entities.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: December 21, 1983.

T. H. Bell,

Secretary of Education.

(Catalogue of Federal Domestic Assistance Number: 84.063, Pell Grant Program)

PART 690—PELL GRANT PROGRAM

The Secretary amends Part 690 of Title 34 of the Code of Federal Regulations as follows:

1. In § 690.34, paragraph (a)(1)(i) is revised to read as follows:

§ 690.34 Computation of the expected family contribution for a dependent student from the effective family income.

* * * * *

(a) * * *

(1)(i) A family size offset in the amount specified in the following table:

FAMILY SIZE OFFSETS

	Amount
Family members:	
2	$6,000
3	7,300
4	9,300
5	11,000
6	12,400

Plus $1,600 for each additional family member over 6.

* * * * *

(Sec. 5 of Pub. L. 97–301 as amended by sec. 4 of Pub. L. 98–79)

2. In § 690.34a, paragraph (a)(1) is revised to read as follows:

§ 690.34a Computation of the expected family contibution for a dependent student from the effective student income.

* * * * *

(a) * * *

(1) If the parental discretionary income is positive, the dependent student offset, which is derived from the family size offset (See § 690.34(a)(1)(i)), is in the amount specified below:

DEPENDENT STUDENT OFFSET

Single student	$3,200
Married student	$4,700

* * * * *

(Sec. 5 of Pub. L. 97–301, as amended by sec. 4 of Pub. L. 98–79)

3. In § 690.44, paragraph (a)(1)(i) is revised to read as follows:

§ 690.44 Computation of the expected family contribution for an independent student from the effective family income.

* * * * *

(a) * * *

(1)(i) A family size offset in the amount specified in the following table:

FAMILY SIZE OFFSETS

	Amount
Family members:	
1	$4,700
2	6,000
3	7,300
4	9,300
5	11,000
6	12,400

Plus $1,600 for each additional family member over 6.

* * * * *

(Sec. 5 of Pub. L. 97-301 as amended by sec. 4 of Pub. L. 98-79)

[FR Doc. 83-34370 Filed 12-27-83; 8:45 am]
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federal register

Wednesday
December 28, 1983

Part V

Federal Trade Commission

General Motors Corp. and Toyota Motor Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 821 0159]

General Motors Corp. and Toyota Motor Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The Federal Trade Commission has provisionally accepted a consent order with General Motors Corporation and Toyota Motor Corporation in settlement of a proposed complaint alleging violations of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. Under the proposed agreement, the automakers would be limited to manufacturing and selling no more than 250,000 Sprinter-derived vehicles per year, including light vans and trucks. The order would limit the Joint Venture to a twelve year period, ending no later than Dec. 31, 1997. While GM, Toyota and the Joint Venture would be permitted to exchange information necessary to produce the Sprinter-derived vehicles, the order would prohibit the transfer or communication of any information concerning current or future prices of new automobiles or component parts produced by either automaker; current or future sales or production forecasts or plans for any product not produced by the Joint Venture; and current or future marketing plans for any product, including products produced by the Joint Venture.

DATE: Comments must be received on or before February 27, 1984.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CDI, Edward F. Glynn, Washington, D.C. 20580. (202) 634–6608.

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

List of Subjects in 16 CFR Part 13

Automobiles, Trade practices.

In the Matter of General Motors Corporation, a corporation, and Toyota Motor Corporation, a corporation.

The Federal Trade Commission having initiated an investigated of the proposed acquisition of shares in a Joint Venture corporation by General Motors Corporation and Toyota Motor Corporation and the respondents having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Clayton Act and the Federal Trade Commission Act; and it now appearing that counsel for the Commission, General Motors Corporation and Toyota Motor Corporation are willing to enter into an agreement containing an order in settlement of that complaint:

It is hereby agreed by and between General Motors Corporation and Toyota Motor Corporation, by their duly authorized agents and attorneys, and counsel for the Commission, that:

1. General Motors is a Delaware corporation with headquarters at 3044 West Grand Boulevard, Detroit, Michigan.

2. Toyota is a Japanese corporation with headquarters at 1, Toyota Cho, Toyota City, Aichi Prefecture 471, Japan.

3. Respondents have been served with a copy of the proposed complaint to be issued by the Federal Trade Commission charging them with violations of section 7 of the Clayton Act, as amended (15 U.S.C. 18), and section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45).

4. For the purposes of this order only, respondents admit all the jurisdictional facts set forth in the complaint attached hereto as Appendix A.

5. Respondents waive:

(a) Any further procedural steps;

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

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

(d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the complaint and exhibit 1 to the Complaint, attached hereto as Appendix A, will be placed on the public record for a period of sixty days. The Commission thereafter may either withdraw its acoeptance of this agreement and so notify Respondents, in which event it will take such action as it may consider appropriate or issue and serve its decision in accordance with the terms of this agreement in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been or would be violated as alleged in the complaint attached hereto as Appendix A.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Respondents, issue its decision containing the following Order in disposition of the proceeding and make non-confidential information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other Orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the Order to Respondent shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation, not contained in the Order or the agreement, may be used to vary or contradict the terms of the Order.

9. Respondents have read the complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

It is ordered that for the purposes of this Order the following definitions shall apply:

1. "GM" means General Motors Corporation, a corporation organized,

existing and doing business under the laws of Delaware, with its principal offices at 3044 West Grand Boulevard, Detroit, Michigan, as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of GM's parents, divisions, subsidiaries, successors and assigns.

2. "Toyota" means Toyota Motor Corporation, a corporation organized, existing and doing business under the laws of Japan, with its principal offices at 1, Toyota Cho, Toyota City, Aichi Prefecture 471, Japan, as well as its officers, employees, agents, its parents, divisions, subsidiaries, successors, assigns, and the officers, employees or agents of Toyota's parents, divisions, subsidiaries, successors and assigns.

3. The term "New Automobiles" means new passenger automobiles manufactured or sold in or shipped to the United States or Canada, and includes light trucks and vans.

4. The term "Module" means an integrated manufacturing facility, comprising, at a minimum, body, paint and final assembly functions, capable of producing not more than approximately 250,000 New Automobiles per year.

5. The term "Joint Venture" means any corporation, partnership or other entity jointly owned, controlled, managed or directed by GM and Toyota, or by both GM and Toyota and any other entity or entities, that engages in the manufacture or sale of New Automobiles. The term "Joint Venture" includes the successors and assigns of a Joint Venture, and any entity formed subsequent to a Joint Venture for purposes similar to the purposes of a Joint Venture.

6. Information is presumptively "public" if it is reported in a publication other than one authored by GM or Toyota.

II

It is further ordered that respondents shall not, without the prior approval of the Commission, form any Joint Venture except a single Joint Venture that is limited to the manufacture for or sale to GM of New Automobiles derived from the Toyota Sprinter and produced by a single Module. Nothing in this paragraph is intended to or is to be construed to prohibit this single Joint Venture from manufacturing or selling additional products to Toyota.

III

It is further ordered that respondents shall not form any Joint Venture that is not limited in duration to a maximum of twelve years after the start of production or that continues in operation beyond the earlier of twelve years after the start of production or December 31, 1997; provided, however, that nothing in this paragraph prohibits respondents from continuing any entity beyond twelve years for the limited purposes of winding up the affairs of the Joint Venture (which shall not include manufacturing New Automobiles), disposing of its assets, and providing for continuing warranty or product or service responsibilities for Joint Venture products.

IV

It is further ordered that respondents shall not exchange or discuss between themselves, or with any Joint Venture, non-public information in connection with New Automobiles relating to current or future:

1. Prices of GM or Toyota New Automobiles or component parts of New Automobiles, except pursuant to a supplier-customer relationship entered into in the ordinary course of business;

2. Costs of GM or Toyota products, except as provided in Paragraph V of this order;

3. Sales or production forecasts or plans for any product other than the product of the Joint Venture; or

4. Marketing plans for any product.

V

It is further ordered that respondents shall not, except as may be necessary to accomplish, and solely in connection with, the legitimate purposes or functioning of any Joint Venture, exchange or discuss between themselves, or with any Joint Venture, non-public information in connection with New Automobiles relating to current or future:

1. Model changes, design changes, or product designs relating to the product of the Joint Venture;

2. Sales or production forecasts or plans as they relate to the product of the Joint Venture; or

3. Costs of GM or Toyota products supplied to the Joint Venture.

VI

It is further ordered that each respondent shall, and respondents shall cause any Joint Venture to:

1. Maintain complete files and records of all correspondence and other communications, whether in the United States or elsewhere, between and among GM, Toyota and the Joint Venture concerning information described in Paragraph V;

2. Maintain logs of all meetings and nonwritten communications, whether in the United States or elsewhere, between and among GM, Toyota, and the Joint Venture concerning information described in paragraph V, including in such logs the names and corporate positions of all participants, the dates and locations of the meetings or other communications and a summary or description of such information;

3. For a period of six years, retain and make available to the Federal Trade Commission on request the complete files, records and logs required by subparagraphs 1 and 2; and

4. Annually, on the anniversary date of this Order, furnish a copy of this Order to each management employee of the Joint Venture and each management employee of GM and Toyota with responsibilities for the Joint Venture, and furnish to the Federal Trade Commission a signed statement provided by each such employee affirming that he or she had read a copy of this Order, understand it, and intends to comply fully with its provisions.

VII

It is further ordered that each respondent shall, within sixty days from the date of issuance of this Order, and annually thereafter, submit in writing to the Commission a report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with the terms of this Order, and such additional information relating thereto as may from time to time reasonably be required.

VIII

It is further ordered that each respondent shall notify the Commission at least thirty days prior to any change in itself or in any Joint Venture that affects compliance with the obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations or Joint Venture.

IX

It is further ordered that the prohibitions of this Order shall terminate five years after the termination of manufacturing or sales of New Automobiles by all Joint Ventures.

Appendix A

Complaint

The Federal Trade Commission, having reason to believe that General Motors Corporation ("GM" or "General Motors") and Toyota Motor Corporation ("Toyota") intend to acquire shares in a Joint Venture corporation in violation of section 7 of the Clayton Act, as amended (15 U.S.C. 18), and section 5 of

the Federal Trade Commission Act, as amended (15 U.S.C. 45), and it appearing that a proceeding by the Commission in respect thereof would be in the public interest, the Commission hereby issues its Compliants, pursuant to section 11 of the Clayton Act (15 U.S.C. 21) and section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. *Definition*

1. For the purpose of this Complaint, the following definition shall apply: "new automobiles" means new passenger automobiles manufactured or sold in the United States or Canada, and includes light trucks and vans.

II. *General Motors Corporation*

2. General Motors is a Delaware corporation with headquarters at 3044 West Grand Boulevard, Detroit, Michigan.

III. *Toyota Motor Corporation*

3. Toyota is a Japanese corporation with headquarters at 1, Toyota Cho, Toyota City, Aichi Prefecture 471, Japan.

IV. *Jurisdiction*

4. At all times relevant herein, each of the companies named in this complaint has been engaged in or affected commerce as "commerce" is defined in section 1 of the Clayton Act, as amended (15 U.S.C. 12), and section 4 of the Federal Trade Commission Act, as amended (15 U.S.C. 44).

V. *The Proposed Joint Venture*

5. Pursuant to an agreement reflected in a Memorandum of Understanding (hereinafter "Memorandum") executed by GM and Toyota on February 17, 1983, attached to this Complaint as Exhibit 1, GM and Toyota have agreed to form a Joint Venture corporation (hereinafter "Joint Venture"). GM and Toyota will each acquire one-half of the shares in the Joint Venture and will each designate one-half of the Board of Directors of the Joint Venture. The Joint Venture will be managed principally by persons designated by Toyota. The Joint Venture will manufacture new automobiles that will be designed by Toyota in consultation with GM and will be sold to GM, and may also manufacture new automobiles that would be sold to Toyota.

VI. *Trade and Commerce*

6. The relevant product market is the manufacture or sale of small new automobiles, which includes automobiles commonly referred to as subcompact, compact, and intermediate sized automobiles.

7. The relevant geographic market is the United States and Canada.

8. Concentration in the relevant product and geographic markets is high.

9. Both GM and Toyota are substantial competitors in the relevant product and geographic markets.

VII. *Effects of the Proposed Joint Venture*

10. The effect of the Joint Venture may be substantially to lessen competition or tend to create a monopoly in the relevant markets in violation of section 7 of the Clayton Act, as amended (15 U.S.C. 18), or may be unfair methods of competition in violation of section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), in the following ways:

(a) The output of the Joint Venture is likely to be significantly expanded beyond the single module, capable of producing not more than 250,000 new automobiles per year, an expansion that would not be reasonably necessary to accomplish any of the legitimate purposes of the Joint Venture; and

(b) The Joint Venture would provide no adequate safeguards against the use of the Joint Venture, or the relationships between GM and Toyota that are occasioned by the Joint Venture, for the transmission of competitively significant information beyond the minimum degree reasonably necessary to accomplish the legitimate purposes of the Joint Venture.

11. Each of the effects identified in paragraph 10, singly or in combination, would significantly increase the likelihood of noncompetitive cooperation between GM and Toyota, the effect of which may be substantially to lessen competition in the relevant markets, and would not be reasonably necessary to obtain any legitimate, procompetitive benefits of the Joint Venture.

VIII. *Violations Charged*

The parties' agreement to the proposed Joint Venture constitutes a violation of section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and, if consummated, would constitute a violation of section 7 of the Clayton Act, as amended (15 U.S.C. 18).

Wherefore, the premises considered, the Federal Trade Commission on this — day of ——, issues its Complaint against said Respondents.

Exhibit 1—Toyota Motor Corporation-General Motors Corporation, Memorandum of Understanding

February 17, 1983.

The Commission has deleted certain portions of this Agreement. Both GM and Toyota have stated that disclosure of the deleted information, which the companies have maintained in strictest confidence, could likely cause serious competitive injury to the joint venture if publicly released. The Commission has determined that this information constitutes "commercial or financial information which was received from any person and which is privileged or confidential" within the meaning of section 6(f) of the FTC Act, 15 U.S.C. 46(f). Accordingly, the Commission is prohibited by that provision from making the information public.

Toyota Motor Corporation (Toyota) and General Motors Corporation (GM) agree to establish a joint venture (JV) for the limited purpose of manufacturing in the United States a specific automotive vehicle not heretofore produced, and related components described below. In so doing, it is the intent of both parties to provide such assistance to the JV as is considered appropriate to the enhancement of the JV's success. The JV will be limited in scope to this vehicle and this agreement is not intended to establish a cooperative relationship between the parties in any other business.

The purpose of this Memorandum is to summarize the current understanding of Toyota and GM regarding the basic parameters of this limited manufacturing arrangement.

Product

The vehicle to be manufactured by the JV will be derived from Toyota's new front-wheel drive Sprinter. Body styles will include a 4-Door Sedan and (6-12 months later) a 5-Door Liftback. Toyota will retain design authority over the vehicle, in consultation as to vehicle appearance with GM, the purchaser. As modifications will probably be made to the Sprinter or Corolla over time in accordance with market demand, Toyota will effect similar changes to the JV vehicle if such changes are deemed desirable by the parties. Vehicle certification will be handled by Toyota, with assistance provided by JV and GM as agreed upon by the parties.

Manufacturing

The JV will begin production of the GM-specific vehicle as early as possible in the 1985 Model year with nominal capacity of approximately 200,000 units per annum at GM's former assembly facility in Fremont, California.

As part of the technical assistance stated hereinafter, Toyota will take the initiative, in consultation with GM, in designing the Fremont manufacturing layout and coordinating the related

acquisition and installation of its machinery, equipment and tooling. In this regard, if GM deems it necessary for orders to be placed for construction of buildings, JV machinery, equipment and tooling prior to the establishment of the JV to facilitate a timely introduction of the initial JV vehicle in the 1985 Model year, GM may do so in its own name directly or through Toyota, and the parties agree to share equally any capital expenditures or cancellation charges arising from such orders. The only exceptions to the above are as follows: In the event the JV is not established as a result of unfavorable U.S. governmental review of the matters set forth in this Memorandum or, following consultations between the senior management of Toyota and GM, as a result of either party notifying the other on or prior to one hundred twenty (120) days following the signing of this Memorandum of Understanding by the parties that such party is not satisfied with the prospects for developing an acceptable employe relations structure, GM shall bear 100% of the cost of such expenditures and charges.

GM's annual requirements are presently expected to exceed 200,000 units per annum. Both parties will, therefore, assist the JV in increasing its production to the maximum extent possible within the available capacity. Requirements for capacity beyond the first module will be the subject of a separate study.

The JV may later produce a variation of the JV vehicle for Toyota. Toyota and GM may also agree for GM to source the GM-specific vehicle from Toyota assembly plants in Japan, feeing JV capacity for Toyota's full or partial production of Toyota-specific vehicles.

Purchase of Production Materials

The JV will purchase its production materials from those sources providing the least possible cost, consistent with its standards for product quality and vendor reliability of supply. Based on this principle, Toyota and GM have agreed upon a tentative sourcing approach, under which specific components to be purchased from Toyota, GM and other outside vendors have been separately identified. Components to be manufactured by the JV, mainly major stampings, have also been identified.

Marketing

All GM-specific vehicles produced by the JV will be sold directly to GM or its designated marketing units for resale through GM's dealer network. If any variation of the JV vehicles should be produced by the JV for Toyota, such vehicles would be sold directly to Toyota or its designated marketing unit for resale through Toyota's dealer network. Neither Toyota nor GM will consult the other with respect to the marketing of JV products, or any other products, through their respective marketing organizations.

Vehicles sold by the JV should be priced by the JV to provide a reasonable profit for the JV, Toyota, and GM. To accomplish this, production costs must be kept as low as possible through the combined best efforts of the JV, Toyota, GM and other major suppliers. In this regard, the parties have been conducting extensive studies detailing how each can work to minimize JV expenses.

The initial JV selling price of the JV vehicle to be sold to GM during the 1985 Model Year will be determined at least 60 days prior to the start of production by negotiation between the JV and GM. This negotiation will be based on the production cost estimated 90 days prior to the expected start of production by the JV, with estimates of said cost to be guided by the feasibility study. In no event, however, will the said initial JV selling price be higher than the upper limit nor lower than the lower limit, each as defined below. The upper limit shall be determined by adjusting for feature differences the Dealer Net Price less —% of Toyota's then current U.S. model front-wheel drive Corolla equipped comparably with the JV vehicle concerned, and the lower limit shall be determined by adjusting for feature differences the Dealer Net Price less —% of said Corolla. The adjustment for feature differences will be made by agreement between the JV and GM.

Thereafter, although there may be exceptions, the JV vehicle selling price will be revised and determined for each model year. The new selling price for the new model year will be determined by applying to the selling price for the previous model year the Index as defined in Exhibit A. Since the calculations embodied in the Index may occasionally yield a selling price which is at significant variance with then current market conditions, the JV and GM will in such cases negotiate a more appropriate selling price.

If model changes or specification changes of the vehicle manufactured by the JV are necessary, Toyota, GM and the JV will agree upon these model changes or specification changes. Toyota will present to the JV the plan for the model changes or specification changes concerned. Then, the JV will submit to and negotiate with GM the planned model changes and specification changes together with the planned price changes. These model changes and specification changes will be made as agreed upon by the JV and GM.

The methodology to be employed in pricing optional equipment available on the JV vehicle (both initial and subsequent) will be comparable to that described in the three preceding paragraphs.

The initial prices of Toyota and GM components purchased by the JV will be determined 90 days or more prior to the start of production by negotiation between the JV and component suppliers after the determination of the specifications of the JV vehicle. Identification of the respective sources of supply and determination of the initial component prices will be guided by the feasibility study, with adjustments made for changes in specifications and appropriate economics.

Thereafter, the prices of components will be reviewed semi-annually. The new prices will be determined by negotiation between the JV and component suppliers.

If it is anticipated that continuation of the above-mentioned methods for determination of the prices of the JV vehicles to be sold by the JV and of components to be purchased by the JV would cause those prices to be at such levels as the JV would incur the losses which could endanger the normal operation of the JV, Toyota, GM and the JV shall negotiate and take necessary measures.

As a fundamental principle, Toyota and GM shall each be free to price and free to market the respective vehicles purchased from the JV without restrictions or influence from the other.

Operating Responsibility

The JV will be jointly controlled by an equal number of Toyota and GM directors, in line with Toyota and GM ownership. Toyota will designate the JV president as the chief executive officer and chief operating officer. Toyota and GM will assign to the JV other operating officers as the JV president and JV directors may request, but the parties recognize that the question of which party shall designate the JV officers in charge of financial affairs, labor relations and certain other operations has not yet been agreed upon.

Quality Assurance

New vehicle warranty expense and administration will be the responsibility of the purchaser of the JV vehicle. The JV shall maintain product liability insurance for the benefit of the JV, the parties and other persons in such

amounts as the parties may deem prudent, and the premium costs for such product liability insurance will be borne by the JV. In each product liability lawsuit involving a JV vehicle, the JV and each of the parties will communicate and cooperate with each other in all respects in investigating the facts surrounding the case and in litigating the matter. Each of the parties will refrain from taking adversarial positions against each other. To the extent possible under the JV's product liability insurance arrangements, the JV shall be the entity having the right to control such product liability lawsuits. However, the relative financial share of settlement or adverse judgment costs relating to such product liability claims or losses which are not covered by such product liability insurance shall be apportioned —% to Toyota and —% to GM. Matters relating to JV vehicle recall campaigns (including fines and costs of corrective actions) shall be the subject of further study and negotiation between the parties.

Technical Assistance

Toyota will grant to the JV the license to manufacture the vehicle developed by Toyota, and in exchange for this license, the JV will pay a reasonable royalty to Toyota as may be agreed upon by the parties. Toyota and GM will license the necessary industrial property rights to the JV, and in exchange for these rights, the JV will pay reasonable license fees to Toyota and/or GM as may be agreed upon by the parties. Toyota and GM will also provide technical assistance to the JV on a cost basis plus reasonable markup.

As part of the technical assistance, GM agrees to assist Toyota and the JV in completing compliance tests for safety, emissions and other areas, as agreed upon by the parties.

Purchase/Sale of Equity Interest

Toyota and GM (including, subject to the approval of the other party, their wholly or majority-owned subsidiaries) will each hold a 50% equity interest in the JV. Neither party may transfer its equity interest in the JV to a third party without the written consent of the other. The above notwithstanding, the JV will terminate not later than 12 years after start of production. The methodology for disposition of Toyota and the GM equity interests prior to or upon JV termination will be incorporated in the JV documentation. Any surplus or deficit of the JV as at termination of the JV will be shared equally by Toyota and GM, in line with Toyota and GM ownership. Other issues relating to JV termination will be separately discussed.

Financing

Both Toyota and GM will contribute cash and/or fixed assets to the JV in exchange for equity interests. The amount to be continued as equity will depend upon the JV's total projected capital requirements. In the event that neither lenders or lessors insist that payments made by the JV be subject to appropriate guarantees, Toyota and GM agree either to provide such guarantees based on their pro rata share of the JV or to temporarily advance funds to the JV on their own account (also on a pro rata basis). To the extent permitted by creditors, Toyota and GM further agree that any security interests held by the parties in the JV assets will be shared equally.

Future Difficulties

If it is anticipated that the establishment or continuation of the JV would become difficult or infeasible due to any legal, political or labor-related reason which may arise in the United States, the parties will in good faith discuss the measures to be taken concerning the JV and endeavor to find appropriate solutions.

Agreements to Be Concluded

Depending upon the specific organizational form, various agreements will be concluded among Toyota and GM (including subsidiaries thereof) and the JV. These will include the following: Partnership Agreement or Shareholders Agreement and Articles of Incorporation; Vehicle Supply Agreement (JV to GM); Toyota Component Supply Agreement (Toyota to JV); GM Component Supply Agreement (GM to JV); Toyota Service Parts Agreement (Toyota to JV and/or GM); Technical Assistance and License Agreement; Realty and Other Asset Sale and/or Lease Agreements; Product Responsibility Agreement; and other documents related to the foregoing.

Since it is extremely important that the JV begin production as early as possible in the 1985 Model Year, Toyota and GM commit their best efforts to completing such documentation by May 15, 1983. In any event, both parties agree to immediately begin the detailed production process planning necessary for conversion of the Fremont plant. Except as set forth in the separate provisions for JV buildings, machinery, equipment and tooling referred to in the "Manufacturing" section above, expenses incurred by either party which directly benefit the JV will be properly recorded and, if mutually agreed, will be subsequently rebilled to the JV.

Transaction Review

The agreements reached between the parties relate only to the manufacturing JV described above and do not establish any special relationship between Toyota and GM who continue to be competitors in the United States and throughout the world. Toyota and GM further acknowledge that there are no implied obligations or restrictions other than those expressly set forth.

This Memorandum of Understanding is subject to review by the governments of Japan and the United States. Both parties commit to use their best efforts to obtain favorable reviews. Until execution of all formal documentation, satisfaction by the parties with the results of any government reviews which are undertaken, and satisfaction by the parties with the prospects for developing an acceptable employe relations structure, each party reserves the right to terminate negotiations without liability to the other and the JV shall not be established. However, except as separately set forth in the "Manufacturing" section, the parties shall share equally the expenses and costs incurred by the parties which would, but for such termination, be rebilled to the JV.

Governing Language

This Memorandum of Understanding shall be executed in both an English and a Japanese version, but the parties agree that in the event of a conflict between the meaning of the English text and the Japanese text, the English text shall control.

Dated: February 17, 1983.

Toyota Motor Corporation.

Eiji Toyoda,

Chairman of the Board.

General Motors Corporation.

Roger B. Smith,

Chairman of the Board.

Exhibit A—Market Basket Index

The best selling models among the sub-compacts will be the models which constitute the basket. The models shall be revised at every model year on the basis of model volume in the U.S., using the latest data for previous months.

For reference, the best selling models at present are as follows:

The "Index" shall be the weighted average rate of wholesale price fluctuations of these models from the prior model year to the current, weighting Corolla at % versus % for all other comparable models combined without regard of model volumes in the U.S.

For this purpose, the wholesale price shall be adjusted by eliminating the

value of equipment changes and product improvements in comparison with the previous year models. To this end, the JV will evaluate and determine the value of equipment changes and product improvements, taking into account the opinions of Toyota and GM.

When competitive models are replaced by new models, or additional competitive models are brought in, neither the old model nor the new or additional model will be included in the calculation of the Index for the model year when such model changes take place. It will, however, be included in the calculation of the Index for subsequent model years.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement to a proposed consent order with General Motors Corporation and Toyota Motor Corporation.

On December 22, 1983, the Commission entered into a consent order agreement with General Motors and Toyota in settlement of a proposed complaint. The proposed complaint alleges that the formation of a joint venture by General Motors and Toyota, as proposed in a Memorandum of Understanding executed by the two companies on February 17, 1983, would violate Section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The Memorandum of Understanding, with certain limited confidential commercial and financial information deleted, is attached to the proposed complaint.

Specifically, the complaint alleges that the proposed joint venture would substantially lessen competition in the manufacture and sale of small new automobiles in the United States and Canada because there are no limitations on the number of vehicles to be jointly produced and no adequate safeguards on the types of information to be shared by the two companies. Small automobiles are automobiles commonly referred to as subcompact, compact, and intermediate sized automobiles. Both General Motors and Toyota are major competitors in the manufacture and sale of small new automobiles.

The proposed consent order has been placed on the public record for sixty (60) days in order that interested persons may comment on it. Comments received during this period will become part of the public record, unless persons commenting request that their comments be afforded confidential treatment. After sixty (60) days, the Commission will review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

According to the proposed complaint, GM and Toyota will hold equal equity in the joint venture and each will appoint half of the board of directors. Toyota will appoint the chief management personnel for the venture. The joint venture will manufacture subcompact cars that will be designed by Toyota in consultation with GM.

The introductory paragraph of the order defines the terms used in the order. "New automobiles" are defined as new passenger automobiles, including light trucks and vans, manufactured or sold in or shipped to the United States or Canada. The order defines "module" as an integrated manufacturing facility capable of producing no more than approximately 250,000 vehicles per year.

Paragraph II of the proposed order limits the proposed joint venture to the manufacture for or sale to General Motors of automobiles derived from a Toyota model currently sold in Japan, the Sprinter, and produced by a single module, *i.e.*, no more than approximately 250,000 vehicles per year.

Paragraph III limits the period during which the joint venture may manufacture automobiles to twelve (12) years from the date the first automobile is manufactured or December 31, 1997, whichever time comes first. The joint venture may continue beyond that period only as necessary to wind up its affairs, dispose of its assets, or provide for continuing warranty or servicing of vehicles produced by the joint venture.

Paragraphs IV and V prohibit the transfer or communication of information between General Motors, Toyota, and the joint venture that is not reasonably necessary to accomplish the legitimate purposes of the joint venture. Under Paragraph IV, the companies may not transfer or communicate the current or future prices of new automobiles or component parts produced by General Motors or Toyota, except pursuant to a supplier-customer relationship entered into in the ordinary course of business. The companies are also forbidden to transfer or communicate information relating to current or future sales or production forecasts or plans for any product not produced by the joint venture, as well as information relating to current or future marketing plans for any product, including products produced by the joint venture.

Paragraph IV allows the companies to exchange information relating to product costs, but only as provided in Paragraph V.

Paragraph V allows the companies to transfer or communicate certain information, but only to the extent necessary to accomplish the legitimate purposes of the joint venture. Thus, the companies may exchange information relating to the design, development, or engineering of the product produced by the joint venture; sales or production forecasts or plans for the product of the joint venture; and costs of General Motors or Toyota products supplied to the joint venture.

Paragraphs VI and VII will enable the Commission effectively to monitor compliance with the order. Paragraph VI requires the companies to maintain complete files and records of all correspondence and communications concerning information described in Paragraph V; to maintain logs of all meetings and nonwritten communications concerning information described in Paragraph V; and, for a period of six (6) years, to make such files, records and logs available to the Commission on request. Paragraph VI also requires that management employees of the joint venture and employees of General Motors and Toyota having responsibilities for the joint venture affirm annually that they have read the order and intend to abide by its provisions.

Paragraph VII requires General Motors and Toyota individually to submit annual written reports to the Commission setting forth its past, current and intended compliance with the order, and to provide any additional information reasonably required by the Commission.

Paragraph VIII requires General Motors and Toyota to notify the Commission in advance of any changes in their respective organizational identities or structures, or in the organizational identity or structure of the joint venture, that might affect compliance with the order.

Finally, Paragraph IX provides for self-executing termination of the order five years after the joint venture has finally ceased to manufacture or sell automobiles.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

Dissenting Statement of Commissioner Pertschuk [1] GM/Toyota Joint Venture, File No. 821–0159

December 22, 1983.

The largest auto company in the world and the third largest auto company in the world are proposing to join together to limit competition in a critical segment of the U.S. market. Competition in the U.S. has already been choked off by the Japanese Voluntary Restraint Agreement. Since 1981, when the VRA took hold, the average retail selling price for all new cars sold in the U.S. has risen by 18.8 percent or *$1741 more* than the consumer price index. Consummation of this joint venture will reinforce this upward pressure on new car prices.

Battalions of neo-classical economists dancing on the head of a pin cannot obscure the threat that this marriage of competitors poses to the American consumer, nor the fact that this joint venture is a plain and unambiguous violations of the antitrust laws. The Commission's settlement, requiring Toyota and GM to abide by the precise terms of their illegal agreement, hardly qualifies as antitrust enforcement.

The suggestion that GM needs this joint venture to learn the secrets of Japanese auto production is not credible. Ford, Chrysler, GM, and the UAW are already revolutionizing domestic auto production with learned Japanese knowhow and that process will continue unabated. Even if GM's plea for Japanese help is genuine, linking up with the dominant Japanese importer is one of the most anticompetitive ways to get it.

The Commission's settlement provisions leave the essential structure of the venture intact and allow the parties to carry it out in the way they had contemplated from the beginning. The settlement does not prevent coordination of output and pricing decisions nor does it (even assuming strict compliance) forbid anticompetitive exchanges of information. Accepting it as a resolution of these fundamental antitrust flaws demonstrates once again the Reagan administration's antipathy to antitrust law enforcement.

In addition to the serious antitrust violation this joint venture appears to represent,[2] it signals an ominous trend of American manufacturers conceding that they cannot compete on their own in small cars. Our major government policies toward the automobile industry—the Voluntary Restraint Agreement, the "CAFE" requirements for an overall mpg average for domestic manufacturers, and even this administration's misguided "regulatory relief" for the auto industry in lowering safety and environmental standards—have all been intended at least in part to help American manufacturers sell cars which can compete on an even footing with foreign manufacturers, particularly the Japanese. GM has now found a way to sell small cars, not by manufacturing them itself, but by assembling cars which are made primarily in Japan. The staff estimates that sixty percent or more of the value of the TVX (the joint venture vehicle), including the engines and transmissions, will be built by Toyota. Not only does this represent a white flag by GM, but there will be powerful incentives for Ford and Chrysler to follow. The result of this trend is likely to be the precise opposite of what is desirable for the long run health of the industry and for vigorous competition—production of high quality small cars in the U.S.

The Risks to Competition

Even if this joint venture were viewed in a world market it would present competitive problems. However, the staff concludes, I believe correctly, that the appropriate geographic market is the United States and Canada. Widespread trade barriers, including our own, require that we evaluate competition based on U.S. (or at most U.S. plus Canadian) sales.

General Motors is by far the largest manufacturer of cars in the United States, with 44 percent of U.S. and Canadian sales, as well as the largest in the world. It is the largest seller of small cars in the U.S. with a 27 percent share and the third largest seller of subcompacts in the United States and Canada. Toyota is the second largest seller of subcompacts in the U.S. and Canada, the fourth largest seller of small cars in the U.S., and the fourth largest seller of all cars in the U.S. and Canada. If we view the United States and Canada as a geographic market, and all new cars as a product market, the market is "highly concentrated" under the Justice Merger Guidelines (with a Herfindahl exceeding 2400). The automobile market has high barriers to entry. Consequently, we are faced with the type of market most susceptible to harm from collaboration among competitors.

A joint venture between two major competitors in the same market as the parents, the type of joint venture presented here, threatens to reduce competition by changing the incentives for the two parents to compete between themselves and with their joint venture and by facilitating information exchange.[3] The ultimate result is the promotion of cooperative, rather than competitive, behavior.

These effects are inherent in this joint venture, regardless of the mostly cosmetic and unenforceable limits on information exchange provided in the settlement. For example, GM and Toyota will establish jointly the price GM will pay the joint venture for the car, in practice the principal determinant of what price GM will charge its dealers. The parties have agreed to base the price on a "market basket" formula, consisting of the weighted increases over the past model year (or fraction of it) for the top selling subcompacts. Although GM and Toyota would like us to view this provision as taking all discretion out of their hands (akin to the annual Price, Waterhouse calculations of Academy Award winners), the effects of the formula are not so simple. They will constitute a percent of the market basket. They will be part of it, too. Thus, any increase in price of these two cars will weigh heavily in determining the price of the TVX. Moreover, GM and Toyota have traditionally been the price leaders, GM setting the domestic industry benchmark with price announcements in the fall, and Toyota serving as the primary price leader for Japanese imports. Consequently, the market basket price changes are, to a large extent, Toyota and GM's price changes from the

[1] I have been advised by the General Counsel's Office that my prepared statement of December 22, 1983 contained references to nonpublic material. While I disagree with that conclusion, I have decided to delete those portions of the statement which have been identified as containing nonpublic material in order not to delay publication and dissemination of the consent agreement, pending further resolution of the issue.

[2] My conclusions are necessarily tentative, based on the evidence before us. My final determination would depend upon review of a full adjudicatory record.

[3] If the parent companies are in competition, or might compete absent the joint venture, it may be assumed that neither will compete with their progeny in its line of commerce. *U.S.* v. *Penn-Oil Chemical Co.*, 378 U.S. 158, 169 (1964). "Of all joint ventures, the horizontal is inherently the most anticompetitive, because it involves the formation of a joint venture in the markets in which the parents operate. Under such circumstances, antitrust compliance and enforcement problems are acute: if the arrangement is allowed to operate at all, the parents, through their representatives in the joint venture, will necessarily agree on prices and output in the very market in which they themselves operate." Brodley "Joint Ventures and Antitrust Policy," 95 *Harvard Law Review* 1523, 1552 (1982).

previous year. A price increase by either will be assured of playing a large role in determining the TVX price.

Moreover, there is looseness in the way these components are calculated. Our staff concluded that the determinations will inevitably depend to some extent on "potentially imprecise judgments and predictions of market value" instead of factors outside the control of either company.[4] Any discretion the companies have in calculating the market basket will, of course, provide the opportunity for strategic use of the provision. It is impossible to believe that this cooperative process in setting prices will not modify to some extent the incentives for the companies to compete with each other on the basis of price. Cooperation between the two price leaders, with a combined share of 50 percent of the new car market, represents a serious antitrust risk by any standards but this administration's. Moreover, the VRA reinforces the oligopolistic structure of the domestic industry by restoring much of the immunity from foreign price competition historically enjoyed by the domestic manufacturers.[5]

In addition to the effects of the market basket formula on GM and Toyota's incentives, the agreement provides that the TVX price to GM will not be determined by the formula, and must be renegotiated between GM and the joint venture, if in GM or the joint venture's view, the price is at "significant variance with then current market conditions." This open-ended concept means that the price of the TVX (which in turn is likely to be a price leader for other small cars) is essentially a negotiated price between GM and Toyota. While the companies argue that the joint venture somehow has independent incentives to be profitable (again, the Price, Waterhouse image comes to mind), there is no escaping the fact that the joint venture is most fundamentally a GM-Toyota partnership, with each receiving half the profits. We can try to view the joint venture as somehow a separate company with separate incentives, but the image lasts only until we consider why and how decisions will be made.

In addition to opportunities to cooperate on price and to influence each other's output,[6] the parties are going to learn a lot about each other in ways that can reduce competition. For example, Toyota will know the transfer price to GM for the TVX well before it is announced (and before Toyota announces Corolla's price). If GM renegotiates the price of the TVX with the joint venture, there will be opportunities (and, of course, strong incentives) for GM to learn about Toyota's price plans before GM announces its own. The agreement also contemplates that GM will receive advance notice of design changes in the Corolla and the similar Sprinter (a version of the Corolla presently sold in Japan and likely to be the TVX). Uncertainty on the part of the dominant American firm of just what technical advances the leading Japanese importer has up its sleeve—up until now—did wonders for burning midnight oil in the R&D and Marketing Departments. Conversely, increased certainty about what the competitor will be offering helps make complacency the preferred strategy.

It is important to recognize that exchanges of highly sensitive competitive information are *not* prohibited under the consent agreement because they are inherent in the structure of the venture, that is, the parties consider some information exchange essential for the joint venture to work. I concede that these exchanges may be essential to carry out the joint venture *in the way the parties have structured it*, but this necessity only reinforces the fact that the risks to competition are inherent in the structure of the arrangement and cannot be cured by the Commission's settlement.[7]

Further, the joint venture results in increased opportunities and incentives for information exchange, even though they may violate the consent agreement. There have already been questionable exchanges between the two companies which may well have blunted competition.

The fact is that the Commission's information exchange order provision is an exercise in getting rid of a problem by pretending it does not exist. The consent agreement expressly allows competitively sensitive information to be exchanged in a way that threatens to damage competition. And even the exchanges that are prohibited on paper are likely to occur at times because of the substantial leeway in interpreting the vague order provision as well as human carelessness and the powerful incentives and opportunities to violate it.

Procompetitive Effects and Less Anticompetitive Alternatives

I think it is beyond dispute that there are potential anticompetitive effects from this joint venture. The limitations insisted upon by the Commission (even though they have little substance) suggest general agreement that there is some *prima facie* showing of harm. The key question then becomes the magnitude of the potential competitive benefits. GM says the principal one is first-hand observation of how Toyota makes small cars. On close examination this "learning" efficiency turns out to be modest and, in any event, all or most of it can be achieved in a less anticompetitive way.

The TVX, certainly in the early years of its life and perhaps always, will be made primarily in Japan, not in Fremont. Toyota estimates the value added in the U.S. to be —— percent, but the BC staff estimate the Japanese component to be over 60 percent. Consequently, the "efficiencies" that GM will be observing first-hand are limited mainly to assembly and stamping processes. GM points to the great importance of learning about the "kanban" process—"just in time" delivery by suppliers. (It is a sign of growth in our national life that this is one of the first of a stream of Japanese words we are certain to adopt.) However, a June 1983 article in *Ward's Auto World* quotes a GM official as saying the implementation of this type of component delivery system is well underway at a Buick City plant, indicating GM has become familiar with the process on its own. The reality is probably that "kanban" *is* hard to implement by GM, given the historical relationship of American suppliers and the automakers, but it's much more likely to be a matter of convincing suppliers to change their ways, rather than learning special technology from the Japanese. Similarly, GM claims that learning about plant layout is a major

[4] Toyota asserts all price increases included in the market basket are historical, rather than predicted, but because of periodic changes during the model year, it is difficult to understand how the formula would work without some discretionary judgment.

[5] Professor Kwoka points out that the market shares in small car sales, after excluding the Japanese, is strikingly similar to the traditional market positions of the "Big Three," with GM having 44.6%, Ford 28.3% and Chrysler 22.7%—a market structure that was not known for vigorous price competition.

[6] The principal constraint on Toyota's sales is the VRA. It has some flexibility, however, by diverting more of its quota to large cars. More significantly, however, Toyota has a powerful incentive to restrain GM's output and raise GM's prices. One of the ironies of the Commission's settlement is that it tries to address the central problem of competitors' collaborating to reduce output by placing a cap on the output of the joint venture.

[7] As Mr. Roger B. Smith, Chairman of GM, told the New York Times in a recent interview, the consent agreement simply repeats what the two companies had already pledged to do in a less formal manner. "If it gives them [the FTC] some comfort and it seals the deal, then it's O.K.", he stated. Another GM official, commenting on the consent agreement, told the *Wall Street Journal*, "We know the FTC needs something like that to cover themselves in the face of all the opposition."

benefit. But it seems safe to say that it would not take the extreme step of a joint venture with the major Japanese importer to adopt new and better plant design.

GM also argues that it needs a joint venture to serve as a catalyst in reorganizing its work force, e.g., by reducing the number of worker classifications. I concede that it may be difficult or impossible to change (at least over the short run) fundamental labor arrangements that have developed over many years without a new venture in a new (or newly reopened) plant. But this argues only for a new venture, not for one with the major Japanese importer.

I have no doubt that GM can learn from the Japanese, and that it would prefer learning from Toyota rather than other Japanese manufacturers or by recruiting management consultants. But in any proposed merger or joint venture, one firm will be a better manager than the other. We must be careful about justifying combinations among competitors on the grounds that the better manager will lift the other firm to its standard. Traditionally, we have relied on the weaker firm's incentives to improve its own operations, rather than to join its stronger rival in order to adopt its management techniques.

Production joint ventures have traditionally been thought to be justified, not because they allow a transfer of management techniques, but because they produce a new product, something "extra" not now in the market or production efficiencies which cannot be achieved without the joint venture.[8] It is conceded by GM and Toyota that the TVX, though it may well be an excellent vehicle, is essentially the Toyota Corolla with minor, mostly stylistic, changes. Consequently, this is not a joint venture to produce an electric car, or one that is crash-proof, or even one that is significantly different in design from one now on the market. The joint venture enables GM to sell a Japanese-quality car by selling a Japanese car already being sold. Further, the evidence clearly suggests that the TVX is at least a partial substitute for the Chevette in the short run, and that the joint venture will hasten the termination of the Chevette line. Far from a net *addition* to small cars in the U.S., the joint venture is more likely to *reduce* small car sales in the long run by driving up prices.

Consequently, even if we concede all of GM's arguments concerning the need to learn Japanese technology, the justification for the serious anticompetitive problems in the joint venture turn on the greater benefits of a venture with Toyota rather than a smaller Japanese firm. I find it exceedingly unlikely that the marginal gain of collaborating with Toyota rather than anyone else could provide this justification.

Our economists argue that one major "procompetitive" benefit of the joint venture is that it allows Toyota to import cars and avoid the Voluntary Restraint Agreement import quota. One can object to the VRA, one can argue it is harmful to competition, even harmful to the auto industry in the long run. But to argue that evading it can be counted on the "procompetitive" side of the ledger is an unacceptable exercise in second-guessing other national policies. The fact is that we are likely to experience some form of import restraints for some time because of the substantial Japanese cost advantage. The idea behind the restraints is to allow our domestic industry time to develop competitive cars, the very development the joint venture allows GM to avoid by selling a car made primarily in Japan. We would be turning the policy behind the VRA totally on its head by justifying the joint venture as a way to get around it.

Conclusion

The American automobile industry, until the 1970's, was a complacent oligopoly. Product innovation was too sluggish, prices were too high, promotional expenses became bloated, and management and labor inefficiencies became entrenched. The development that undercut this oligopoly and started us on the painful, but ultimately beneficial, road toward competitiveness has been the imports of foreign, particularly Japanese, cars. The Voluntary Restraint Agreement began a reversal of this trend by creating a wall against further Japanese imports. This trade barrier has inevitably been a step back toward the historic American oligopoly and one that increases the power of GM to set prices for the industry. Under these circumstances, it is a fundamentally misguided decision to sanction this type of cooperative arrangement between the dominant domestic manufacturer and the leading importer. To justify such risks to competition we should require a substantial showing of true procompetitive benefits. These are not present. The cosmetic limitations placed on this joint venture by the consent agreement represent an antitrust policy based on crossing fingers and looking the other way.

In October 1981, GM embarked on a spirited "Beat Toyota Project." In 1982 the project was placed on hold. As of today, GM has a green light to embark on this "Join Toyota" project. That may be just fine for GM and Toyota, but it's bad news for the consumer.

Addendum

Dissenting Statement of Commissioner Patricia P. Bailey GM/Toyota Joint Venture, File No. 821-0159

December 22, 1983.

It is a matter of serious concern to me that I am advised by the FTC General Counsel that section 6(f) of the FTC Act prevents me from providing in this Statement specific mention of certain information which, ultimately, was important to my decision in this matter. It is not entirely clear to me that certain of the information to which I would make reference should, in fact, not be disclosed pursuant to section 6(f). Nonetheless, I have deleted it and, thus, if references from time to time throughout this Statement appear vague, it is for that reason.

The Commission majority has today voted to accept a consent agreement with the General Motors and Toyota Motor Corporation which does not cure the antitrust infirmities of their proposed joint venture. I have, therefore, dissented from that decision.

I am acutely aware of the arguments favoring this joint venture. Certainly any knowledgeable observer would agree that American car companies, facing stiff foreign competition in the United States market, need to improve production techniques in order to strengthen their competitive positions into the future. The decision for this Commission, however, is whether a joint venture such as that proposed by these companies is sanctioned by the nation's antitrust laws. I do not believe by any stretch of the imagination that it is. Whether it *should* be is not for me to say. That argument should be posed in another forum.

In any event, to claim that the consent agreement accepted today, which allows a partial combination of the first and

[8] "The joint venture is in some respects a 'quasi-merger,' where cooperation between formerly independent companies often acts to benefit and spur competition. The combined capital, assets, or knowhow of two companies may facilitate entry into new markets and thereby enhance competition, or may create efficiencies or new productive capacity unachievable by either alone." *Brunswick Corp.*, 94 F.T.C. 1174, 1265 (1979), *aff'd and modified sub nom. Yamaha Motor Co. v. FTC*, 657 F.2d 971 (8th Cir. 1981), *cert. denied*, 452 U.S. 915 (1982).

third largest car companies in the world, solves any perceived antitrust problems with the venture, is simply, in my view, not the case. Indeed, both companies have acknowledged publicly that the consent merely restates the essential conditions of their original agreement.[9]

The reasons for my decision in this matter are summarized below.

Effect of precedent

There should be no mistake about the effect of the Commission's decision today. The principles of legality for this joint venture cannot be limited to one hermetically sealed experiment in Freemont, California. This joint venture is between the largest U.S. car producer and the largest Japanese car producer—both price-leaders for their makes of cars; thus, any similarly-structure joint venture between any other members of the industry must be sanctioned. How could we deny to other companies what we have authorized for the industry giants? In effect, this is rule-making for the industry.

It is predictable that several features of this joint venture will result in a reduction of competitive vigor between GM and Toyota. Concern about that should deepen when the strong likelihood that these features will be copied in "me-too" joint ventures between the remaining domestic car companies and foreign partners is considered. This joint venture, then, must be seen as a prototype for the industry that may well produce changes which are quantitatively more significant than those caused by it alone. The auto industry is clearly undergoing a concentration trend; the question is whether the Federal Trade Commission should accelerate that process by an action which will almost inevitably touch off a reactive pattern of strategic pairing between car manufacturers. That is especially a troubling concern since the purpose behind these cooperative ventures would not be the creation of a new competitor, but rather a decrease in the overall number of market participants, leading to increased likelihood of tacit, if not actual, collusion.[10]

Nature of the transaction

Some joint ventures can be highly pro-competitive, although this is not likely to be one of them. Particularly prized are ventures where the combination of the parent firms' resources achieves what neither can manage alone: an increase in pure research, a technological breakthrough, product innovation, or entry into a new market.[11] This joint venture has none of those output-enhancing features. Manifestly, neither GM or Toyota is a new entrant into the automobile market. The car to be produced by this joint venture likewise is nothing new: it is a derivative of Toyota's Corolla. The design differences between the two models are "modest" and beneath the sheet metal the cars will be "essentially identical." (BC staff memo, I, 10)

On its face the GM/Toyota arrangement falls into the most suspect category of joint ventures:

> Of all joint ventures, the horizontal is inherently the most anticompetitive because it involves the formation of a joint venture in the markets in which the parents operate. Under such circumstances, antitrust compliance and enforcement problems are acute: if the arrangement is allowed to operate at all, the parents, through their representatives in the joint venture, will necessarily agree on prices and output in the very market in which they themselves operate. Brodley, *supra*, 95 Harv. L. Rev. at 1522.

Or, as another commentator puts it:

> when one or both parent firms actively compete in the same product and geographic market as the joint venture, the inevitable coordination of competitive activities between parent and partly-owned subsidiary and the resultant stifling of aggressive behavior of the joint venture should be treated under typical cartel rules. Pitofsky, *supra*, 82 Harv. L. Rev. at 1035–1036.

Initial concerns about the joint venture's anticompetitive potential are only intensified when it is analyzed in its market context. Our economic and legal staffs have calculated the Herfindahl indices for various probable markets. They range from a low of 1262 (dollar sales, subcompact cars) to a high of 2413 (unit sales, all cars). (BC staff memo VI, 9; BE memo, Appendix H). This means that a plausible market is at best moderately concentrated, and at worst highly concentrated—but in any event structured in a way which mandates a very hard look at any combination of competitors. Entry barriers to this market are obviously quite high, consisting of economies of scale in production and distribution and, for foreign car manufacturers, import limitations. (BC staff memo VI, 22, 26). Within this oligopolistic market, GM holds the longstanding leading market share (44% as compared with the 16.7% of its closest rival, Ford) and is the price leader among domestic auto producers. (BC staff memo, VI, 10, 12)[12] Toyota holds the same price leader position among Japanese importers. (BE staff memo, VI, 15). Toyota is the fourth largest car manufacturer in the U.S. and the third largest in the world. (BC staff memo, III, 1).[13]

In short, this is a market which is prone to effective collusion, and a collaboration between two major competitors resembles a partial merger more than a true joint venture. In these circumstances the degree of anticompetive risk and the genuine need for the venture must be stringently examined. *See, e.g., U.S. v. Penn-Olin*, 378 U.S. 158, 170–72 (1964); *Brunswick Corp.*, 94 F.T.C. 1174, 1265–66 (1979), *aff'd and modified on other grounds sub nom., Yamaha Motor Co. v. FTC*, 657 F.2d 971 (8th Cir. 1981), *cert. denied*, 102 S. Ct. 1768 (1982).

Anticompetitive Risks

The two principal aspects of the joint venture which I fear will lead to blunted competition between the two companies are the transfer price formula and the ongoing exchange of a broad range of product planning, engineering design, and marketing information.

The price which the joint venture will charge GM for the car is calculated by a formula which consists of a weighted average of wholesale prices of competitive small cars. Toyota's Corolla is given special weight in the formula. Simply between GM and Toyota this formula reduces price competition, because any price cuts Toyota gives its dealers must be passed on to GM, with a corresponding reduction in Toyota's joint venture profits. Consequently, Toyota's incentives are to raise the Corolla price, knowing that such a price rise is incorporated into the cost of the joint venture car to GM; and knowing, moreover, that both it and GM are the

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[9] See, *e.g.*, *New York Times*, December 21, 1983, p. D1 "If it gives them [the FTC] some comfort and seals the deal, then it's OK." (quoting General Motors Chairman Roger Smith); *Washington Post*, December 21, 1983, p. D1 "The precise terms of the order . . . are likely to include no more than a written agreement to abide by three elements of the venture that have already been publicly announced." (According to Toyota's U.S. Counsel.)

[10] Professor Pitofsky has observed that a market setting with numerous joint ventures raises particular antitrust concerns. Pitofsky, Joint Ventures Under the Antitrust Laws: Some Reflections on the Significance of *Penn-Olin*, 82 Harv. L. Rev., 1007, 1033 (1969).

[11] U.S Department of Justice Antitrust Guide Concerning Research Joint Ventures, 466 CCH Trade Reg. Reports, 35 (December 1, 1980); Brodley, Joint Ventures and Antitrust Policy, 95 Harv. L. Rev., 1523 (1982); Pitofsky, *op. cit.*

[12] General Motors is clearly the price leader among domestic auto producers, both because it announces prices first and because its prices virtually dictate Ford and Chrysler decisions. (BC staff memo, VI, 12)

[13] In the subcompact portion of the U.S. market which is most directly affected by this joint venture, Ford, Toyota and GM are ranked respectively first, second and third, with the following market shares: 19.10%, 16.06%, 14.41%. (BC staff memo, VI, 96)

industry price leaders, so that competitors are likely to match the higher prices. The competitors' price hikes in turn are reflected in the transfer price formula—and so the formula assures an ascending spiral of lockstep pricing,[14] although without explicit cooperation or collusion.[15]

It is important to note that infirm price competition between the Corolla and the joint venture car can infect the prices on other car models. Car manufacturers who offer a full line of cars maintain price differentials between various carlines and models. (BC staff memo, VIII, 12). GM will undoubtedly follow this practice and seek to keep a consistent dollar gap between the joint venture car and the next biggest model, and between each model further up the line. Thus a rise in the price of the joint venture car will force reactive price rises all the way up the GM line and, because of GM's price-leader position, the same ripple effect can be expected in competitive car lines. Consumers will still be offered a choice of prices, but the overall level of price competition will be artifically elevated.

The Bureau of Competition Director has dismissed the price rises flowing from the transfer formula as too small to worry about. However, the problem is not so much how much prices rise, but the fact that there has been a major change in car manufacturers' incentives to engage in price competition. Because there will be several new disincentives to price competition at work in the market, cartel stability will be encouraged.

Alternatives to this competitor-based pricing formula apparently were never explored by the parties. (BC staff memo, VIII, 7). The consent does not cover the matter at all. In particular, there has been no consideration of an alternative, suggested by Professor Salop, of a price escalator provision that is triggered by a cost index which is not under Toyota's control yet is highly correlated with Toyota's costs. Such indexed contracts have been used for the purpose of major car components[16] and are apparently common to various industries. I fail to see why the Commission was not provided with a comparative analysis of all practical pricing formulae.

Finally, I should point out that the transfer price formula is a bit of a red herring, since the agreement between GM and Toyota allows them to negotiate directly an appropriate selling price whenever the transfer formula yields a selling price which is at significant variance with then current market conditions. The consent agreement would not prevent operation of this proviso.

Unfortunately, even if a well-drafted consent could cure the transfer price infirmities of this joint venture, I would still object to it. That is because I see the overriding problem as incurable. This joint venture, by its very nature, necessitates coordination of GM and Toyota product marketing and research efforts. The joint venture will produce a car for GM which is manufactured according to Toyota production techniques. The most significant components of the car, representing well over half the value of all its parts and material, will be produced by Toyota. How could the joint venture not act as a clearinghouse for exchanges between customer (GM) and supplier (Toyota) as to what the end product should and could be? The twelve-year life of the joint venture covers two complete model cycles, and certainly there are a host of changes in car features from year to year. Improvements in the vehicle's designs and technology will be known to the parent companies well in advance of public announcements or even industry gossip. Moreover many features on small cars are common to large portions of the entire fleet; therefore knowledge that either parent can produce, say, extended corrosion protection or a significantly lighter engine, gives a window onto overall marketing strategies, not "just" plans for compact and subcompact cars.

It has been argued that GM and Toyota are such fierce competitors that they will jealously guard all their secrets. This argument ignores the fact that, even if a major technological breakthrough or some other "hush hush" project were carefully isolated, merely in the legitimate daily operations of the joint venture GM and Toyota can glean enough additional hard data to vastly improve educated guesses about each other's competitive activities. There does not have to be a complete swap of technical plans for competition to be dulled. For example, in the course of negotiations, Toyota has *already* supplied GM with certain detailed product information which otherwise would certainly not be exchanged between these competitors. (BC staff memo, VIII 17–18; Kwoka, 37–38) It may be too late for GM to match certain technological improvements, but it certainly can adjust its marketing efforts to defuse any Toyota impact. This would leave it free to focus its competitive energies on car companies other than Toyota—a strategic luxury not available to Ford, Honda, Chrysler *et al.*

As a final example of why I have trouble accepting this rosy picture of uncompromising competitors who will never be tempted to do each other favors, consider that Toyota *has already offered, and GM has acted upon,* suggestions on retail price differentials for the joint venture car relative to the Corolla. (BC staff memo, VIII, 18–19; Kwoka, 38–39).

I cannot improve upon the BC staff's summary of these instances of the most competitively sensitive information exchange:

> The point here is that the joint venture facilitates discussions about price that GM conceded were forbidden and this is the only example we happen to know about; should the joint venture proceed, others may well occur due to the introduction of new models and/or changes in the product itself. . . . Concern over the occasion and necessity for such information exchanges arises again when a new joint venture model needs to be negotiated after several years. (BC staff memo, VIII, 19).

The consent agreement does not cure this problem. It specifically allows the parties to exchange information "necessary to accomplish . . . the legitimate purposes or functioning of the Joint Venture." This is a highly significant loophole. What is "necessary" or "legitimate" is determined in the first instance by GM and Toyota. Their threshold sensitivity on these points is demonstrated by the fact that GM's counsel has represented that the information exchanges I just described were not used for any purpose other than determining suitable product options for the joint venture. (BC staff memo, VIII, 17–18).

Alleged Procompetitive Benefits

We are assured that the joint venture will produce "efficiencies" which will offset any competitive effects such as I have described above. In the FTC merger guidelines we defined an efficiency as a cost saving that could not be obtained unilaterally by either company, but instead required a pooling of resources. The efficiencies alleged in

[14] The phrase "lockstep" pricing was first used by one of Toyota's counsel when describing to his client a probable effect of the transfer price formula. (GM 25945, quoted in Koch memo, 30).

[15] For a more vigorous analysis of this phenomenon, see the comments of John Kwoka (Professor of Economics, George Washington University; Consultant to the F.T.C.) and Steven C. Salop (Professor of Economics, Georgetown University Law Center; Consultant to the Chrysler Corporation).

[16] For example, Chrysler has furnished us with examples of two such contracts which it has with Mitsubishi and Volkswagen, both for the supply of automotive engines.

this matter do not meet even that general description.

Staff of the Bureau of Economics conclude that the joint venture will increase industry output and is therefore procompetitive. Such a conclusion, I note, requires a rejection of GM's own estimates to the contrary. Nonetheless, I am not convinced that staff has proved this special efficiency, as distinct from private benefits to GM and Toyota. There is no doubt that GM could use a new small car in order to maintain or increase market share in the compact/subcompact market, as well as to safeguard its large car sales by accrual of CAFE credits.[17] However, it is highly doubtful that the GM/Toyota venture arrangement represents additional output that would not come into being without the joint venture. The best evidence on this point is GM's own predictions that the sales of the joint venture car will come largely at the expense of other GM and Toyota vehicles. The joint venture car is expected to divert sales especially from GM's Chevette and mid-size "J" car. (BE staff memo, VIII, 3–4; Kwoka memo, 51) Our economics staff finds "somewhat puzzling" that GM assumes *no* net increase in industry sales as a result of the joint venture , and deals with the puzzle by summarily rejecting GM's estimates and producing its own competitive supply and demand models. (BE staff memo, VIII, 5–14). I am troubled by this willingness to set aside a damaging admission, as well as by several of the assumptions underlying the BE calculations.[18] Also, regardless of what minimal [19] output effects the joint venture may have, those same effects could be achieved in large part through alternatives. As Professor Kwoka demonstrates, absent the joint venture GM would very likely satisfy its small car needs by a variety of options, including domestic assembly of the "R" car now being produced by GM's Japanese affiliate Isuzu, and improving and retaining the Chevette. (Kwoka memo, 47–55A; Muris memo, 31). Similarly, though with less certainty, we can predict that Toyota would have to pursue U.S. manufacturing options, absent the joint venture. (Toyota's two largest Japanese rivals, Honda and Nissan, have already taken that step.) Naturally these options are more expensive and presumably not as attractive to the companies, but from an overall industry viewpoint they are preferable to simply letting GM acquire 200,000 units of Toyota's production capacity for twelve years.

The second major [20] justification for the joint venture translates even less easily into an "efficiency" benefit. That is the claim that GM needs to have "hands-on" experience with Japanese management techniques in order to produce a cheaper car. No one denies that the Japanese have a significant cost advantage (approximately $2000) in the production of cars. However, it is not possible to isolate and quantify many of the sources of that advantage, other than differences between labor wages in the automotive industries of the U.S. and Japan, which account for 40% of the cost advantage. (Kwoka memo, 11). GM concedes that Japanese advantage does not derive from superior products or manufacturing hardware. I must ask therefore, regardless of what value we assign to management skills, whether the fact that they differ justifies this sort of close cooperation between rivals. For example, if Ford had a 30% cost advantage over GM, attributable solely to some Ford management mystique, would the antitrust laws permit GM to learn Ford's special production techniques by jointly producing a Lincoln/Cadillac-type car? I think not.

Conclusion

In summary, then, if this joint venture between the world's first and third largest automobile companies does not violate the antitrust laws, what does the Commission think will? This is surely the question that potential joint venture partners will be asking themselves. In this decision, the Commission has swept another set of generally recognized antitrust law principles into the dustbin, using again the incorporeal economic rhetoric that now dominates Commission decision-making. In this case, the decision results in the blessing of a business proposal that is both breathtaking in its audacity and mind-numbing in its implications for future joint ventures between leading U.S. firms and major foreign competitors that seek to lend a friendly helping hand.

Perhaps in uneasy recognition of the controversy this antitrust generosity would otherwise ignite, the majority has thrown Br'er Rabbit into the briar patch by penciling in a last minute consent order that the proposed joint venture partners have themselves said merely restates the main features of the private agreement already existing between them. This will fool no one who has even a passing familiarity with the real issues in this antitrust decision.

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[17] The Corporate Average Fuel Economy ("CAFE") statute, part of the Energy Policy and Conservation Act of 1975, sets annually escalating efficiency standards for the average of each domestic car manufacturer's fleet. The law provides stiff fines for failure to meet the standard. CAFE essentially conditions the sale of a larger car on the sale of a small car. Firms need to lower their fleet average and so continue selling the more profitable large cars.

[18] See critique in Koch memo, pp. 38–39; alternate calculations by Professor Kwoka at 31–35, 44–55.

[19] Ironically, BE's favorite justification for the joint venture has been hamstrung by the only provision of the consent which changes the original obligations of the parties. The formerly open-ended production commitment has been capped at 200,000 cars.

[20] GM has characterized the learning experience as the primary goal of the joint venture; BC staff is skeptical as to its value. (BC staff memo, II, 31–40, 48–52).

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