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Test Report Federal Register

Wednesday
November 28 1984

8 468-521
GSA
ITEM 4

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Federal Aviation Administration

Banks

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Chemicals

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Questions and requests for specific information may be directed to the telephone numbers listed under **INFORMATION AND ASSISTANCE** in the **READER AIDS** section of this issue.

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Environmental Protection Agency

Postal Service

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Price Support Programs

Commodity Credit Corporation

Railroad Retirement

Railroad Retirement Board

Securities

Securities and Exchange Commission

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Proclamation 5282 of November 26, 1984

The President

National Home Care Week, 1984

By the President of the United States of America

A Proclamation

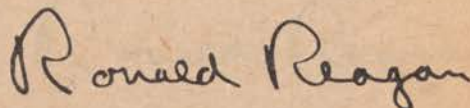
Home care services, which are rapidly gaining acceptance throughout the Nation, allow the physically and mentally impaired who do not require skilled nursing home care to remain in their own homes, or to stay with their families, instead of being moved to an institution. Home care provides individualized support services to permit maximum independence for those in need of assistance.

Progress in medical science and the generally rising level of health care from birth are contributing to a greater number of people living longer. A corollary to this advance is an increase in chronic illnesses of the aged that require care over an extended period of time. Home care provides the assistance needed to help older Americans to maintain independence despite such illness. All Americans should commend those individuals who provide personal and health care in the home. Their skill and caring make the lives of those they serve fuller and more meaningful.

To give special recognition to the importance of home care services, the Congress, by Senate Joint Resolution 237, has designated the week of November 25, 1984, through December 1, 1984, as "National Home Care Week," and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 25 through December 1, 1984, as National Home Care Week, and I call upon all Government agencies, interested organizations, community groups, and the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.



Presidential Documents

Proclamation 5283 of November 26, 1984

National Epidermolysis Bullosa Awareness Week, 1984

By the President of the United States of America

A Proclamation

Epidermolysis Bullosa, or "EB," is a group of hereditary disorders in which the skin forms blisters after minimal injury or even simple pressure. Symptoms of the disease can resemble severe burns and can be very painful and debilitating. Mucous membranes of the mouth, eye, and gastro-intestinal tract may be affected and lead to scarring, malnutrition, anemia, and even premature death.

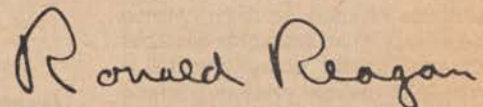
As many as 25,000 to 50,000 Americans, mostly children, may suffer from EB. The disease can disable people physically because of the pain and anguish it causes, and it also places a severe financial burden on many families.

Basic research is just beginning to reveal the underlying causes of EB. New research findings and new approaches to diagnosis and treatment are needed to eliminate this affliction. The Federal government and private voluntary organizations have developed a strong and enduring partnership committed to EB research in order to reduce or eliminate the disease and its painful consequences.

The Congress, by Senate Joint Resolution 201, has designated the week of November 25 through December 1, 1984, as "National Epidermolysis Bullosa Awareness Week" and authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of November 25 through December 1, 1984, as National Epidermolysis Bullosa Awareness Week. I urge the people of the United States and educational, philanthropic, scientific, medical and health care organizations and professionals to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of November, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.



[FR Doc. 84-31301

Filed 11-26-84; 2:27 pm]

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Rules and Regulations

Federal Register

Vol. 49, No. 230

Wednesday, November 28, 1984

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 408

[Docket No. 1762S]

Eastern U.S. Apple Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: Under the authority contained in the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the closing date for accepting applications for Eastern U.S. Apple Crop Insurance Regulations (7 CFR Part 408), effective for the 1985 crop year. This action is necessary because of a delay in processing the issuance of an amended Fresh Fruit Option to provide the insured producer with a quality provision for the type of apples insured under this option when such apples do not grade U.S. No. 1 or do not grade 80 percent fancy or better under USDA standards. The intended effect of this notice is to advise all interested parties of the extension of the sales closing date and to comply with the provisions of the Eastern U.S. Apple Crop Insurance Regulations with respect to the authority of the Manager, FCIC, to extend closing dates.

EFFECTIVE DATE: November 28, 1984.

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

SUPPLEMENTARY INFORMATION: Under the provisions contained in the Eastern U.S. Apple Crop Insurance Regulations

(7 CFR Part 408), the closing date for accepting applications is November 20. Because of a delay in processing an amendment to the Fresh Fruit Option to such regulations effective for the 1985 and succeeding crop years, FCIC is extending the closing date for accepting applications through the close of business on December 31, 1984, effective for the 1985 crop year only.

The amendment in question provides a fresh fruit option amendment to insured growers who wish to insure quality, not presently contained in the policy for insuring apples under 7 CFR Part 408, when the apples do not grade U.S. No. 1 or do not grade 80 percent fancy or better under U.S. Department of Agriculture standards.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that the closing date for accepting applications for apple crop insurance under the provisions of 7 CFR Part 408 is extended, effective for the 1985 crop year only, through the close of business on December 31, 1984.

Dated: November 20, 1984.

Done in Washington, D.C., on November 19, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Merritt W. Sprague,
Manager.

[FR Doc. 84-31111 Filed 11-27-84; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 911

[Lime Reg. 43, Amdt. 3]

Limes Grown in Florida; Amendment of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule would raise the minimum grade requirements for fresh shipments of seedless limes grown in Florida, and for seedless limes imported into the United States, from the current U.S. Combination, Mixed Color, of 60

percent U.S. No. 1 and 40 percent U.S. No. 2, to a modified U.S. Combination, Mixed Color, of 75 percent U.S. No. 1 and 25 percent U.S. No. 2. The minimum diameter requirement for such limes would remain at 1 1/8 inches. Such action is necessary to assure the shipment of limes of acceptable quality in the interest of producers and consumers.

EFFECTIVE DATES: December 3, 1984 through January 31, 1985.

FOR FURTHER INFORMATION CONTACT:

William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Acting Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Florida lime regulation is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The regulation applicable to limes grown in Florida is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by grade and size under Florida Lime Regulation 43 (49 FR 25243). This regulation, which is effective on a continuing basis, requires seedless limes for fresh shipment to: (1) Grade at least U.S. Combination, Mixed Color; (2) meet a minimum juice content of 42 percent by volume; and (3) have a minimum diameter of 1 1/8 inches. This amendment would increase minimum quality requirements applicable to fresh shipments of Florida seedless limes by requiring such shipments to grade a modified U.S. Combination, Mixed Color, with the stipulation that 75 percent of the limes, by count, grade at least U.S. No. 1 and 25 percent of the limes grade at least U.S. No. 2. The current grade requirement is U.S.

Combination, Mixed Color, (60 percent of the limes, by count, grade at least U.S. No. 1 and 40 percent of the limes grading U.S. No. 2). This action was unanimously recommended by the Florida Lime Administrative Committee at a public meeting on October 10, 1984.

Florida Persian seedless limes are marketed throughout the year, with peak production during the summer months. At that time, market prices and grower returns tend to be low. Traditionally, the winter market for Florida seedless limes has been strong. However, current prices for such limes are weak due to the availability of large volumes of lesser quality limes in the market place. Such limes have poor retail acceptance, which has a price-depressing effect on shipments of better quality fruit. The specified increase in the percentage of U.S. No. 1 grade fruit in fresh shipments is designed to stimulate consumer demand, result in greater sales volume of limes of preferred quality and improve grower returns.

During the five previous years, fresh shipments of Florida limes have trended upward from 755,337 bushels in 1978-79 to 1,286,127 bushels in 1983-84. The 1984-85 crop of Florida limes is expected to approach record levels. Approximately 50 percent of the Florida lime crop is utilized in processing. Thus, ample supplies of better quality limes should be available to meet fresh market requirements. The amendment of grade requirements is necessary to make available to consumers better quality seedless limes and to improve grower returns.

This amendment would be effective through January 31, 1985. At that time the requirement applicable to seedless limes would revert to U.S. Combination, Mixed Color, (60 percent of the limes, by count, grade at least U.S. No. 1 and 40 percent grading U.S. No. 2). The resumption of lower grade requirements reflects the prospective grade composition of the Florida seedless lime crop at that time.

Under section 8e of the act, whenever specified commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, grade requirements for imported seedless limes would also change to conform to the grade requirements for domestic shipments of seedless Florida limes. It is hereby found that this regulation will tend to effectuate the declared policy of the act.

Accordingly, the Secretary finds that upon good cause shown it is

impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared policy of the act. Moreover: (1) Shipment of the current crop of limes grown in Florida is underway; (2) the amendment to the Florida lime regulation was recommended by the committee following discussion at a public meeting on October 10, 1984, at which there were no opposing views; (3) Florida lime handlers have been apprised of these requirements for Florida limes; (4) the lime import requirements are mandatory under section 8e of the act and they should be effective for the specified period; (5) the grade requirements for imported limes are the same as those for Florida limes; and (6) at least three days notice of this import regulation is provided, the minimum prescribed by section 8e of the act.

List of Subjects in 7 CFR Part 911

Marketing Agreements and Orders,
Florida, Limes.

PART 911—[AMENDED]

Section 911.344 Lime Regulation 43 (49 FR 25243) is amended by revising paragraph (a)(2), to read as follows:

§ 911.344 Florida Lime Regulation 43.

(a) * * *

(2) Such limes of the group known as seedless, large-fruited, or Persian limes (including Tahiti, Bearss, and similar varieties) grade at least U.S. Combination, Mixed Color: *Provided*, That stem length shall not be considered a factor of grade; *Provided further*, That such limes not meeting these requirements may be handled within the production area, if they meet the minimum juice content requirement of at least 42 percent by volume specified in the U.S. Standards for Persian (Tahiti) limes, if they meet the minimum size requirements specified in paragraph (a)(3) of this section, and if they are handled in containers other than those authorized in Section 911.329; and *Provided further*, that during the period December 3, 1984 through January 31, 1985, no handler shall ship such limes to destinations outside the production area unless they grade at least U.S. Combination, Mixed Color, with the stipulation that stem length shall not be a factor of grade and at least 75 percent,

by count, of the limes in the lot grade at least U.S. No. 1 and 25 percent, by count, of the limes grade at least U.S. No. 2.

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

Dated: November 23, 1984.

Charles R. Brader,
Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 84-31191 Filed 11-27-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 985

Spearmint Oil Produced in the Far West; Establishment of Salable Quantities and Allotment Percentages for the 1985-86 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from, or handled for, producers by handlers during the 1985-86 marketing year which begins June 1, 1985. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions. The proposal was recommended by the Spearmint Oil Administrative Committee which works with USDA in administering the order.

EFFECTIVE DATE: June 1, 1985 through May 31, 1986.

FOR FURTHER INFORMATION CONTACT:

Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This proposed 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 under criteria contained therein.

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

Notice of this action was published in the October 4, 1984, issue of the *Federal Register* (49 FR 39166), and interested persons were afforded an opportunity to submit written comments. No comments were received.

The salable quantity and allotment for each class of spearmint oil are

established in accordance with the provisions of Marketing Order No. 985, regulating and handling of spearmint oil produced in the Far West, hereinafter 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). The salable quantities and allotment percentages were recommended by the Spearmint Oil Administrative Committee, which works with the USDA in administering the order.

The salable quantity percentage established for each class of spearmint oil for the 1985-86 marketing year beginning June 1, 1985, are based upon the following estimates and recommendations of the Committee:

- (1) "Class 1" Oil (Scotch Spearmint).
 - (A) Estimated carryin on June 1, 1985—23,783 pounds.
 - (B) Estimated trade demand (domestic and export) for the 1985-86 marketing year, based on an average of producer sales for 1980-81, 1981-82 and 1983-84—781,248 pounds.

- (C) Recommended desirable carryout on May 31, 1986—100,000 pounds.

- (D) Salable quantity required from 1985 production—857,465 pounds.

- (E) Total allotment based for "Class 1" Oil—1,625,127 pounds.

- (F) Computed allotment percentage—52.8 percent.

- (G) The Committee's recommendation for the salable quantity—861,317 pounds.

- (H) Recommended allotment percentage—53 percent.

- (2) "Class 3" Oil (Native Spearmint).
 - (A) Estimated carryin on June 1, 1985—50,000 pounds.

- (B) Estimated trade demand (domestic and export) for the 1985-86 marketing year based on an average of sales for the past four years averaged with the handler estimates for 1985-86—909,876 pounds.

- (C) Recommended desirable carryout on May 31, 1986—75,000 pounds.

- (D) Salable quantity required from 1985 production—934,876 pounds.

- (E) Total allotment bases for "Class 3" Oil—1,793,085 pounds.

- (F) Computed allotment percentage—52.1 percent.

- (G) The Committee's recommendation for the salable quantity—932,404 pounds.

- (H) Recommended allotment percentage—52 percent.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to

his/her allotment base for the applicable class.

When the order was established in 1980, producer stocks of spearmint oil were very large and producer prices severely depressed. Volume regulations in effect under the order since that time have aided in reducing these burdensome stocks and in creating a more stable market for each class of oil. The objective of the Committee's recommendations for 1985-86 is to balance supplies with needs to maintain a stable market for each class of 1985-crop oil and promote orderly marketing. The Committee's recommendations are based on expectations of continued strong sales of spearmint oil during the 1985-86 marketing year.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee, and other available information, it is found that to establish a salable quantity and allotment percentage for each class of oil, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 985

Agricultural Marketing Service;
Marketing Agreements and Orders,
Spearmint Oil.

PART 985—[AMENDED]

Therefore, a new § 985.205 is added under Subpart—Salable Quantities and Allotment Percentages to read as follows: (The following provisions will not be published in the Code of Federal Regulations.)

§ 985.205 Salable quantities and allotment percentages—1985-86 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins June 1, 1985, shall be as follows:

- (a) "Class 1" Oil—a salable quantity of 861,317 pounds, and an allotment percentage of 53 percent.

- (b) "Class 3" Oil—a salable quantity of 932,404 pounds, and an allotment percentage of 52 percent.

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

Dated: November 21, 1984.

Thomas R. Clark,
Acting Director, Fruit and Vegetable Division.

[FR Doc. 84-31141 Filed 11-27-84; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

[Amdt. 3]

General Regulation Governing Price Support for the 1978 and Subsequent Crops; Grains and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The proposed rule published in the *Federal Register* on September 4, 1984, (49 FR 34833) is adopted as a final rule. This final rule amends the regulations at 7 CFR Part 1421 with respect to: (1) The reconcentration of warehouse-stored loan commodities; (2) loan interest rates; (3) producer eligibility for commodity loans; and (4) the assessment of liquidated damages. This final rule also removes obsolete references to annual commodity supplements, provides forgiveness provisions with respect to certain producer violations, and authorizes compensation to be made available to rice producers who are required by CCC to deliver rice to a warehouse beyond the producer's customary delivery point.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447-8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560-0087 and 0560-0040.

This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this final rule applies are: Title—Commodity Loans and Purchases; Number—10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

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

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

Proposed Rule

A rule proposing to amend the General Regulations Governing Price Support for the 1978 and Subsequent Crops was published in the Federal Register on September 4, 1984, at 49 FR 34833. The proposed rule provided for a 30-day comment period. The comment period was limited to 30 days because producers are currently obtaining loans with respect to 1984-crop commodities and the proposed changes made by these regulations are applicable to 1984-crop commodities. No comments were received with respect to the provisions contained in the proposed rule.

The rule proposed to amend the regulations at 7 CFR Part 1421 by: (1) Removing obsolete references to annual commodity supplements; (2) incorporating provisions for reconcentration of warehouse-stored loan commodities; (3) revising the interest rate to be assessed on unsettled loans; (4) revising a producer's eligibility for commodity loans when eligible and ineligible commodities have been commingled; (5) incorporating liquidated damages to be assessed producers for (a) unauthorized disposition of farm-stored loan collateral, (b) failure to deliver farm-stored commodity by the delivery date specified by CCC on the commodity delivery notice, (c) failure to repay a loan on a farm-stored

commodity, for which a marketing authorization was issued, when delivery of the commodity to the buyer is completed; (6) incorporating county committee authority to forgive violations as required by the Agriculture and Food Act of 1981; and (7) including rice as an eligible commodity for which producers will be compensated for the delivery of the commodity beyond the producer's customary delivery point.

Amendment to the Proposed Rule

It has been determined that a technical revision should be made with respect to the provisions of the proposed rule. It is not believed that this change is of such significance as to warrant further public comment. Section 1421.17(i) of the proposed rule provided that a county committee may waive some or all applicable penalties or liquidated damages imposed on producers who sample, turn, move, or replace farm-stored loan collateral in violation of law or regulation if the county committee determines that: (1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity and (2) the violation did not result in harm or damage to the right or interest of any person or government agency. The county committee is required to furnish a copy of its determination to the Administrator, ASCS, and the State Committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or State Committee within sixty days from the date the determinations are received, such determination is considered to have been approved. In developing and publishing that proposed rule, a provision for the Administrator's designee to disapprove county committee determinations was inadvertently omitted. Accordingly, § 1421.17(i) is revised to provide that if the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State Committee within sixty days from the date the determinations are received, such determination is considered to have been approved.

Revisions have also been made in § 1421.17 (h) and (i) of the proposed rule to correct typographical errors.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Surety bonds, Warehouses.

PART 1421—[AMENDED]

Final Rule

Accordingly, the regulations at 7 CFR Part 1421 are amended by revising "Subpart—General Regulations Governing Price Support for the 1978 and Subsequent Crops" as follows:

1. The authority citation for 7 CFR Part 1421 is revised to read:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended 1072 (15 U.S.C. 714b, 714c). Secs. 101, 105B, 107B, 201, 301, 401, 405, 63 Stat. 1051, as amended, 95 Stat. 1227, as amended, 95 Stat. 1221, as amended, 63 Stat. 1052, as amended, 1053, as amended, 1054, as amended (7 U.S.C. 1441, 1444d, 1445b-1, 1446, 1447, 1421, 1425).

2. The table of contents to Subpart—General Regulations Governing Price Support for the 1978 and Subsequent Crops is amended by adding § 1421.29 as follows:

* * * * *

1421.29 Paperwork Reduction Act assigned numbers.

* * * * *

3. Section 1421.1 is revised to read as follows:

§ 1421.1 General statement.

This subpart contains the regulations which set forth the general requirements with respect to price support for the 1978 crop and each subsequent crop of barley, corn, flaxseed, oats, rice, rye, sorghums, soybeans, farm-stored peanuts, farm-stored flue-cured tobacco, and wheat. Price support shall be made available for a particular crop of a commodity based upon the level of support which is determined and announced annually by the Secretary. Farm storage loans will be evidenced by notes and secured by security agreements. In certain cases, chattel mortgages or financing statements will be filed. Warehouse storage loans will be evidenced by notes and security agreements and secured by the pledge of warehouse receipts representing an eligible commodity stored in approved warehouse storage. A producer may sell to CCC any or all of an eligible commodity which is not security for a price support loan by delivering to CCC the commodity or the warehouse receipts representing the commodity in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

4. In § 1421.9, paragraph (b) is revised to read as follows:

§ 1421.9 Warehouse receipts.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank in order to vest title in the holder. Receipts must be issued by an approved warehouse and must represent a commodity which is deemed to be stored commingled. The receipts must be negotiable and must represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the warehouse of the original deposit. *Provided, however,* That warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated in accordance with the provisions of § 1421.18(c).

5. In § 1421.12, paragraph (b) is revised to read as follows:

§ 1421.12 Interest rate.

(b) Price support loans which have been repaid by the maturity date or the original required settlement date for called loans shall bear interest at the same rate of interest which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR 1403.5. Until the loan is settled, such interest will be assessed beginning on the date immediately following the loan maturity date or the original required settlement date for called loans, whichever is applicable.

6. In § 1421.17, paragraphs (b) and (g) are revised and new paragraphs (h) and (i) are added to read as follows:

§ 1421.17 Farm storage loans.

(b) *Commingling eligible and ineligible commodity.* If an eligible quantity of a commodity has been commingled with an ineligible quantity of the commodity, the commingled commodity is not eligible to be pledged as collateral for a loan unless: (1) The producer has received prior approval from the county ASCS office to commingle the commodity as evidenced by an approved form CCC-687-1, Approval to Commingle or Move Loan Collateral, and the eligible or ineligible commodity has been measured by a representative of the county ASCS office; or (2) the producer has made a certification with respect to the acreage planted to the commodity which is to be commingled for all farms in which the producer has an interest. When

certifying to the acreage on all farms in which interest is held, the producer must provide acceptable evidence of the production or purchase of the commodity from which the county committee may determine whether the eligible production claimed by the producer is reasonable in relation to the production practices on such farm or similar farms in the same county; or have either the eligible or ineligible commodity measured by a representative of the county ASCS office.

(g) *Unauthorized removal and unauthorized disposition.* If there has been an unauthorized removal or unauthorized disposition of any part of farm-stored collateral, the county committee may: (1) Call the loan involved, (2) refuse to approve any further farm-stored loans for the producer with respect to any commodity for a period determined to be appropriate by the county committee, and (3) take other actions deemed necessary.

(h) *Liquidated damages.* If unauthorized disposition of a quantity of a commodity occurs, liquidated damages shall be assessed, in addition to any applicable interest with respect to the loan, on the quantity so disposed of beginning on the date the county committee has determined the unauthorized disposition occurred and shall continue until the loan is repaid. If the date of the unauthorized disposition of the loan collateral cannot be determined, such disposition shall be considered to have occurred on the later of: (1) The day following the latest inspection of the collateral by an ASCS representative, or (2) the day following disbursement of the loan. Liquidated damages shall be computed by multiplying the loan principal which represents the quantity so disposed by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts at the time the unauthorized disposition is determined to have occurred.

(i) *Waiver of liquidated damages.* If liquidated damages are assessed in accordance with paragraph (h) of this section, the county committee may waive some or all of such liquidated damages if the county committee determines that: (1) The violation occurred inadvertently or because the producer acted to prevent spoilage of the commodity, and (2) the violation did not result in harm or damage to the right or interest of any person or government agency. The county committee shall furnish a copy of its determination to the

Administrator, ASCS, and the State committee. If the determination of the county committee is not disapproved by either the Administrator, ASCS, or his designee, or the State committee within sixty days from the date the determinations are received, such determination shall be considered to have been approved.

7. In § 1421.18, paragraphs (a) and (c) are revised to read as follows:

§ 1421.18 Release of the commodity under loan.

(a) *Obtaining release—farm storage loan.* A producer shall not dispose any commodity which is pledged as collateral for a loan until prior written approval for such disposition has been provided by the county committee in accordance with § 1421.8. A producer may at any time obtain the release of all or any part of the commodity remaining as loan collateral by paying to CCC the principal amount of the loan which is outstanding with respect to the quantity of the commodity released, plus interest. CCC will permit removal of a quantity of the commodity from storage, without the payment to CCC of the loan amount, if the principal amount outstanding on such loan does not exceed the maximum loan value of the quantity of the commodity remaining in storage after removal of the quantity requested by the producer. When the proceeds of the sale of the commodity are needed to repay a farm storage loan, the producer must request and obtain prior written approval of the county ASCS office on a form prescribed by CCC in order to remove a specified quantity of the commodity from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county ASCS office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by the county ASCS office. If a producer fails to repay a loan within the time period prescribed by CCC for a farm-storage loan and the commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC-681-1, Marketing Authorization, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity removed with such authorization. Such liquidated damages shall be assessed beginning on the earlier of: (1) The expiration date of

such marketing authorization, or (2) the date delivery of the commodity to the buyer is completed, and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the quantity removed with such authorization by 50 percent of the rate of interest which is charged by CCC with respect to delinquent debts on the date that liquidated damages are first assessed.

(c) *Obtaining release, warehouse storage loans.* (1) The producer may arrange with the county ASCS office for the release of all or part of the commodity which is pledged as collateral for a warehouse storage loan at or prior to the maturity of such loan by repayment of the principal amount of the loan, plus interest, with respect to the quantity of the commodity to be released. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Subject to the provision of § 1421.5(b), warehouse receipts redeemed by repayment shall be released only to the producer or the producer's authorized agent, except that redeemed warehouse receipts may be released to persons who may be designated in a written authorization which is filed with the county office by the producer or the producer's authorized agent and which is dated within 15 days prior to the date of repayment.

(2) Upon the filing of Form CCC-699, Reconciliation Agreement and Trust Receipt, by the producer and warehouseman, the county committee may at any time during the loan period approve the reconcentration in another CCC-approved warehouse of all or part of a commodity which is pledged as collateral for a warehouse storage loan. Movement of the commodity must be to a warehouse that is located in the normal commercial line of marketing for the commodity and must not interfere with or abridge CCC's security interest in the pledged commodity. Any such approval shall be subject to all the terms and conditions set forth in Form CCC-699, Reconciliation Agreement and Trust Receipt. Warehouse receipts issued by the subsequent warehouse must: (i) Represent a commodity which is deemed to be stored commingled; (ii) be negotiable; and (iii) represent a commodity which is the same quantity and quality as the eligible commodity actually in storage in the subsequent

warehouse. The quantity of the commodity eligible to be pledged as collateral for the new warehouse storage loan shall not exceed the quantity approved for reconcentration as shown on Form CCC-699, Reconciliation Agreement and Trust Receipt. Liability for any loss in quality or quantity shall be resolved solely between the warehouseman and the producer without any liability on the part of CCC. A producer may redeem all or part of the commodity reconcentrated by paying to CCC the loan principal plus applicable interest and charges before the new warehouse receipt is delivered to CCC. If the commodity being reconcentrated is pledged as collateral for an extended price support loan under the Farmer-Owned Grain Reserve Program, the producer shall pay early redemption charges which are applicable in accordance with § 1421.733 and § 1421.753. Except for wheat, barley, sorghum, or rye, commodities which are reconcentrated shall be transported without cost to CCC. CCC shall increase or decrease the loan to the producer by the amount by which the loan value of the commodity stored in the subsequent warehouse is greater than or less than the value of the original warehouse storage loan. The maturity date of the new warehouse storage shall be the maturity date applicable to the original warehouse storage loan.

8. In § 1421.19, paragraph (a) is revised to read as follows:

§ 1421.19 Liquidation of farm storage loans.

(a) *General.* In the case of farm storage loans, the producer is required to repay the loan or deliver to CCC a sufficient quantity of the eligible commodity having a price support value equal to or greater than the outstanding balance of the loan. Deliveries may be either of the identical commodity which is subject to the note and security agreement or of other eligible commodities of the same kind. Deliveries shall be made in accordance with written instructions issued by the county ASCS office which shall set forth the time and place of delivery. CCC will not accept delivery of any quantity in excess of the larger of: (1) 110 percent of the measured or certified quantity, or (2) a sufficient quantity of the commodity having a settlement value equal to 110 percent of the loan value being settled. Settlement of the quantity delivered shall be made as provided in § 1421.22. If the producer fails to deliver to CCC the commodity pledged as price support

loan collateral by the date specified by CCC on Form CCC-691, Commodity Delivery Notice, and if the producer subsequently redeems the collateral by repaying the loan before delivery is accomplished, liquidated damages shall be assessed, in addition to any applicable interest due on the loan, on the quantity of the commodity redeemed. Such liquidated damages shall be assessed beginning on the date following the required delivery date and shall continue until the loan is repaid. Liquidated damages shall be computed by multiplying the loan principal on the repaid quantity by 50 percent of the rate of interest charged by CCC with respect to delinquent debts on the date the failure to deliver occurred.

9. In § 1421.22, paragraph (a) is revised to read as follows:

§ 1421.22 Settlement.

(a) *General.* Settlement with producers for commodities acquired by CCC as a result of loans made or under purchase agreements entered into under this subpart shall be made as provided in this section and in the applicable commodity regulation. The price support rate at which settlement shall be made shall be determined in accordance with the provisions of the applicable commodity regulations. Settlement shall be made on the basis of the grade, quality, and quantity of the commodity delivered by the producer. In the case of farm-stored peanuts and farm-stored tobacco, paragraphs (b), (c), and (e) of this section shall not apply. In the case of farm-stored rice, paragraphs (b) and (c) of this section shall not apply.

10. A new § 1421.29 is added to read as follows:

§ 1421.29 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Numbers 0560-0087 and 0560-0040 have been assigned.

Signed at Washington, D.C. on November 21, 1984.

C. Hoke Leggett,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84-31143 Filed 11-27-84; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 337****Unsafe and Unsound Banking Practices**

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC has determined that it is not unlawful under the Glass-Steagall Act for an insured nonmember bank to establish or acquire a bona fide subsidiary that engages in securities activities nor for an insured nonmember bank to become affiliated with a company engaged in securities activities if authorized under state law. At the same time, however, the FDIC has found that some risk may be associated with those activities. In order to address that risk the FDIC is amending its regulations to (1) define bona fide subsidiary, (2) require notice of intent to invest in a securities subsidiary, (3) limit the permissible securities activities of insured nonmember bank subsidiaries, and (4) place certain other restrictions on loans, extensions of credit, and other transactions between insured nonmember banks and their subsidiaries or affiliates that engage in securities activities.

EFFECTIVE DATE: December 28, 1984.

FOR FURTHER INFORMATION CONTACT:

Pamela E.F. LeCren, Senior Attorney, Legal Division, (202-389-4171), Room 4126 E. 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On August 23, 1982, the Board of Directors of the FDIC adopted a policy statement concerning the applicability of the Glass-Steagall Act to securities activities of subsidiaries of nonmember banks. The policy statement, which was published in the *Federal Register* on September 3, 1982 (47 FR 38984), concluded that, in the opinion of the Board of Directors, the Banking Act of 1933 (popularly known as the Glass-Steagall Act and codified in various provisions of title 12 of the United States Code) does not prohibit an insured nonmember bank from establishing an affiliate relationship with or organizing or acquiring a subsidiary corporation that engages in the business of issuing, underwriting, selling or distributing stocks, bonds, debentures, notes, or other securities. Although the policy statement was not designed to address the safety and soundness of such activities, it did state that the FDIC recognized its ongoing responsibility to ensure the safe and sound operation of

insured nonmember banks and that, depending on the facts, potential risks can be presented by a bank subsidiary's involvement in particular securities activities.

In keeping with that statement, the FDIC on September 20, 1982 adopted an Advance Notice of Proposed Rulemaking (47 FR 42121) designed to solicit comment on the need, if any, for rulemaking with regard to securities activities of affiliates and subsidiaries of insured nonmember banks. After carefully reviewing the comments received in response to that notice, the FDIC adopted on May 9, 1983 a proposed regulation (May 1983 proposal) addressing the securities activities of subsidiaries and affiliates of insured nonmember banks. The basic features of the May 1983 proposal were as follows: (1) A requirement that a bank give FDIC notice of intent to invest in a securities subsidiary; (2) a prohibition on an insured nonmember bank establishing or acquiring a subsidiary that underwrites securities unless the underwriting activity is done on a best-efforts basis, is the underwriting of top rated debt securities, and/or is the underwriting of a money market type mutual fund; (3) a limit on the bank's investment in one or more securities subsidiaries to twenty percent of the bank's equity capital; (4) a limit on the amount of loans or other extensions of credit the bank can make to its securities subsidiary or affiliate; (5) a prohibition on the bank making loans to any customer where the purpose of the loan is to acquire securities currently being underwritten or distributed by the bank's subsidiary or affiliate or accepting such securities as collateral on a loan or other extension of credit; (6) a prohibition on the bank directly or indirectly making loans or other extensions of credit to companies whose securities are currently being underwritten or distributed by the bank's subsidiary or affiliate if those securities are not rated in the top four rating categories by a nationally recognized rating service; (7) a prohibition on the bank as trustee purchasing in its sole discretion any security currently being underwritten, distributed, or issued by the bank's subsidiary or affiliate or any security currently being underwritten, distributed, or issued by any investment company advised by the bank's subsidiary or affiliate; and (8) a prohibition on the bank transacting business through its trust department with the bank's securities subsidiary or affiliate unless the transactions are comparable to transactions with an unaffiliated securities company.

Additionally, the May 1983 proposal defined the term "bona fide subsidiary" as a subsidiary of an insured nonmember bank that at a minimum (i) is adequately capitalized; (ii) is physically separate in its operations from the operation of the bank; (iii) maintains separate accounting and other corporate records; (iv) observes separate formalities such as separate board of directors meetings; (v) maintains separate employees who are compensated by the subsidiary; and (vi) conducts business separately from, functions independently of, and is not identified with, the banking business of the insured nonmember bank.

The May 1983 proposal was published for a sixty-day comment period which ended on July 18, 1983. In addition to inviting written comments during that time period, the FDIC invited oral testimony at a one-day public hearing that was held on June 17, 1983. The FDIC received 35 written comments and heard oral testimony from two witnesses at the June 17 public hearing. Because of the complexity of the issues involved and the relatively small number of comments received during the comment period, the FDIC issued a revised proposed regulation dealing with same subject matter on May 1, 1984 (49 FR 18497). The new proposed regulation was formulated after carefully reviewing the written comments on the May 1983 proposal as well as testimony given before various congressional committees that was given directly in connection with, or was relevant to, FDIC's rulemaking. The revised proposal, which is detailed below, was issued for a thirty-day comment period during which FDIC received 22 comments. Those comments are summarized below where relevant to an explanation of the final regulation.

Of the total of fifty-nine comments received during both comment periods, twelve were totally opposed to FDIC pursuing the rulemaking. Of the twelve comments opposing the rulemaking, two that were received during the 30-day comment period resubmitted comments which had been filed with the FDIC in response to the May 1983 proposal. The basis for the objections to the rulemaking included the following: (1) The proposal is beyond FDIC's authority, (2) the proposal is contrary to the Glass-Steagall Act, (3) action with regard to this area is best left to the states, (4) FDIC should let Congress deal with the question, (5) there is no need for a regulation in the area, (6) the proposal will not produce and benefits, (7) securities activities are inherently unsafe and unsound and banks should

not be exposed to those risks at all, (8) the proposal will cause a mass exodus from the Federal Reserve System, and (9) at the most, the FDIC should issue a policy statement concerning insured nonmember bank indirect involvement in securities activities and not a regulation.

The FDIC acknowledges these comments but has determined to go forward with the rulemaking. FDIC is not attempting to usurp the prerogative of the state supervisors to regulate insured state nonmember banks nor the right of Congress to define the proper scope of a bank's direct and indirect securities activities under the Glass-Steagall Act. FDIC is merely seeking to fulfill its statutory responsibility to ensure the safe and sound operation of insured nonmember banks and to address the realities of the present market place. Moreover, the FDIC does not feel that indirect securities activities are inherently unsafe or unsound in all instances. The FDIC does recognize that certain risks may be involved depending upon the securities activities in which a nonmember bank subsidiary is engaged and that certain conflicts of interest can arise from securities activities. The risks and the conflicts of interest can, however, in our opinion, be adequately addressed by proper regulation. FDIC also rejects the argument that the proposal will cause a mass exodus from the Federal Reserve System. Such a forecast is merely speculative and is, in our opinion, unwarranted. Lastly, we have rejected the suggestion that the FDIC merely adopt a policy statement rather than a regulation as the latter is a preferable enforcement tool.

The FDIC also rejects the argument that the agency's position on the Glass-Steagall Act as set out in its policy statement is incorrect. The FDIC is merely applying the clear language of the statute. The only provision of the Glass-Steagall Act that prohibits affiliations between banks and corporations engaged in securities activities applies solely to member banks of the Federal Reserve System. Section 20 of the Glass-Steagall Act specifically provides that no member bank shall be affiliated with any corporation, association, business trust, or other similar organization engaged principally in the issue, flotation, underwriting, public sale, or distribution of stocks, bonds, debentures, notes or other securities. Section 32 of the Glass-Steagall Act prohibits persons who are officers, directors, or employees of corporations that are primarily engaged in certain securities activities, or partners or employees of partnerships so

engaged, from serving as directors, officers, or employees of member banks. Section 21 of the Glass-Steagall Act which does apply to banks whether or not they are members of the Federal Reserve System was found by the Supreme Court to not reach companies related by ownership to banks. In *Board of Governors of the Federal Reserve System v. Investment Company Institute*, 450 U.S. 46 (1981) the Court at footnote 24 indicated that "Section 21 prohibits firms engaged in the securities business from also receiving deposits . . . and the language of § 21 cannot be read to include within its prohibition separate organizations related by ownership with a bank, which does receive deposits." FDIC's literal approach to the Glass-Steagall Act is also fully consistent with two recent Supreme Court cases involving the Glass-Steagall Act, *Securities Industry Association v. Board of Governors of the Federal Reserve System*, 104 S.Ct. 2979 (1984) ("Becker") and *Securities Industry Association v. Board of Governors of the Federal Reserve System*, 104 S.Ct. 3003 (1984) ("Schwab"). In both instances the Court relied on the plain language of the Glass-Steagall Act in deciding the cases and went so far as to state that it was constrained to abide by the literal meaning of the statute.

The FDIC's action in adopting this regulation is fully within the agency's authority and is consistent with its stated goal of safeguarding the safety and soundness of insured nonmember banks. The courts have recognized that defining what constitutes an unsafe or unsound banking practice in a particular fact situation is within the domain of the banking agencies. The 5th Circuit on two occasions stated that "One of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies." *Groos National Bank v. Comptroller of the Currency*, 573 F.2d 880, 897 (5th Cir. 1978), *First National Bank of LaMarge v. Smith*, 610 F.2d 1258, 1265 (5th Cir. 1980). The United States Court of Appeals for the D.C. Circuit has stated with regard to the Comptroller of the Currency's authority under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), one of the statutory provisions from which FDIC derives authority for this rulemaking, that "the Comptroller is entitled to accomplish his regulatory responsibilities over 'unsafe and unsound' practices both by cease and desist proceedings and by rules defining and explicating the practices which in

his discretion he finds threatening to a stable and effective national banking system." *Independent Bankers Association of America v. Heimann*, 613 F.2d 1164, 1169 (D.C. Cir. 1979). Finally, the FDIC wishes to make clear that it is not, by adopting this final regulation, waiving its right to address on a case-by-case basis practices, conduct, or acts it finds to constitute unsafe and unsound practices that are not specifically addressed by this regulation. The FDIC will continue to monitor bank direct and indirect involvement in securities activities and will take whatever future action is appropriate.

The provisions of the final regulation and a further summary of the comments received by FDIC are detailed below.

1. Bona Fide Subsidiary

The term "bona fide subsidiary" as proposed for the thirty-day comment period required at a minimum that the subsidiary (i) be adequately capitalized; (ii) be physically separate in its operations from the operation of the bank and not operate on the same floor of a building on which deposits are received; (iii) not share a common name of logo with the bank; (iv) maintain separate accounting and other corporate records; (v) observe separate formalities such as separate board of directors' meetings; (vi) maintain separate employees who are compensated by the subsidiary; (vii) share no common officer with the bank; (viii) have a majority of directors that are neither directors nor officers of the bank; and (ix) conduct business pursuant to policies and procedures independent from the bank so that customers of the subsidiary are aware that the subsidiary is a separate organization from the bank and that investments recommended, offered, or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.

In proposing the above definition the FDIC indicated that it was not necessarily implying that any association between a bank and its securities subsidiary in the public's mind could harm the reputation of the bank but rather that the FDIC was attempting to ensure the separateness of the subsidiary and the bank. That separation is essential inasmuch as the bank would be prohibited by the Glass-Steagall Act from engaging in many activities the subsidiary might undertake. If a bank's subsidiary is not sufficiently distinct from its parent, the subsidiary may be found to be an alter ego or a mere instrumentality of the

bank and the bank held to be engaging in securities activities in violation of the Glass-Steagall Act. The definition was also designed to ensure the separateness of the subsidiary from the bank as a means of safeguarding the soundness of the parent bank. As stated in the May, 1983 proposal, "the parent bank is less likely to be harmed if the subsidiary has adequate capital and thus can itself absorb losses as well as liabilities arising from the securities operation."

The final regulation adopts a definition of "bona fide subsidiary" that is substantially the same as that which was most recently proposed for comment with a few significant revisions. The final definition retains the requirement that the subsidiary be adequately capitalized. This requirement was generally viewed as proper by those commenting on the May 1983 proposal. No comment was directed to this aspect of the proposed definition during the thirty-day comment period with the exception of the comment of the Investment Company Institute ("ICI") which resubmitted its comment filed in response to the May 1983 proposal. The ICI in commenting unfavorably on the May 1983 proposal opined that the parent bank could not be sufficiently insulated from the subsidiary's financial losses nor the possibility of liability under the securities laws regardless of to what degree the subsidiary is capitalized. After considering this comment, FDIC agreed that a parent bank may be considered a "controlling person" of the securities subsidiary and thus potentially subject to liability to the same extent as the subsidiary for any violations of the securities laws on the part of the subsidiary. That liability is not absolute, however. The bank as a "controlling person" may not be liable if it had no knowledge of the circumstances which gave rise to the violation, the bank acted in good faith, and the bank did not directly or indirectly induce the violation. The FDIC therefore concluded that it is possible to structure the relationship between a parent bank and its subsidiary to avoid or lessen the bank's exposure under the securities laws for the acts of the subsidiary.

Although the final regulation requires that the subsidiary be adequately capitalized, it does not define what constitutes adequate capital. No definition had been incorporated in the final regulation as the adequacy of any particular subsidiary's capital can vary from a safety and soundness point of view. It is FDIC's position, however, that the bank's subsidiary must, at a

minimum, comply with any applicable capital requirements imposed by the Securities and Exchange Commission ("SEC") or imposed under state law. That level of capital is merely a starting point, however, and the FDIC reserves the right to determine that the subsidiary's activities and/or the parent bank's condition warrant that the subsidiary be capitalized over and above any such requirement. It is FDIC's intention to make this assessment during the "notice" period (see section (d) of the final regulation discussed below) and to inform the bank at that time whether in FDIC's opinion the capital position of the subsidiary is adequate. It is FDIC's belief that such a flexible approach will better serve FDIC's supervisory interest in maintaining the safety and soundness of insured nonmember banks.

The final definition also retains the requirement that the subsidiary maintain separate accounting and other corporate records and that the subsidiary observe separate formalities such as separate board of directors' meetings. No adverse comments were received as to either of these two requirements. Also retained is the requirement that the subsidiary maintain separate employees who are compensated by the subsidiary. Bank employees will be permitted, however, to perform so-called "back office" operations (such as accounting, data processing, and recordkeeping) provided that the bank is fully compensated for such services in an arm's-length transaction. In response to comments that the language of the exclusion for "back-office" operations was ambiguous, the FDIC has reworded footnote 5 of the final regulation which contains that exclusion to permit use of dual employees to perform functions which do not "directly involve customer contact." The proposal had excluded functions which do not "relate to" customer contact.

The separate employee requirements was criticized in a substantial number of comments in response to the May 1983 proposal and in two comments filed during the 30-day comment period. Overall, the comments observed that the requirement would be costly and inefficient, would prevent the bank subsidiary from entering the securities area slowly, would prevent the bank from making available to the subsidiary the expertise of bank personnel already familiar with securities operations, and would probably most adversely impact smaller banks. The FDIC acknowledges that the separate employee requirement can produce some additional costs to

insured nonmember banks but anticipates that the exception contained in the final regulation for back office operations (*i.e.*, allowing bank employees to perform administrative, non-customer contact type activities) reduces the inefficiency and added costs that might otherwise be produced. One comment, while recommending that the restriction be liberalized, did agree that the exclusion should alleviate some of the problems cited above. The separate employee requirement has also been retained in the final regulation as it is felt that the use of separate employees in customer contact positions is an extremely important factor in maintaining the separate corporate identity of the subsidiary and the bank. The requirement is also expected to have the added benefit of encouraging banks to hire experienced personnel to operate the subsidiary.

The final regulation retains the basic requirement that the subsidiary's operation be separated from the operation of the bank, however, the language indicating that "physically separate" operation of a subsidiary requires that the securities subsidiary not be located on the same floor of a banking building where deposits are received has been modified. The May 1983 proposal had required that the subsidiary's operation merely be physically separate and had not specified that the subsidiary could not operate on the same floor as the bank. The FDIC's purpose in changing the wording of the definition to that contained in the 30-day proposal was to more clearly demarcate the bank's depository business from the subsidiary's securities business and to prevent customer confusion regarding the separation. Several comments objected to this restriction as being overly broad and unnecessary, *i.e.* customer confusion can be avoided by less restrictive means and is adequately safeguarded against if the other proposed restrictions contained in the definition of bona fide subsidiary are observed. It was pointed out that as worded, the physically separate requirement would even prohibit a subsidiary of the bank from operating in a separate office with a separate entrance if the office happened to be on the same floor of a building where the bank operates.

The FDIC reevaluated its position and although the agency has determined to retain the requirement that the subsidiary's operation be physically separate and distinct, the minimum separation necessary to meet that regulatory standard has been modified.

The revised language would permit the subsidiary's to operate out of an office within a branch of the bank so long as the subsidiary's office is clearly identified and the bank and the subsidiary do not share a common entrance. The regulation, however, would permit both to share a common outer lobby or corridor. Existing operations within bank branches will be required to make whatever physical changes are necessary in order for the subsidiary to have separate offices that do not share a common entrance (other than a common outer lobby or corridor) with the bank. In all instances the subsidiary's offices must be clearly identified as belonging to the subsidiary.

The FDIC is adopting the physical separation requirement as described above despite the criticism it has received as we find our concern over public misconception as to with what entity the public is dealing to be a paramount concern. We are not comfortable with any less stringent requirement for fear that a bank customer may believe he or she is dealing with the bank or a department of the bank when making securities investments. For example, if the bank's subsidiary underwrites money market funds and an employee of the subsidiary counsels investors at a desk within the branch, there is the unavoidable possibility that the bank customer may confuse the investment in a money market fund underwritten by the subsidiary as a deposit of the bank even if the customer is given a written disclosure to the contrary. Although proper disclosures can go a long way in avoiding such customer confusion, disclosure *plus* other measures will more effectively separate the identities of the players.

The proposed definition of bona fide subsidiary required that the subsidiary not share a common name or logo with the bank. As previously stated by FDIC, name identification is a factor used by the courts in deciding whether to pierce the corporate veil, is a factor in public identification of the securities operation with the bank, plays a role in the public's misconception as to the insured status of investments placed with the subsidiary, and plays a role in engendering an expectation that the bank is liable for the obligations of the subsidiary. Additionally, a bank may be reluctant to allow a subsidiary to fail if that subsidiary carries the bank's name. The comments on the common name prohibition for the most part have been consistently critical and, in sum, opined that: a business's name is an asset on which it should be permitted to trade,

name identification will not necessarily confuse the public, and as nonbanking companies may freely use a common name for any number of enterprises, it is unfair to prohibit banks from doing the same.

Despite this criticism, FDIC has determined to retain the prohibition on the use of a common name or logo by a bank and its securities subsidiary. The final regulation expressly indicates, however, that the restriction does not preclude a bank from advertising and/or otherwise disclosing the relationship between its subsidiary and itself. For example, bank X may advertise the securities services of its full service brokerage subsidiary, Y company, and denote Y company as a subsidiary of bank X. In this way, a bank may still obtain some benefits of name recognition but the public confusion that may arise if the subsidiary uses a common name (especially if that subsidiary operates out of the bank's branch) is lessened. We continue to feel that this restriction will not unduly competitively harm insured nonmember bank subsidiaries.

Insured nonmember banks should note that if the subsidiary *only* conducts activities that the bank itself could conduct, the need for the subsidiary to not be identified with the bank in order to avoid a Glass-Steagall Act violation is eliminated. The FDIC, however, still intends to require that there be sufficient differentiation between the bank and its subsidiary in its name, advertisements, promotions, customer contacts, etc., so as to avoid any public misconception as to the insured status of any accounts or other investments held by the subsidiary.

The final definition of bona fide subsidiary retains the proposed requirement that the subsidiary not share common officers with the bank and that a majority of its board of directors not be directors or officers of the bank. The officer/director requirement has been adopted in order to: (1) Ensure that the subsidiary operates independently from the parent bank, and (2) reduce the likelihood under the "controlling person" doctrine (see above) that the parent bank may be held liable for any securities laws violations on the part of the subsidiary. Five comments addressed the officer interlock restriction, some of which commented in the context of the same restriction found in proposed section 337.4(c) dealing with bank affiliation with securities companies. All five comments criticized the prohibition on any officer of the bank being an officer of the subsidiary (in the case of an

affiliate any officer of the affiliate being an officer of the bank). In sum, the comments indicated that the restriction was not necessary in order to achieve a corporate separation under the law, that sharing of officers reduces costs, the restriction will adversely impact smaller banks, and that any conflicts of interest, etc. that might be associated with shared officers are sufficiently addressed under existing banking laws and regulations. While one of the comments extended its criticism to the restriction on the composition of the board of directors, several other comments supported that aspect of the restriction.

While FDIC agrees that shared officers and directors will not in and of itself cause the corporate form to be ignored, it is a factor, along with the other criteria set out in the definition of bona fide subsidiary, that a court will consider in deciding whether or not to do so. More importantly, shared officers and directors can play a significant role in determining the liability, if any, under the securities laws of the bank as a "controlling person." This restriction will also help to ensure that the bank subsidiary employs experienced managers. We do not anticipate that the restriction will be unduly burdensome for smaller banks that wish to establish securities subsidiaries as: (1) We expect smaller banks to confine their securities operations to brokerage or underwriting activities that the bank itself could lawfully conduct rather than to enter into underwriting activities the bank could not pursue (in the former instance the subsidiary need not be a bona fide subsidiary), and (2) should a bank establish a securities subsidiary that must be bona fide because of the nature of the activities it pursues, there is no minimum required number of experienced officers it needs to employ to do so. Depending upon the size and nature of the operation, one experienced officer may be sufficient to ensure that the securities operation is well managed.

The final regulation adopts the proposed requirement that the subsidiary conduct business pursuant to independent policies and procedures. The wording has been slightly modified in response to a comment that the phrase "so that customers of the subsidiary are aware that the subsidiary is a separate organization . . ." is ambiguous. The provision as reworded requires the subsidiary to employ "policies and procedures designed to inform customers and prospective customers of the subsidiary that the

subsidiary is a separate organization

To briefly summarize, FDIC is adopting the definition of bona fide subsidiary substantially as proposed. We recognize that one cannot assure that a court will not pierce the corporate veil between a bank and its subsidiary by establishing a list of requirements and we further recognize that a court would probably not ignore the corporate form on the basis of one or perhaps two of the criteria the agency has set out. We hope rather to assure through this definition that the bank's subsidiary will be a well managed, fiscally independent, separate corporate body whose operation will not pose a threat to the bank and whose obligations and liabilities as well as the securities products it offers to the public will be perceived by the public to be its own. It is not our intent to establish inordinate burdens nor preclude innovation neither of which consequence do we feel will flow from our action.

The measures that FDIC is requiring to separate the subsidiary from its parent bank are borrowed from corporate law. Similar measures were required by the Federal Home Loan Bank Board when it approved the operation of a savings and loan association service company that would (1) offer securities brokerage and investment advisory services, and (2) operate out of savings and loan association branch offices. The Bank Board's action was challenged in Federal District court and upheld. In response to the charge that the host savings and loan association would be engaging in securities activities in violation of the Glass-Steagall Act, the court refused to pierce the corporate veil between the service corporation and the savings and loan association stating that in view of the prophylactic measures required by the Bank Board, the two organizations must be treated separately. (*Securities Industry Association v. Federal Home Loan Bank Board*, 588 F.Supp. 749 (D.D.C., 1984).

2. Underwriting

The regulations as published for 30-day comment restricted a nonmember bank subsidiary's securities underwriting activities that the bank could not lawfully itself conduct to the following: (1) underwriting of investment quality debt securities; (2) underwriting of investment quality equity securities; (3) underwriting of mutual funds whose investments are exclusively limited to investment quality debt securities and/or investment quality equity securities; and (4) underwriting of money market type mutual funds. The term

"investment quality debt security" was defined to mean a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture the investment characteristics of which are equivalent to the investment characteristics of such a top-rated obligation. The term "investment quality equity security" was defined to mean marketable common or preferred corporate stock that is rated medium grade, average or better by a nationally recognized rating service.

Upon a review of the comments, FDIC has determined to revise the definition of investment quality equity security (see discussion in paragraph #3 below) and make the following changes to the underwriting restrictions as set out in proposed § 337.4(b)(1)(i): (1) The reference in § 337.4(b)(1)(i) (as well as elsewhere in the regulation) to mutual funds has been replaced with a reference to investment companies, (2) insured nonmember banks will be permitted to establish or acquire subsidiaries that underwrite investment companies not more than 25% of whose investments consist of investments other than investment quality debt securities and/or investment quality equity securities, and (3) if the subsidiary of an insured nonmember bank meets certain enumerated conditions (*i.e.* is a "qualified underwriter") the subsidiary's underwriting activities will not be limited to those identified in subparagraph (b)(1)(i) (*i.e.* investment quality debt, investment quality equity, money market funds, and qualifying investment companies).

The first revisions to § 337.4(b)(1)(i) is being made in response to a comment which pointed out that by using the term "mutual fund" the regulation excluded from eligibility for underwriting a number of other types of investment companies all of which are subject to regulation under the Investment Company Act of 1940, for example, unit investment trusts which are investment companies that have a defined investment portfolio that does not change. Inasmuch as FDIC did not intend such a result, the final regulation substitutes the term "investment company" for the term "mutual fund".

The second revision to paragraph (b)(1)(i) eliminates the requirement that an investment company invest "exclusively" in investment quality debt or investment quality equity securities in order for the investment company to be eligible for underwriting by the bank's

subsidiary. FDIC received several comments which criticized the requirement as overly restrictive. As pointed out by one comment, the restriction would in fact exclude most mutual funds from eligibility as mutual funds are typically diversified within the meaning of the Investment Company Act of 1940; *i.e.* up to 25% of their investments are in securities that would not qualify as investment quality securities under the proposal.

The most significant revision to the proposal allows a "qualified underwriter" to engage in any underwriting activity; *i.e.* there are no product restrictions on the subsidiary if it meets the conditions enumerated in § 337.4(b)(2). Those conditions are: (1) Membership in good standing in the National Association of Securities Dealers ("NASD"), (2) continuous operation for the five year period preceding notice to FDIC as required by this part, (3) no officer, director, general partner, employee, or 10 percent shareholder of any class of voting securities of the subsidiary has been convicted within five years of the notice required by this part of any felony or misdemeanor in connection with the purchase or sale of any security, involving the making of a false filing with the Securities and Exchange Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser, (4) neither the subsidiary nor any of its directors, officers, general partners, employees, or 10 percent shareholders of any class of voting securities of the subsidiary is subject to any state or federal administrative order or court order, judgment, or decree entered within five years of the notice required by this part temporarily or preliminarily enjoining or restraining such person or the subsidiary from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security involving the making of a false filing with the Securities Exchange Commission, or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser, (5) none of the subsidiary's directors, officers, general partners, employees, or 10 percent shareholders are subject to an order entered within five years of the notice required by this part of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 780, 780-4) or section 203(c) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(c), (f)), and (6)

all officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five years experience in similar activities at NASD member securities firms.

FDIC has determined to adopt the "qualified underwriter" approach after reconsidering comments which urged FDIC to concentrate on the subsidiary's management rather than establishing product restrictions. This approach is also being adopted in light of several comments which brought to our attention that, in attempting to establish an objective standard to measure the investment quality of equity securities by defining "investment quality equity security" as proposed, FDIC excluded from eligibility for underwriting (1) entire industries whose equity securities are not ranked, (e.g. auto companies, steel companies, airlines), (2) equity securities of any company that has not been in operation for ten years or more (ranking is typically done by reviewing a stock's performance over a ten-year period in relationship to other stocks), and (3) equity investments other than common or preferred stock such as limited partnerships. Two comments pointed out that: (1) There is no customary or obligatory after market for shares of limited partnerships, (2) neither the subsidiary nor the bank would be identified with any such distribution as only the managing underwriter is named in the prospectus, and (3) there is no capital commitment on the part of the selling broker. (See paragraph #3 below.)

While FDIC recognizes that there are problems with trying to objectively define what constitutes an investment quality equity security and that there are no guarantees that investment grade equity securities are sound investments, it is still FDIC's feeling that it is appropriate to adopt a guarded stance at the outset with respect to equity underwriting even if utilizing an imperfect standard. FDIC has therefore retained the basic concept of product restrictions where a nonmember bank subsidiary is a de novo entrant into the securities underwriting market. If a nonmember bank acquires a functioning underwriter that is a "qualified underwriter" within the parameters of section 337.4(b)(2), that subsidiary is permitted a wider latitude in its underwriting activities under the final regulation. If the de novo subsidiary meets the remaining conditions for a qualified underwriter after it has been in operation for five years, the subsidiary may, after giving FDIC notice pursuant to § 337.4(d), expand its underwriting activities to ones other than those set

out in § 337.4(b)(1)(i). In either case, the FDIC will not be precluded from intervening in, or objecting to, the acquisition of the qualified underwriter, or expansion of underwriting activities into ones permitted to a qualified underwriter, if such intervention or objection is warranted.

While the final regulation permits unlimited underwriting (in the sense of product restrictions) to qualified underwriting subsidiaries of insured nonmember banks, any de novo subsidiary will be limited to underwriting of investment quality debt and equity securities, underwriting investment companies that primarily invest in such securities, and underwriting money market funds. (Investment quality equity securities are normally traded on an exchange thus eliminating pressures on the subsidiary to create an after market. Even if the subsidiary were to create an after market in such securities, there should not be any undue risk due to the high quality of the securities.) By adopting this two-tier approach, FDIC hopes to allow nonmember bank subsidiaries the flexibility of slowly moving into larger securities markets as they gain more experience. At the same time, by permitting experienced securities underwriting firms owned by nonmember banks to engage in a larger product market, the FDIC is avoiding what would have been the unintended result of the proposal: precluding underwriting of securities of smaller, regional companies; companies that have not been operating for ten years or more; and companies whose securities are not ranked because their securities are not felt to be "amenable" to the ranking process. While the parent nonmember banks of such qualified underwriters are arguably exposed to greater risks, the FDIC feels that the requirement that the subsidiary be bona fide and the requirement that the subsidiary be well managed and experienced coupled with the other restrictions of the final regulation sufficiently offset those risks.

Lastly, as was the case with the 30-day proposal, the final regulation does not restrict a nonmember bank's affiliation with a securities company depending upon the activities conducted by that company. As it has indicated in earlier Federal Register notices, FDIC feels that there is less of a possibility that losses suffered by the bank's parent or sister affiliate due to underwriting activities will adversely impact the bank. This is especially so as the affiliate's ability to move funds out of the bank is limited by several provisions

of the final regulation. In any event, the FDIC will have the opportunity when processing change in bank control applications to disapprove a bank's affiliation with a securities company if warranted under that Act.

3. Investment Quality Debt Security/ Investment Quality Equity Security

The May 1983 proposal defined the term "investment quality debt security" to mean a marketable obligation in the form of a bond, note, or debenture the investment characteristics of which are not predominantly speculative. The definition specifically included obligations rated in the top four rating categories by a nationally recognized rating service. The definition as revised in the most recent proposal provided that "Investment quality debt security" shall mean a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture the investment characteristics of which are equivalent to the investment characteristics of such a top rated obligation." The revised definition responded to comments on the May 1983 proposal that the phrase "speculative investment characteristics" was overly vague and to comments which indicated that by limiting the definition of investment quality debt securities to rated securities, the FDIC may foreclose access by smaller companies to capital markets.

The definition of investment quality debt security is being adopted as most recently proposed without modification. Only one comment was directed to the definition. It expressed approval of the language as proposed. The definition allows a bank subsidiary to underwrite debt securities that are of comparable quality to highly rated debt securities. As the nonrated debt obligations must still be of high quality in order for the bank's subsidiary to engage in the underwriting, the FDIC does not feel that the broader definition will expose the parent bank to any additional risks.

The most recent proposal defined the term "investment quality equity security" to mean a marketable common or preferred corporate stock that is rated medium grade, average, or better by a nationally recognized rating service. The proposed definition of investment quality equity security did not encompass nonrated equities that have equivalent investment characteristics to top rated equities as, as explained in the supplemental information to the proposal, the science of rating equity

securities is not as precise as the science of rating debt securities, nor is it as developed.

In attempting to define what constitutes an investment quality equity security FDIC relied upon ratings of common and preferred corporate stock. According to a comment on the proposed definition, common stock is not rated, but is "ranked" with reference to its standing relative to other common stocks based on a ten-year history of earnings and dividends. The comment further indicated that (1) a significant group of companies in major industries is not ranked; e.g. most auto companies, steel companies, and airlines, and (2) some common stocks are not ranked at all because they are not considered amenable to the ranking process. In short, according to the comment, reliance on rankings of common stock to determine what constitutes an investment quality equity security is misplaced and is too narrow of an approach. Lastly, the comment indicated that, at the very least, FDIC's definition should allow for the underwriting of highly rated preferred corporate stock (preferred stock is "rated" in the same manner and according to much the same standards as bonds are rated) and/or underwriting of unrated preferred stock whose investment characteristics are equivalent to the investment characteristics of top rated preferred stock.

Upon consideration of the above, FDIC has determined to modify the definition of investment quality equity to read as follows: "Investment quality equity security shall mean marketable common stock ranked or graded in the top four categories or equivalent categories by a nationally recognized rating service and marketable preferred corporate stock that is rated in the top four rating categories by a nationally recognized rating service or has investment characteristics that are equivalent to the investment characteristics of such top-rated preferred stock."

Although FDIC acknowledges that using ranking of common stocks as an objective measure of the investment quality of corporate securities is not free from shortcomings, FDIC has determined to retain this limitation on the permissible corporate underwriting activities of subsidiaries of insured nonmember banks for the reasons more fully set forth in paragraph #2 above describing the underwriting provisions of the final regulation.

4. Filing of Notice

The final regulation adopts the notice provision as proposed with minor

changes. Under the final regulation the bank must give the appropriate FDIC regional office written notice of intent to establish or acquire a subsidiary that engages in any securities activity at least 60 days prior to consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The regulation also requires that, in addition to the 60-day advance notice, a bank must file a written follow-up notice with the appropriate FDIC regional office within 10 days after the acquisition is consummated or the subsidiary commences operations, whichever is earlier. The regulation does not specify the content of the written notice of intent. By not specifying the content of the notice, the FDIC is permitting a bank to satisfy the notice requirement in any way it finds most convenient. For example, if the subsidiary will be registered with the SEC, a copy of the SEC filing may simply be forwarded to the appropriate FDIC regional office.

Where the 60-day advance notice pertains solely to an instance where a bank transfers to its subsidiary securities activities previously performed by the bank, the bank is required under the final regulation to file an additional notice with the regional office if the subsidiary expands into restricted activities; i.e., the underwriting activities referenced in subparagraph (b)(1)(i) and paragraph (b)(2) of the final regulation. Likewise, if the subsidiary gives the FDIC 60 days advance notice regarding the establishment or acquisition of a subsidiary that will engage in subparagraph (b)(1)(i) activities, an additional notice must be given to the regional office if the subsidiary commences broadened underwriting activities as permitted by paragraph (b)(2).

These notices serve as a supervisory mechanism that will apprise FDIC of which insured nonmember banks are conducting securities activities through their subsidiaries that pose potential risks to which the bank would not otherwise be exposed. The subsequent notice is a one-time notice; i.e., the first time the subsidiary commences any activity covered by paragraph (b)(1)(i) or (b)(2), notice must be filed. No subsequent notice is required if the subsidiary later begins another underwriting activity covered by (b)(1)(i) or (b)(2) that was not the activity which triggered the above notice. The only comment received by FDIC during the most recent comment period which addressed the notice requirements objected to a bank having to give FDIC notice if it transfers securities activities

from the bank to a subsidiary. The requirement is being retained, however, as FDIC does not feel that the requirement is burdensome and moreover because the information will aid FDIC in discharging its supervisory responsibilities.

It is the FDIC's intent to use the notices required by the final regulation as a point of reference. The regional office will contact the bank seeking further information if the bank's condition or other facts warrant a closer review. It is for this reason that the regulation requires that the initial notice be received at least 60 days in advance. The 60-day notice can be waived at the FDIC's discretion where such period is impractical, e.g., where the acquisition is the result of a purchase and assumption transaction or an emergency merger. The subsequent notice must be received in the regional office within 30 days after the subsidiary commences the triggering underwriting activity. Prior notice is not required in this instance as it was felt to do so would be too impractical and would unduly interfere in the day-to-day operations of the subsidiary. None of the notice requirements are an approval process although the FDIC will not be precluded from intervening in an intended acquisition or establishment of a subsidiary or from objecting to the expansion of activities if such intervention or objection is warranted, for example, if the subsidiary would not appear to meet the requirements for a bona fide subsidiary, or any details of the planned transaction (such as the source of funding for the establishment or acquisition of the subsidiary) present any supervisory concerns.

The final regulation does not require a written notice when a bank becomes affiliated with a securities company. For the most part, affiliation with a securities company will arise out of a change in bank control or come to FDIC's attention when a bank seeks deposit insurance. As the FDIC will become aware of the affiliation prior to consummation in both instances, there is no need to create an additional notice requirement.

5. Lending Restrictions

The most recent proposal contained a number of restrictions designed to prevent abuse of a bank's credit facilities. Such abuse can arise in several ways, for example, the making of imprudent loans to companies whose securities are underwritten or distributed by the bank's subsidiary or affiliate in an effort to improve the condition of the company and thus the

marketability of the company's securities. The proposal would have prohibited a bank from: (1) Making extensions of credit to any company whose securities are currently underwritten or distributed by the bank's affiliate unless those securities qualify as investment quality debt securities or investment quality equity securities, (2) making any extension of credit to a money market fund or mutual fund currently underwritten or distributed by the bank's subsidiary or affiliate, (3) making any extension of credit where the proceeds are to be used to acquire securities currently issued, underwritten or distributed by the bank's subsidiary or affiliate or currently issued by an investment company advised by the bank's subsidiary or affiliate, (4) making any extension of credit to its securities subsidiary or affiliate that does not comport with section 23A of the Federal Reserve Act, (5) making any extension of credit to any investment company advised by the bank's subsidiary or affiliate if the extension of credit does not comport with section 23A of the Federal Reserve Act, (6) directly or indirectly conditioning any extension of credit to a company on the requirement that the company contract or agree to contract with the bank's subsidiary or affiliate to underwrite or distribute the company's securities, and (7) directly or indirectly conditioning any extension of credit to any person on the requirement that that person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate. (Items 6 and 7 are discussed in paragraph #9 below.)

The lending restrictions are being adopted as most recently proposed with two minor changes: (1) The reference to "money market fund" and "mutual fund" contained in paragraph (e)(4) has been replaced with the term "investment company", and (2) the restriction on extensions of credit to companies whose non-investment quality securities are currently underwritten or distributed by the bank's affiliate has been expanded to cover companies whose non-investment quality securities are currently underwritten or distributed by the bank's subsidiary. The expanded coverage is necessary as qualified underwriting subsidiaries of nonmember banks may underwrite securities that are not investment quality. The lending restrictions and the basis for their adoption are discussed separately below.

Paragraph (e)(3) of the final regulation prohibits a bank from extending credit to any company the stocks, bonds,

debentures, notes or other securities of which are currently underwritten or distributed by a subsidiary or affiliate of the bank unless those securities qualify as investment quality debt securities or investment quality equity securities. Paragraph (e)(3) is designed to address the concern that a bank may make imprudent loans to companies whose lower quality securities are underwritten or distributed by the bank's subsidiary or affiliate in an effort to improve the condition of the company and thus the marketability of its securities. Inasmuch as the securities in question must be investment quality in order for the company to be eligible for extensions of credit from the bank, the above concern is eliminated. If the bank's subsidiary is engaging in underwriting activities as permitted by section 337.4(b)(2), the bank would not be able to extend credit to any company whose securities the bank's subsidiary currently underwrites or distributes assuming of course that the securities in question are not investment quality.

In determining whether an underwriting or distribution is "current", the bank may rely upon the affiliate's or subsidiary's statement that any particular underwriting or distribution has terminated. A footnote to paragraph (e)(3) indicates that the restrictions of (e)(3) are not to be construed as prohibiting the bank from honoring a loan commitment or revolving loan agreement or funding a line of credit where such loan commitment, revolving loan agreement, or line of credit was entered into prior in time to the underwriting or distribution. It is felt that this exclusion coupled with the definition of investment quality debt security and investment quality equity security (both of which take into consideration unrated debt and unrated preferred corporate stock that has investment characteristics equivalent to those of highly rated securities) prevents the restrictions of paragraph (e)(3) from having an adverse effect on the availability of credit. The same footnote also provides that the restrictions of (e)(3) do not apply to extensions of credit to non-U.S. companies whose securities are underwritten or distributed outside the United States by an insured nonmember bank's non-U.S. affiliate. This exclusion has been added in response to comments from several foreign banks. (See paragraph #14 below.)

Paragraph (e)(4) of the final regulation prohibits a bank from making any extension of credit or loan directly or indirectly to any investment company whose shares are currently underwritten

or distributed by a subsidiary or affiliate of the bank. As stated in the preamble to the proposal, FDIC considered exempting mutual funds and money market funds from the reach of the lending restriction. Such an exemption was rejected, however, inasmuch as the credit needs of such funds are most likely to arise when the fund is having liquidity problems. If interest rates should rise sharply and large numbers of shareholders, especially institutional investors, redeem their shares to put their money directly into higher paying investments, a fund could face a liquidity crisis. A bank may thus be tempted to make an unsound loan to the fund in order to prevent the fund from suffering a loss by selling portfolio assets at a depressed price to meet liquidity needs. As the FDIC received no comments critical of the restriction, and it is still our opinion that the restriction is warranted, the final regulation retains the provision as proposed with the exception of the reference change to "investment company". Money market funds have been targeted within the prohibition despite their relative stability as at present there is no self-regulatory organization such as the NASD to watch-dog money market funds.

Paragraph (e)(5) of the final regulation prohibits a bank from extending credit for the purpose of acquiring securities currently underwritten or distributed by the bank's subsidiary or affiliate, securities issued by an investment company advised by a bank's subsidiary or affiliate, or securities issued by the bank's subsidiary or affiliate. The provision contains an exception that would permit the bank to extend credit to any employee of the subsidiary or affiliate where the purpose of the loan is to acquire securities of the subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board of trustees of the subsidiary or affiliate. Footnote 11 indicates that the bank in complying with paragraph (e)(5) may rely in good faith on the customer's statement as to the purpose of the loan. FDIC received one comment addressing the above described purpose lending restriction. That comment urged FDIC to merely require that any purpose loan by the bank comply with safe and sound banking practice rather than prohibiting purpose loans in their entirety. FDIC still feels, however, that this prudential restriction is warranted especially in a supervisory environment which is progressively moving toward fewer on-site examinations at greater intervals.

Paragraph (e)(6) of the final regulation subjects extensions of credit by a bank to the bank's subsidiary to the same loan ceiling and other restrictions as would be applicable under section 23A of the Federal Reserve Act if that subsidiary were an affiliate for the purposes of that statute. Paragraph (e)(6) also places extensions of credit to the bank's affiliate under the same restrictions. Paragraph (e)(7) subjects extensions of credit by a bank to an investment company advised by the bank's subsidiary to the same loan ceiling and other restrictions that would be applicable under section 23A of the Federal Reserve Act if that subsidiary were an affiliate within the meaning of section 23A and makes extensions of credit to investment companies advised by the bank's affiliate subject to the same restrictions. As loans or extensions of credit to the bank's affiliate as that term is defined in the regulation are already covered by the language of section 23A, placing affiliates under the restrictions of paragraph (e)(6) does not establish any additional requirements. Additionally, as section 23A covers extensions of credit to investment companies advised by the bank's affiliates, placing affiliates under the restriction of paragraph (e)(7) does not establish any additional requirements. The final regulation expressly incorporates the exemptions contained in section 23A as well as the restrictions. These provisions did not receive any adverse comment during the 30-day comment period and thus are being adopted as proposed. (FDIC did receive one comment opining that Congress did not intend for subsidiaries of banks that advise mutual funds to be subject to section 23A. Although that may or may not be the case, FDIC has determined that certain risks may be present even when the subsidiary merely acts as an adviser to an investment company and that those risks are appropriately addressed by section 23A-type restrictions.)

6. Trust Department Restrictions

One safety and soundness problem associated with securities activities of subsidiaries and affiliates of nonmember banks is dumping of poor securities into the bank's trust department. The May 1983 proposal contained a provision designed to address that concern that would have prohibited an insured nonmember bank which has a subsidiary or affiliate that engages in the sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities or acts as an investment adviser to any investment company that sells,

distributes, or underwrites any such security, from purchasing in its sole discretion as fiduciary or co-fiduciary any security currently being issued, distributed, or underwritten by that subsidiary or affiliate or purchasing in its sole discretion any security currently being distributed, underwritten, or issued by any investment company advised by the subsidiary or affiliate. The May 1983 proposal also would have prohibited an insured nonmember bank from transacting business through its trust department with its securities subsidiary or affiliate unless the transactions are comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank. The later provision was designed to insulate the bank from the possibility that its securities subsidiary or affiliate will drain off profits from the bank.

In response to comments that the phrase "in its sole discretion" should be clarified, paragraph (e)(1) of the proposed regulation was reworded to permit insured nonmember banks to purchase, as fiduciary or co-fiduciary, securities currently distributed, underwritten or issued by the bank's subsidiary or affiliate or currently issued by an investment company advised by the bank's subsidiary or affiliate where those purchases are expressly authorized by the trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure. As FDIC indicated in its earlier publications, the provision merely restated the common law obligation of a fiduciary to refrain from self dealing and was at the same time consistent with the following statement regarding trust department examinations found in FDIC's Manual of Examination Policies: "It is a general axiom that a bank has a definite moral responsibility, as well as legal, not to deal with itself in the administration of a fiduciary account."

FDIC's examination manual also goes on to state that a bank should not invest fiduciary funds in its own obligations or stock unless court order, local law or the trust instrument authorizes the purchase and retention of the obligation or stock, or specific authority for the investment is obtained from all interested parties.

FDIC received several comments addressed to paragraph (e)(1) of the proposal all of which objected to the provision as worded. The comments indicated that the "expressly authorized" requirement was too strict; the requirement might necessitate redrafting existing trust instruments which in some cases could prove

impossible; obtaining specific authority from all interested parties could be costly and perhaps impossible; and the provision may preempt existing law or at best cause confusion. In response to these comments, paragraph (e)(1) has been revised in the final regulation so as to provide that the bank is prohibited from purchasing in its discretion as fiduciary, co-fiduciary, or managing agent any security currently underwritten, distributed, or issued by the bank's subsidiary or affiliate or any security issued by an investment company advised by the bank's subsidiary or affiliate unless one of three conditions are met: (1) The purchase is expressly authorized by the managing agency agreement, trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure, (2) the purchase, although not expressly authorized under item 1, is otherwise consistent with the bank's fiduciary obligation, or (3) the purchase is permissible under any applicable federal and/or state statute or regulation. Condition three is designed to take into account, for example, federal law governing employee benefit and pension plans which would permit, in certain instances, transactions involving such funds and affiliates of the funds' trustees. Condition two is responsive to the comment that in order to meet its fiduciary obligation, a trustee is not always required to obtain the authorizations covered by item one.

FDIC feels that paragraph (e)(1) as adopted in final should provide sufficient flexibility so as to not conflict with existing fiduciary common law and/or federal or state statutes or regulations governing the operation of trust departments and the duty of fiduciaries. At the same time it should prevent abuses that might otherwise arise. It should be noted that (e)(1) as adopted also covers purchases by the bank in its discretion as managing agent. Paragraph (e)(1) thus covers a situation where the bank is the managing agent for an investment account and the bank has investment discretion over that account. Although the bank is not a fiduciary with respect to that agency account in the same sense as if it were a trustee of a trust account, the bank still has certain obligations with respect to the account and it is in a position through its investment discretion to take securities off the hands of its subsidiary or affiliate. FDIC has therefore concluded that (e)(1) is appropriately expanded to cover such instances.

The final regulation adopts paragraph (e)(2) as proposed. Under that provision the bank is prohibited from transacting business through its trust department with the bank's subsidiary or affiliate unless the transactions are at least comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank. The purpose of (e)(2) is to ensure that when a bank's subsidiary or affiliate executes securities transactions on behalf of the bank's trust accounts, the costs associated with those executions (both to the bank and the trust account) are not inflated, *i.e.* not substantially greater than would have been incurred if dealing with an unaffiliated securities company. To the extent those costs are inflated, the bank, may suffer, *i.e.* the subsidiary or affiliate may drain off profits from the bank, or the trust customers may suffer, *i.e.* the higher costs are passed on to the customer.

FDIC received one comment urging that paragraph (e)(2) be amended to require that such transactions be at cost as a beneficiary of a trust is entitled to a trustee which is free from the incentive to generate transactions in order to produce commission income. FDIC has not adopted an "at cost" requirement as the requirement of paragraph (e)(1) should adequately ensure against churning and other acts that can constitute a breach of fiduciary obligation on the part of the trustee when the bank is dealing with its subsidiary or affiliate. It should be noted that (e)(2) does not prohibit a bank's trust department from using the broker/dealer services of its subsidiary or affiliate to execute transactions on behalf of fiduciary accounts. The bank's decision to utilize the subsidiary's or affiliate's services (and the transaction as a whole) must fully comport, however, with the bank's fiduciary obligation to its trust department customers. It is not FDIC's intent to countenance any transaction or practice which, although "comparable" to transactions with unaffiliated securities companies, is otherwise a breach of fiduciary obligation.

7. Investment Ceiling

Paragraph (b)(3) of the proposed regulation would have restricted an insured nonmember bank's direct and indirect investment in one or more securities subsidiaries to 20% of the bank's primary capital unless the FDIC approves a greater investment. Although few of the comments received over the course of the rulemaking criticized the proposed investment restriction, the FDIC has determined to eliminate that

portion of the regulation. The final regulation retains, however, the statement that the bank's investment in its securities subsidiary will not count toward the bank's capital. The investment limitation is being eliminated as the FDIC, upon further reflection, concluded that the investment ceiling was unnecessary inasmuch as the bank's investment in the subsidiary will be excluded from the bank's capital.

The exclusion provides the FDIC with a strong enforcement tool to help safeguard the bank's safety and soundness. If, for example, the FDIC should determine after receiving notice that an insured nonmember bank's capital would not be adequate after making the necessary adjustments, the bank could be subject to enforcement action if it were to proceed with the acquisition or establishment of the subsidiary. The automatic exclusion of the investment from the bank's capital will provide the FDIC greater assurance that the bank and subsidiary are independent, financially viable entities and will prevent institutions with marginal capital from taking on additional activities that could pose additional risks.

8. Affiliation With a Securities Company

Section 337.4(c) of the proposed regulation would have prohibited an insured nonmember bank from becoming affiliated with a securities company unless: (1) The securities business of the affiliate is physically separate in its operation from the operation of the bank and does not operate on the same floor of a building on which the bank receives deposits; (2) the bank does not share common officers with the affiliate; (3) a majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct any securities activities on behalf of the affiliate on the premises of the bank that involve customer contact; (5) the bank and affiliate do not share a common name or logo; and (6) the affiliate conducts business pursuant to policies and procedures independent from the bank so that customers of the affiliate are aware that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.

The May 1983 proposal only required that the securities business of the bank's affiliate be "kept separate and distinct

from the banking business of the insured nonmember bank". Inasmuch as the FDIC did not necessarily mean to imply that the affiliate could more closely mingle its operations with the bank than could the bank mingle operations with its subsidiary, the FDIC specifically proposed restrictions that paralleled those set forth for subsidiaries of insured nonmember banks. In doing so, the FDIC indicated that it felt that the restrictions were as warranted in the case of an affiliate as in the case of a subsidiary. The proposal further indicated that it was felt that the restrictions were necessary in order to avoid customer confusion, to avoid conflicts of interest, to avoid a finding that the bank is itself engaged in prohibited securities activities, and to avoid a finding that the affiliated securities company is taking deposits in violation of section 21 of the Glass-Steagall Act. For example, if the FDIC approves deposit insurance for a newly chartered bank whose parent is a securities company and the bank is so closely intertwined with its parent that one could find the parent securities company is taking deposits, the FDIC would, by its action, countenance a violation of the Glass-Steagall Act.

The FDIC specifically sought comment on the necessity of the above restrictions and the problems, ramifications, burdens, etc., if any, that might be associated with the director/officer restriction and the prohibition on the use of common names or logos. With the exception of the comments to be discussed below, the comments FDIC received which addressed the proposed restriction on bank affiliations with securities companies have essentially been outlined in paragraph #1 above which discusses the definition of bona fide subsidiary. (Inasmuch as the restrictions in proposed section 337.4(c) essentially parallel the restrictions for bona fide subsidiaries, comments directed to one provision, for the most part, raised issues equally applicable to the other.)

One comment made on behalf of several securities companies which are presently affiliated with insured nonmember banks or which intend to affiliate therewith made the argument that FDIC has not adequately supported its case for restricting the affiliation of a nonmember bank with a securities company *i.e.*, even if there is a basis to define bona fide subsidiary as proposed, there is a fundamental difference between a bank being owned or otherwise affiliated with a securities company and a bank establishing or acquiring a securities subsidiary. This

comment, as well as others, primarily focused on the prohibition on the use of a common name or logo, the restriction on shared officers, and the restriction on the composition of the bank's board of directors. One comment suggested exempting banks that are presently affiliated with securities companies from the common name prohibition (either by a premanent grandfather or through a list of exemptive criteria such as the amount of the affiliate's revenue, capital, or assets, the length of time the affiliate has been in business, and the location of a majority of the affiliate's offices). Such banks, said the comment, have expended considerable amounts of money in promotional activities (albeit less than that which would have been expended if they could not have relied on the name identification of their parent) and would need to expend far more to recapture the market position they presently hold if they are required to change their names.

Additionally, several comments objected to the proposed requirement that the affiliate conduct business pursuant to independent policies and procedures. One such comment felt that the requirement constituted an unwarranted intrusion on the affiliate's operations and was beyond FDIC's authority. Several others pointed out that under the language as proposed, an affiliate of a nonmember bank could not broker the bank's deposits as the provision requires the affiliate to make its customers aware that investments recommended or sold by the affiliate are not bank deposits, are not insured by the FDIC, nor are obligations of the bank. Lastly, several comments pointed out that § 337.4(c) would require that the affiliated securities company comply with the restrictions contained therein regardless of whether the securities company was solely conducting activities of the sort permitted to the bank under the Glass-Steagall Act. A subsidiary of a bank on the other hand only need meet the criteria for a bona fide subsidiary if it conducts securities activities which the bank could not conduct. After carefully weighing these comments, FDIC has determined to go forward with proposed § 337.4(c) with certain modifications described below.

The final regulation restricts under section 337.4(c) the affiliation of a securities company and a nonmember bank where the affiliate directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities. The language change thus tracks the language of section 21 of the Glass-Steagall Act and in effect cuts back the scope of the provision from

that which was proposed. Under the new language, to the extent that the affiliate engages in any other securities activities (*i.e.* ones not encompassed by section 21 of the Glass-Steagall Act) the affiliate is not subject to § 337.4(c). As in the case of a nonmember bank subsidiary, however, it is still FDIC's intent to require that there be sufficient differentiation between the bank and its affiliate in the bank's name, advertisements, promotions, etc. so as to avoid any public misconception as to with whom it is dealing. Also, under the provision as revised in the final regulation, only a securities company that *directly* engages in the sale, distribution, or underwriting of securities is subject to the restrictions of § 337.4(c). (The proposal would have covered companies directly or indirectly engaged in securities activities.) For example, a nonmember bank may share officers with its parent holding company that does not itself engage in securities activities except where those persons are also officers of a company controlled by the bank's parent (*i.e.*, an affiliate of the bank as defined in § 337.4(a)(1)) that underwrites securities).

A securities company subject to § 337.4(c) will not be required to be physically separate in its operations from the operations of its affiliated nonmember bank in the sense of not operating on the same floor of a building on which the bank receives deposits. As is the case with a subsidiary, however, the final regulation retains the requirement that the affiliate be physically separate and distinct in its operations from the operation of the bank. The final regulation thus would allow the affiliated securities company to have a separate office located in the branch so long as it was clearly demarcated as belonging to the affiliate and conversely would allow the bank to be housed in the same building, on the same floor as the affiliate so long as separate, clearly demarcated offices are maintained. In both instances, access to the affiliate's offices may not be through a common entrance with the exception that a common outer lobby or corridor is permitted.

The final regulation requires that the affiliate conduct business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, nor are otherwise obligations of, nor

guaranteed by, the bank. A footnote has been added to the provision to clarify that this restriction is not to be construed to prohibit the affiliate from engaging in the brokering of deposits to the extent otherwise permitted by law and/or regulation. Lastly, the final regulation retains the prohibition on the use of a common name or logo. Section 337.4(c) has been amended, however, to indicate that this prohibition does not preclude the bank from disclosing in its promotions, advertisements, etc. that it is affiliated with a securities company. The remaining portions of § 337.4(c) are being adopted as proposed. The FDIC rejected the idea of grandfathering banks presently sharing a common name or logo with securities affiliated because of the continued possibility of public confusion. Likewise, an asset or revenue based exemption is, in the FDIC's opinion, inappropriate as public confusion may still result. Additionally, a numerical or ratio test would be unmanageable over time and potentially more disruptive for banks affiliated with securities companies.

The FDIC is taking the above-described action in an attempt to address three concerns: (1) Safety and soundness (FDIC wants to ensure that the bank is independent and operated in a manner consistent with safe and sound banking practice); (2) protection of the insurance fund (FDIC wants to avoid claims against the bank arising out of the public's misconception as to with whom it is dealing); and (3) compliance with section 21 of the Glass-Steagall Act which prohibits companies engaged in the business of issuing, selling, distributing, or underwriting securities from taking deposits (if the bank is a "captive" institution, the affiliate may be found to be taking deposits). The FDIC feels that the elements contained in § 337.4(c) of the final regulation all play an important part in achieving those ends. Taken as a whole, we do not feel that the restrictions are overly burdensome nor that they will interfere with the internal operations of the affiliate. Nor do we feel that the prohibition on common names or logos (the restriction which received the most criticism) will put nonmember banks affiliated with securities companies at an undue disadvantage or deprive them of the goodwill of their affiliate's name. Nonmember bank's presently affiliated with securities companies that share a common name or logo with their affiliate may still obtain some of the benefits of name recognition by identifying themselves as being affiliated with the securities company. Such banks also

have some flexibility in coming into compliance with the bank on common name or logo as they are required to conform to § 337.4(c) as soon as practicable, but not to exceed one year without the FDIC's consent.

9. Tying

The final regulation adopts without revision the anti-tying prohibition that was proposed for comment. Paragraph (e)(8) of the final regulation prohibits an insured nonmember bank from either directly or indirectly conditioning an extension of credit to any company on the requirement that the company contract, or agree to contract, with the bank's subsidiary or affiliate to underwrite or distribute that company's securities. Paragraph (e)(8) also prohibits a bank from conditioning an extension of credit to any person on the requirement that that person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate. Although insured nonmember banks that are part of a bank holding company system are subject to similar anti-tying restrictions under the Bank Holding Company Act Amendments of 1970, that Act would not seem to cover banks that are not held by bank holding companies in that the restrictions cover the tying of a loan with some additional credit, property, or service from the bank, the bank's holding company, or any other subsidiary of the bank's holding company. (12 U.S.C. 1972). The restriction in the final regulation fills that gap and serves as a reminder to all insured nonmember banks not to engage in unlawful tying practices. As a large number of insured nonmember banks are held by bank holding companies, the imposition of this requirement would not represent a major change from the status quo.

10. Construction of the Terms "Underwrite", "Distribute", and "Security"

It is not FDIC's intent by adopting this regulation to prevent an insured nonmember bank subsidiary from engaging in any securities underwriting activity that the insured nonmember bank may itself lawfully pursue under the Glass-Steagall Act. Those activities are set forth in 12 U.S.C. 24 (Seventh) and include underwriting obligations of the United States, general obligations of any state political subdivision thereof, and numerous other obligations specifically named therein. Insured nonmember banks should keep in mind that the terms "underwrite" and "distribute", and the phrase "stock, bonds, debentures, notes, or other securities" are to be construed

consistently with the securities laws and regulations except where the context requires otherwise. A securities subsidiary or affiliate of an insured nonmember bank while engaged in the conduct of securities activities will be subject to the securities laws and regulations, the oversight of the SEC, and oversight by entities such as the NASD. The above terms are therefore to be construed consistently with the securities laws and regulations when used in connection with the subsidiary or affiliate. Reference in the final regulation to these terms as used in conjunction with an insured nonmember bank (see paragraphs (b)(1)(i), (f) and (g)) are to be construed consistently with the Glass-Steagall Act.

11. Definition of "Affiliate", "Subsidiary", and "Extension of Credit"

The final regulation defines the term "affiliate" to mean a company that directly or indirectly controls an insured nonmember bank and any company under common control with an insured nonmember bank. The term "affiliate" as defined herein differs from the proposed definition which included as an affiliate "any company controlled by a company, person, or group of persons that controls an insured nonmember bank." The phrase "any company under common control with an insured nonmember bank" has been substituted in the final regulation in order to clarify the scope of the definition. "Control" is defined as the power to directly or indirectly vote 25 percent of a bank's or company's stock, the ability to control the election of a majority of a bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company. At a minimum, the final regulation treats as affiliates of the bank a bank's parent company, a company that controls 25% or more of the bank's stock, and companies controlled by either of the above.

The term "subsidiary" is defined in the final regulation to mean a company controlled by a bank. As "company" is defined in the final regulation to include corporations other than banks, partnerships, business trusts, associations, joint ventures, pool syndicates or other similar business organizations, a securities company operated by several banks in a co-operative effort can be considered a subsidiary of each of the banks. Although it is possible for a mutual fund (i.e., a business trust) to be a subsidiary of the bank if controlled by the bank, we anticipate that this will not generally be the case. All of the above terms are

being adopted in the final regulation as most recently proposed as none of the definitions received comment.

The term "extension of credit" as defined in the final regulation has generally the same meaning as found in Federal Reserve Board Regulation O (12 FR 215.3) which concerns insider transactions. The term as defined herein covers, however, purchases "whether or not under repurchase agreement" of securities, other assets, or obligations. The "whether or not" language is included in the final regulation in an attempt to control the extent to which a bank may indirectly pour money into the subsidiary by means of purchasing securities and other assets from the subsidiary. The term also differs from that used in Regulation O in that a "draw" upon a line of credit is an extension of credit whereas a "grant" of a line of credit is not.

Although the term extension of credit is defined to include a purchase of securities, it is not FDIC's intent to prohibit a bank from purchasing, at a customer's direction, securities underwritten or distributed by the bank's subsidiary or affiliate. FDIC received a comment which inquired whether or not such a purchase would be permitted under paragraphs (e)(3) and (e)(4) of the regulation inasmuch as those provisions prohibit extensions of credit (said term including purchases of securities) to investment companies whose securities are underwritten or distributed by a bank's subsidiary or affiliate and extensions of credit to companies whose lower quality securities are underwritten or distributed. The answer is no. Likewise, a bank is not prohibited under paragraph (e)(7) from purchasing at the direction of a bank customer shares of an investment company advised by a subsidiary or affiliate of the bank, i.e. the purchase may be made without regard to the limitations and restrictions of section 23A of the Federal Reserve Act. Any purchases, however, by the bank for its own account of securities issued, distributed, or underwritten by the bank's subsidiary or affiliate or an investment company advised by the bank's subsidiary or affiliate is encompassed within the scope of the term extension of credit.

12. "Phase-Out" Provision

The final regulation requires all insured nonmember banks that established or acquired securities subsidiaries prior to the effective date of the regulation or which became affiliated with securities companies prior to the effective date of the

regulation to bring themselves into compliance with the regulation within two years. Any bank that established or acquired a securities subsidiary prior to the relevant date must, however, comply with §§ 337.4(b)(1)(ii), 337.4(c) and 337.4(e) as soon as practicable such time not to exceed, however, one year unless the FDIC consents. Section 337.4(b)(1)(ii) requires that the subsidiary be a bona fide subsidiary if it conducts activities not permitted to the bank under the Glass-Steagall Act. Section 337.4(c) pertains to affiliations with securities companies and § 337.4(e) places lending and other restrictions on the bank. The final regulation also requires that any insured nonmember bank that is subject to the phase-out provision must inform the FDIC in writing within thirty days from the effective date of the regulation that it has a subsidiary or affiliate that conducts securities activities. This notice will provide FDIC with a mechanism to monitor compliance with the phase-out requirement.

The phase-out provision as adopted differs from the proposal in one respect. The final regulation more clearly denotes what the FDIC feels is a reasonable time period for a nonmember bank to comply with certain provisions of the regulation. The final regulation is still flexible on compliance as to those provisions, however, as the bank may request a longer time period to come into compliance.

The FDIC specifically requested comment addressing two issues with respect to the phase-out provision: (1) Is immediate compliance more appropriate than a phase-out provision in view of FDIC's stance that the restricted activities may pose a safety or soundness problem, and (2) if a phase-out provision is adopted, should it be longer than two years or shorter. FDIC did not receive any comments addressing either point. We did receive a comment urging FDIC to make the regulation prospective only, *i.e.* exempt banks that became affiliated with securities companies prior to the effective date of the regulation from the requirements of § 337.4(c). FDIC does not feel that an exemption is warranted in view of the agency's concerns as outlined in paragraph #8 above. Furthermore, FDIC does not feel that compliance with the regulation by such banks will be onerous inasmuch as the affected banks are given one year to comply with the regulation. To the extent that such banks have supplies of stationery and other printed matter on hand which carry the same name as the bank's securities affiliate (something in contravention of § 337.4(c)(v)), the banks

will not be precluded from using the existing supplies. FDIC will expect the bank to take reasonable steps toward compliance as soon as possible and to ultimately comply within one year unless the FDIC otherwise consents.

Lastly, any insured nonmember bank that is presently subject to an outstanding order imposing conditions that are inconsistent with the final regulation, or that has agreed to conditions that are inconsistent with the final regulation, is still subject thereto and must file a request with FDIC's Board of Directors that the inconsistent conditions be listed.

13. Sections 337.4(f) and 337.4(g)

These sections of the final regulation are being adopted without change. They serve to remind insured nonmember banks that (1) it is not FDIC's intent to prohibit a bank subsidiary from conducting any securities activity that the bank itself could lawfully conduct under the Glass-Steagall Act, and (2) that the regulation does not authorize the bank to itself conduct any securities activities that are not lawful under the Glass-Steagall Act. We wish to stress that the final regulation does *not* authorize any insured nonmember bank to either directly, or indirectly through a subsidiary, conduct any securities activity. An insured nonmember bank must derive that authority, if at all, from some other source, such as state law.

14. Foreign Banks and Insured Branches of Foreign Banks

FDIC received during the most recent public comment period several comments urging FDIC to exempt insured branches of foreign banks from the restrictions of the regulation. One comment urged that FDIC exempt domestic U.S. bank subsidiaries of foreign banks as well. The comments indicated that, as proposed, the regulation could have an extraterritorial effect, *i.e.* it could prohibit U.S. branches or commercial bank subsidiaries of foreign banks from making loans to non-U.S. companies whose securities are underwritten or distributed outside the United States by non-U.S. subsidiaries or affiliates of the parent foreign bank. The comments also indicated that application of the proposal to insured branches of foreign banks would be inconsistent with the International Banking Act which grandfathered nonbanking activities of foreign banks and their affiliates in the United States. That Act also gave the Federal Reserve Board the authority to terminate grandfather status as to any particular foreign bank after December 31, 1985 if that agency determines such action is

necessary to prevent undue economic concentration, decreased competition, conflicts of interest, or unsound banking practices in the United States. The interposition of an FDIC regulation is, according to these comments, unnecessary.

After carefully weighing these comments, the FDIC has determined to exempt foreign banks and insured branches of foreign banks by defining the term "insured nonmember bank" for the purposes of § 337.4 to exclude foreign banks with insured branches in the United States. The final regulation does *not* exclude domestic insured nonmember banks that are owned by foreign banks. It should be noted, however, that inasmuch as the final regulation defines "company" to exclude a bank, the foreign bank parent of a domestic bank does not fall within the definition of the term "affiliate" which itself refers to a "company" that directly or indirectly controls an insured nonmember bank. Any nonbank subsidiaries of the parent foreign bank would qualify, however, as affiliates of the U.S. bank subsidiary. The final regulation also provides that the lending restriction contained in § 337.4(e)(3) does not apply to extensions of credit to non-U.S. companies whose securities are underwritten or distributed outside the United States by an insured nonmember bank's non-U.S. affiliate or affiliates. The regulation has been changed in this manner in order to avoid any extraterritorial effect and also because equity securities of non-U.S. companies are not ranked by any nationally recognized rating service.

15. Federal Savings Banks

FDIC received a comment from the National Council of Savings Institutions requesting that FDIC expressly set forth in the regulation that federally chartered savings banks insured by FDIC are not subject to the regulation. FDIC has not done so, however, as it is FDIC's intent to include such institutions within the scope of the regulation. (The term "insured nonmember bank" has been defined in the final regulation so as to clearly cover FDIC insured federal savings banks. (The securities activities conducted by subsidiaries and affiliates of federal savings banks can impact bank safety and soundness and ultimately the insurance fund. As the insurer of such institutions, FDIC has the authority under section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) and the agency's general rulemaking authority to adopt rules and regulations applicable to such institutions designed to safeguard the

insurance fund and ensure compliance with the Glass-Steagall Act.

16. Paperwork Reduction Act

The notice requirements contained in the final regulation do not constitute "collections of information" for purposes of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and therefore are not subject to the Office of Management and Budget ("OMB") clearance provisions of that Act. This is because the notice requirements fall within the exception to the definition of "information" set out in § 1320.7(k)(1) of OMB regulations implementing the "collection of information clearance" provisions of the Act (5 CFR Part 1320). It is recognized, however, that the notice requirements do place an affirmative obligation on a bank to notify the FDIC of its intended action, to confirm whether or not the subsidiary was acquired or established, and to notify FDIC if the subsidiary's activities are expanded. Any costs associated with these notices would appear, however, to be minimal. The final regulation does not specify the content of the written notices nor require the bank to provide any specific information. Inasmuch as the bank subsidiary will in all likelihood be filing with the SEC, no additional paperwork burdens of any kind should be created.

17. Regulatory Flexibility Analysis

In accordance with FDIC's policy statement entitled "Development and Review of FDIC Rules and Regulations" and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FDIC conducted an analysis of the impact of the proposed regulation. The results of that analysis, which were published in the *Federal Register* along with the 30-day proposal, are republished below inasmuch as FDIC's conclusions drawn from the regulatory assessment of the final regulation do not differ from FDIC's conclusions with respect to the most recent proposal.

In general, participation by bank subsidiaries in the underwriting market for new securities issues offers a number of potential benefits. Bank participation will likely lower underwriting costs for issuers in a number of markets. This competitive benefit should be particularly noticeable in local and regional markets where the number of bidders for a new issue is generally small. Additionally, increased activity in the secondary market for securities will increase the liquidity of any new issue. This will increase the attractiveness of new securities issues to potential investors. The presence of new entrants in the underwriting and

discount brokerage markets should increase investor awareness, provide for greater customer convenience and lower brokerage costs to investors (both for users of discount brokerage and full service brokerage services) as fee and service competition increases. All of the above factors will tend to benefit the U.S. economy as more money flows into the capital markets.

The final regulation should not interfere substantially with the realization of these potential benefits. Moreover, it should provide additional benefits in that it reduces the potential for conflicts of interest, helps to ensure that banks are adequately insulated from their subsidiaries, and prevents the subsidiaries from engaging in excessive risk taking. Furthermore, the final regulation should not, in any way, give certain competitors unfair advantage or work to the detriment of small banks.

There would be an overall cost to the economy if the advent of bank securities subsidiaries could be expected to jeopardize the viability of the nation's banking institutions. That does not appear to be the case, however, and certainly is not the case when the structure of the final regulation is taken into consideration. For example, the regulation is structured so as to insulate the bank from the activities of the subsidiary as well as any financial repercussions generated by losses on the part of the subsidiary. The bank is further insulated as it will not be able to make purpose loans, prop up companies whose securities are underwritten by the bank's subsidiary or affiliate, make excessive loans to its securities subsidiary or affiliate, invest an excessive amount of capital in the subsidiary, or move poor issues into the bank's trust department.

Several provisions of the final regulation are designed to address the potential for conflicts of interest. It should be pointed out, however, that conflicts of interest can never be entirely eliminated. Nor would it be desirable to attempt to do so as the costs associated with excessive restrictions and government oversight would far outweigh the potential benefits from any incremental reduction in conflicts of interest.

The final regulation should not be detrimental to small banks. The absence of an investment cap in the subsidiary should enable even relatively small insured nonmember banks to indirectly compete in the securities market through a subsidiary. Moreover, there are no restrictions against joint ventures, *i.e.* more than one bank or financial institution can join together to form a

securities subsidiary. The requirements that the securities business of the subsidiary and affiliate be physically separate and distinct in its operation from the operation of the bank and that a majority of the bank's officers and directors not be officers or directors of the subsidiary or affiliate, and that no officer of the bank be an officer of the subsidiary or affiliate should not be an excessive burden on small banks.

List of Subjects in 12 CFR Part 337

Banks, banking, Securities, State nonmember banks.

In consideration of the foregoing, the FDIC hereby amends Part 337 of title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 is amended to read as follows:

Authority: Sec. 6, 64 Stat. 876, 12 U.S.C. 1816; sec. 8(a), section 2[8(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 879), effective September 21, 1950, as amended by section 204 of title II of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1054), effective October 16, 1966; section 6(c)(14) of the Act of September 17, 1978 (Pub. L. No. 95-369; 92 Stat. 618), effective September 17, 1978; and section 113(g) of title 1 of the Act of October 15, 1982 (Pub. L. No. 97-320; 96 Stat. 1473 and 1474), effective October 15, 1982; 12 U.S.C. 1818(a); sec. 8(b), Section 2[8(b)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by section 202 of title II of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1046), as amended by section 110 of title I of the Act of October 28, 1974 (Pub. L. No. 93-495; 88 Stat. 1506); section 11 of the Act of September 17, 1978 (Pub. L. No. 95-369; 92 Stat. 624); sections 107(a)(1) and 107(b) of title I of the Act of November 10, 1978 (Pub. L. No. 95-630; 92 Stat. 3649 and 3653); and sections 404(c), 425(b), and 425(c) of title IV of the Act of October 15, 1982 (Pub. L. No. 97-320; 96 Stat. 1512 and 1524); 12 U.S.C. 1818(b); sec. 9, 64 Stat. 881-882, 12 U.S.C. 1819; sec. 18(j)(2); 92 Stat. 3664, 12 U.S.C. 1828(j)(2), sec. 422, 96 Stat. 1469, (Pub. L. No. 97-320); sec. 11(a), section 2[11(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 884), effective September 21, 1950, as amended by section 301(c) of title III of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1055), effective October 16, 1966; section 7(a)(3) of title I of the Act of December 23, 1969 (Pub. L. No. 91-151; 83 Stat. 375) effective December 23, 1969; sections 101(a)(3) and 102(a)(3) of title I of the Act of October 28, 1974 (Pub. L. No. 93-495; 88 Stat. 1500 and 1502), effective November 27, 1974; section 1401(a) of title XIV of the Act of November 10, 1978 (Pub. L. No. 95-630; 92 Stat. 3712), effective March 10, 1979; section 323 of title III of the Act of December 21, 1979 (Pub. L. No. 96-153; 93 Stat. 1120); section 308 of title III of the Act of March 31, 1980 (Pub. L. No. 96-221; 94 Stat. 147), effective March 31,

1980; and section 103 of title I of the Act of December 26, 1981 (Pub. L. No. 97-110; 95 Stat. 1514), effective December 26, 1981; sec. 11(f), section 2[11(f)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 885), effective September 21, 1950, as amended by section 6(c)(20) of the Act of September 17, 1978 (Pub. L. No. 95-369; 92 Stat. 619), effective September 17, 1978, 12 U.S.C. 1821(f).

2. Part 337 is amended by adding new § 337.4 to read as follows:

§ 337.4 Securities activities of subsidiaries of insured nonmember banks: bank transactions with affiliated securities companies.

(a) *Definitions:* for the purposes of this section,

(1) "Affiliate" shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured nonmember bank.

(2) "Bona fide subsidiary" means a subsidiary of an insured nonmember bank that at a minimum: (i) is adequately capitalized; (ii) is physically separate and distinct in its operations from the operation of the bank;⁴ (iii) does not share a common name or logo with the bank;⁵ (iv) maintains separate accounting and other corporate records; (v) observes separate formalities such as separate board of directors' meetings; (vi) maintains separate employees who are compensated by the subsidiary;⁶ (vii) shares no common officers with the bank; (viii) a majority of its board of directors is composed of persons who are neither directors nor officers of the bank; and (ix) conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.

(3) "Company" shall mean any corporation (other than a bank), any

partnership, business trust, association, joint venture, pool syndicate, or other similar business organization.

(4) "Control" shall mean the power to directly or indirectly vote 25 per centum or more of the voting stock of a bank or company, the ability to control in any manner the election of a majority of a bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company.

(5) "Extension of credit" shall mean the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes, but is not limited to:

(i) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(ii) An advance by means of an overdraft, cash item, or otherwise;

(iii) Issuance of a standby letter of credit (or other similar arrangement regardless of name or description);

(iv) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(v) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(vi) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (A) accrued interest or (B) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(vii) Any other transaction as a result of which a natural person or company becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(6) "Insured nonmember bank" shall mean state and federally chartered banks insured by FDIC that are not members of the Federal Reserve System. The term shall not include foreign banks with insured branches in the United States nor insured branches of foreign banks.

(7) "Investment quality debt security" shall mean a marketable obligation in the form of a bond, note, or debenture that is rated in the top four rating categories by a nationally recognized rating service or a marketable obligation in the form of a bond, note, or debenture

the investment characteristics of which are equivalent to the investment characteristics of such a top-rated obligation.

(8) "Investment quality equity security" shall mean marketable common stock that is ranked or graded in the top four categories or equivalent categories by a nationally recognized rating service, marketable preferred corporate stock that is rated in the top four rating categories by a nationally recognized rating service, or marketable preferred corporate stock that has investment characteristics that are equivalent to the investment characteristics of top rated preferred corporate stock.

(9) "Subsidiary" shall mean any company controlled by an insured nonmember bank.

(b) *Investment in securities subsidiaries.* (1) An insured nonmember bank may not establish or acquire a subsidiary that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes or other securities; conducts any activities for which the subsidiary is required to register with the Securities and Exchange Commission as a broker/dealer; acts as an investment adviser to any investment company; or engages in any other securities activity unless:

(i) Except as otherwise provided by § 337.4(b)(2), the subsidiary's underwriting activities that would not be authorized to the bank under section 16 of the Glass-Steagall Act (12 U.S.C. 24 (Seventh)) as made applicable to insured nonmember banks by section 21 of the Glass-Steagall Act (12 U.S.C. 378) are limited to, and thereafter continue to be limited to, one or more of the following: (A) Underwriting of investment quality debt securities; (B) underwriting of investment quality equity securities; (C) underwriting of investment companies not more than 25 percent of whose investments consist of investments other than investment quality debt securities and/or investment quality equity securities; or (D) underwriting of investment companies not more than 25 percent of whose investments consist of investments other than obligations of the United States or United States Government agencies, repurchase agreements involving such obligations, bank certificates of deposit, banker's acceptances and other bank money instruments, short-term corporate debt instruments, and other similar investments normally associated with a money market fund; and

(ii) The subsidiary is, and thereafter continues to be, a bona fide subsidiary if

⁴ The subsidiary must have separate offices that share no common entrance with the bank except that access to the subsidiary's and bank's offices may be through a common outer lobby or common corridor. In all instances the subsidiary's offices must be clearly identified as belonging to the subsidiary.

⁵ This requirement shall not prohibit the subsidiary from advertising or otherwise disclosing its relationship to the insured nonmember bank.

⁶ This requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and recordkeeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to those agreed to by independent entities.

that subsidiary conducts securities activities not authorized to the bank under section 16 of the Glass-Steagall Act as made applicable to insured nonmember banks by section 21 of the Glass-Steagall Act.

(2) Paragraph (b)(1)(i) of this section notwithstanding, a subsidiary of an insured nonmember bank may engage in underwriting activities other than as limited thereby provided that the following conditions are met:

(i) The subsidiary is a member in good standing of the National Association of Securities Dealers ("NASD");

(ii) The subsidiary has been in continuous operation for the five year period preceding notice to the FDIC as required by this part;

(iii) No director, officer, general partner, employee, or 10 percent shareholder of any class of voting securities of the subsidiary has been convicted within five years of the notice required by this part of any felony or misdemeanor in connection with the purchase or sale of any security involving the making of a false filing with the Securities and Exchange Commission or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(iv) Neither the subsidiary nor any of its directors, officers, general partners, employees, or 10 percent shareholders of any class of voting securities of the subsidiary is subject to any state or federal administrative order or court order, judgment, or decree entered within five years of the notice required by this part temporarily or preliminarily enjoining or restraining such person or the subsidiary from engaging in, or continuing, any conduct or practice in connection with the purchase or sale of any security involving the making of a false filing with the Securities and Exchange Commission or arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, or investment adviser;

(v) None of the subsidiary's directors, officers, general partners, employees, or 10 percent shareholders of any class of voting securities of the subsidiary are subject to an order entered within five years of the notice required by this part of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 780, 780a-4) or section 203(c) or (f) of the Investment Advisors Act of 1940 (15 U.S.C. 80b-3(c), (f)); and

(vi) All officers of the subsidiary who have supervisory responsibility for underwriting activities have at least five

year experience in similar activities at NASD member securities firms.

(3) An insured nonmember bank's direct investment in a securities subsidiary described in paragraphs (b)(1) or (b)(2) of this section will not be counted toward the bank's capital.

(c) *Affiliation with a securities company.* An insured nonmember bank is prohibited from becoming affiliated with any company that directly engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities unless: (1) The securities business of the affiliate is physically separate and distinct from the operation of the bank;⁷ (2) the bank and affiliate share no common officers; (3) a majority of the board of directors of the bank is composed of persons who are neither directors nor officers of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct any securities activities on behalf of the affiliate on the premises of the bank that involve customer contact; (5) the bank and affiliate do not share a common name or logo;⁸ and (6) the affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that investments recommended, offered or sold by the affiliate are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are otherwise obligations of the bank.⁹

(d) *Filing of notice.* Every insured nonmember bank that intends to acquire or establish a subsidiary that (1) engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities; (2) acts as an investment adviser to any investment company; (3) conducts any activity for which the subsidiary is required to register with the Securities and Exchange Commission as a broker/dealer; or (4) engages in any other securities activity, shall notify the regional director of the FDIC region in which the bank is located of such intent. Notice shall be in writing and must be received in the regional office at least 60 days prior to consummation of the

⁷ The affiliate must have separate offices that share no common entrance with the bank except that access to the affiliate's and bank's offices may be through a common outer lobby or common corridor. In all instances the affiliate's offices must be clearly identified as belonging to the affiliate.

⁸ This requirement shall not prohibit the bank from advertising or otherwise disclosing its relationship to the affiliate.

⁹ This requirement shall not be construed to prohibit the affiliate from brokering deposits to the extent and in the manner as otherwise permitted by statute and regulation.

acquisition or commencement of the operation of the subsidiary, whichever is earlier. The bank shall also notify the regional office in writing within 10 days after the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The 60-day notice requirement may be waived in FDIC's discretion where such notice is impracticable such as in the case of a purchase and assumption transaction or an emergency merger. Where the above notices pertain solely to the transfer of securities activities previously performed by the bank to the subsidiary, an additional written notice must be filed with the regional office if the subsidiary commences any securities activity covered by § 337.4 (b)(1)(i) or (b)(2) of this part. This notice must be received in the regional office within thirty days after the subsidiary commences the new activity. If the 60-day advance notice and 10-day follow-up notice pertain to the establishment or acquisition of a subsidiary that engages in underwriting activities as limited by § 337.4(b)(1)(i), an additional written notice must be filed with the regional office if the subsidiary commences underwriting activities as permitted by § 337.4(b)(2) of this part. This notice must be received in the regional office within thirty days after the subsidiary commences the new activity.

(e) *Restrictions.* An insured nonmember bank which has a subsidiary or affiliate that engages in the sale, distribution, or underwriting of stocks, bonds, debentures, notes, or other securities, or acts as an investment adviser to any investment company shall not:

(1) Purchase in its discretion as fiduciary, co-fiduciary, or managing agent any security currently distributed, currently underwritten, or issued by such subsidiary or affiliate or purchase as fiduciary, co-fiduciary, or managing agent any security currently issued by an investment company advised by such subsidiary or affiliate, unless (i) the purchase is expressly authorized by the trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure, (ii) the purchase, although not expressly authorized under paragraph (e)(1)(i) of this section, is otherwise consistent with the insured nonmember bank's fiduciary obligation, or (iii) the purchase is permissible under applicable federal and/or state statute or regulation;

(2) Transact business through its trust department with such subsidiary or affiliate unless the transactions are at

least comparable to transactions with an unaffiliated securities company or a securities company that is not a subsidiary of the bank;

(3) Extend credit or make any loan directly or indirectly to any company the stocks, bonds, debentures, notes or other securities of which are currently underwritten or distributed by such subsidiary or affiliate of the bank unless the company's stocks, bonds, debentures, notes or other securities that are underwritten or distributed (i) qualify as investment quality debt securities, or (ii) qualify as investment quality equity securities;¹⁰

(4) Extend credit or make any loan directly or indirectly to any investment company whose shares are currently underwritten or distributed by such subsidiary or affiliate of the bank;

(5) Extend credit or make any loan where the purpose of the extension of credit or loan is to acquire (i) any stock, bond, debenture, note, or other security currently underwritten or distributed by such subsidiary or affiliate; (ii) any security currently issued by an investment company advised by such subsidiary or affiliate; or (iii) any stock, bond, debenture, note, or other security issued by such subsidiary or affiliate, except that a bank may extend credit or make a loan to employees of the subsidiary or affiliate for the purpose of acquiring securities of such subsidiary or affiliate through an employee stock bonus or stock purchase plan adopted by the board of directors or board trustees of the subsidiary or affiliate;¹¹

(6) Make any loan or extension of credit to a subsidiary or affiliate of the bank that (i) distributes or underwrites stocks, bonds, debentures, notes, or other securities, or (ii) advises any investment company, if such loans or extensions of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by section 23A of the Federal Reserve Act (12 U.S.C. 371c) and that are not within any exemptions established thereby;

(7) Make any loan or extension of credit to any investment company for

which the bank's subsidiary or affiliate acts as an investment adviser if the loan or extension of credit would be in excess of the limit as to amount, and not in accordance with the restrictions imposed on "covered transactions" by section 23A of the Federal Reserve Act and that are not within any exemptions established thereby; and

(8) Directly or indirectly condition any loan or extension of credit to any company on the requirement that the company contract with, or agree to contract with, the bank's subsidiary or affiliate to underwrite or distribute the company's securities or directly or indirectly condition any loan or extension of credit to any person on the requirement that that person purchase any security currently underwritten or distributed by the bank's subsidiary or affiliate.¹²

(f) Nothing in this section prohibits an insured nonmember bank from establishing or acquiring a subsidiary that sells, distributes, or underwrites stocks, bonds, debentures, notes, or other securities or engages in any other securities activity if those activities would be permitted to an insured nonmember bank by sections 16 and 21 of the Glass-Steagall Act (12 U.S.C. 24 (Seventh) and 378).

(g) Nothing in this section authorizes an insured nonmember bank to directly engage in any securities activity not authorized to it under sections 16 and 21 of the Glass-Steagall Act (12 U.S.C. 24 (Seventh) and 378).

(h) An insured nonmember bank that prior to [insert effective date of regulation] became affiliated with a securities company or prior to that date established or acquired a subsidiary that engages in securities activities, shall have two years from December 28, 1984 to bring itself into compliance with § 337.4 of this Part, except that, such bank must comply with paragraphs 337.4(b)(1)(ii), 337.4(c) and 337.4(e) as soon as practicable (but not more than one year from [insert effective date of regulation] without the FDIC's consent) and must inform the regional director of the FDIC region in which the bank is located not later than 30 days after December 28, 1984 that the bank is affiliated with a company that engages in securities activities or has a subsidiary that engages in securities activities.

¹² An insured nonmember bank in complying with the requirements of §§ 337.4 (e)(1), (e)(3), and (e)(4) of this part concerning "current" underwritings and distributions may rely upon the affiliate's or subsidiary's statement that the underwriting or distribution of any particular security has terminated.

By Order of the Board of Directors, 19th day of November 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84-31144 Filed 11-27-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 523 and 528

[No. 84-658]

Flood Disaster Protection, Nondiscrimination Requirements; Technical Amendments

Dated: November 16, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board has adopted amendments to its final regulations regarding flood disaster protection and nondiscrimination requirements in order to implement the Board's authority granted by the Garn-St Germain Depository Institutions Act of 1982 to regulate Federal savings banks insured by the Federal Deposit Insurance Corporation with respect to these matters.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra L. Richardson, Attorney, (202)-377-6455, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On December 8, 1982, by Board Resolution No. 82-791, the Board adopted amendments to its regulations implementing the Board's authority to regulate Federal savings banks insured by the Federal Deposit Insurance Corporation ("FDIC") granted by the Garn-St Germain Depository Institutions Act of 1982 ("DIA") (Pub. L. 97-320; 96 Stat. 1469 (1982)). The DIA amended Section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464 (1984)), granting additional powers to federal associations and enabling the Board to authorize the conversion of a state-chartered savings bank insured by the FDIC into a federal savings bank without requiring that it surrender its FDIC insurance in favor of insurance of accounts from the Federal Savings and Loan Insurance Corporation ("FSLIC"). Because the DIA provided, for the first time, for Board regulation of FDIC-insured federal savings banks (see 12 U.S.C. 1464(o)(1) (West Supp. 1984)), it

¹⁰ This restriction shall not be construed to prohibit the bank from honoring a loan commitment or revolving loan agreement or funding a line of credit where the loan commitment, revolving loan agreement, or line of credit was entered into prior in time to the underwriting or distribution. This restriction does not apply to any extension of credit to a non-U.S. company whose securities are underwritten or distributed outside the United States by a non-U.S. affiliate of an insured nonmember bank.

¹¹ In complying with § 337.4(e)(5) of this Part, the bank shall be entitled to rely in good faith on the customer's statement as to the purpose of the extension of credit or loan.

was necessary to make a large number of technical and conforming amendments to prior regulations to permit these institutions to fit rationally into the regulatory scheme. 47 FR 56985 (December 22, 1982). Such amendments were required in large degree due to the prior description of "insured institutions" as institutions the accounts of which are insured by the FSLIC.

These earlier revisions inadvertently omitted conforming changes to the language of the Flood Disaster Protection regulations (12 CFR 523.29) and the Nondiscrimination Requirements regulations (12 CFR Part 528) to reflect the addition of FDIC-insured federal savings banks to the Board's regulatees. Thus, 12 CFR 523.29(a) currently provides that requirements set forth in § 523.29 with respect to flood disaster protection "do not apply to a member whose accounts are insured by the Federal Deposit Insurance Corporation." Similarly, 12 CFR 528.1 currently excludes "savings bank(s) whose deposits are insured by the Federal Deposit Insurance Corporation" from the definition of "member institutions," to which the nondiscrimination requirements set forth in Part 528 are applicable. By its action today, the Board amends sections 523.29(a) and 528.1 to remove this inconsistency and to clarify that it is the Board's intent to regulate all operations of FDIC-insured federal savings banks as authorized by the DIA.

The Board has determined that observance of the notice and public procedure requirements of 5 U.S.C. 552(b) (1982) and 12 CFR 508.11 and the delay of effective date provided pursuant to 5 U.S.C. 552(d) (1982) and 12 CFR 508.14 are unnecessary and contrary to the public interest due to the minor, conforming nature of these amendments.

List of Subjects in 12 CFR Parts 523 and 528

Federal home loan banks; Fair housing, Flood insurance, Civil rights.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

Accordingly, the Board hereby amends Parts 523 and 528 of Subchapter B, Chapter V, Title 12 of the *Code of Federal Regulations*, as set forth below.

PART 523—MEMBERS OF BANKS

§ 523.29 [Amended]

1. Amend § 523.29(a) by inserting "which is not Board-chartered and" between the words "member" and "whose" in the second sentence thereof.

PART 528—NONDISCRIMINATION REQUIREMENTS

§ 528.1 [Amended]

2. Amend § 528.1(b)(1) by inserting "state-chartered" between the words "A" and "savings" in that paragraph.

(Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202(b), 87 Stat. 982, as amended (42 U.S.C. 1406(b)); sec. 503, 88 Stat. 1521, as amended (15 U.S.C. 1691, 1691a); Reorg. Plan No. 3 of 1947; 12 FR 4981, 3 CFR 1943-48 Comp., p. 1071)

By: the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-31165 Filed 11-27-84; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ACE-07]

Alteration of Control Zone; Cape Girardeau, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the control zone at Cape Girardeau, Missouri, to extend the zone's area southwest of the Cape Girardeau Municipal Airport from 6.5 statute miles to 8.5 statute miles. The intended effect of this action is to provide the subject airport with additional instrument approach capability.

DATES: Effective date February 14, 1985. Comments must be received on or before December 29, 1984.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine E. Hiland, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th

Street, Kansas City, Missouri 64106. Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage additional instrument approach capability to the Cape Girardeau Municipal Airport, Cape Girardeau, Missouri, is being established. The establishment of a new instrument approach procedure entails alteration of the control zone at Cape Girardeau, Missouri, to extend the control zone area southwest of the Airport from 6.5 statute miles to 8.5 statute miles. On pages 19829 and 19830 of the *Federal Register* dated May 10, 1984, the FAA published a Notice of Proposed Rulemaking which inadvertently identified the alteration as a transition area rather than a control zone. However, the proposal correctly set forth the legal description of the control zone to be altered. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments were received as a result thereof. Although this action will increase the size of the control zone and is in the form of a final rule, it will not be preceded by an amended notice and public procedure because: (1) This is primarily a redescription of the existing control zone to accommodate a new approach to the Cape Girardeau Municipal Airport; (2) the notice to alter the airspace correctly set forth the legal description of the proposed control zone to be altered and (3) it is in the public interest to assure that the effectivity of this regulation coincides with the publication date for the instrument approach procedure pertaining to this alteration. However, interested persons are being given the opportunity to comment on the final rule. When the comment period ends the FAA will use the comments submitted, together with any other available information, to review the regulation. If this review indicates changes to the rule are appropriate, the agency will initiate rulemaking proceedings to amend it. Comments that include facts supporting the views and suggestions expressed will be of the most help in evaluating the appropriateness of the rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended by altering the following control zone:

Cape Girardeau, Missouri

Within a 5-mile radius of the Cape Girardeau, Missouri, Municipal Airport (latitude 37°13'30" N, longitude 89°34'10" W), within 2½ miles each side of the Cape Girardeau VOR 194° radial extending from the 5-mile radius to 6½ miles south of the VOR; within 3 miles each side of the Cape Girardeau VOR 044° radial extending from the 5-mile radius to 8½ miles northeast of the VOR; and within 3 miles each side of the Cape Girardeau VOR 279° radial extending from 5-mile radius to 8.5 miles west of the VOR.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69).

This amendment becomes effective 0901 G.m.t. February 14, 1985.

Issued in Kansas City, Missouri, on November 14, 1984.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-31089 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ASW-39]

Alteration of Transition Area: Refugio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Refugio, TX. The intended effect of the amendment is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Mellon Ranch Airport. This amendment is necessary since the nondirectional radio beacon (NDB) SIAP is being revised to approach the airport in a different direction than the current procedure, thereby requiring

realignment of the designated 700-foot transition area.

EFFECTIVE DATE: 0901 G.M.T., February 14, 1985.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2463.

SUPPLEMENTARY INFORMATION:

History

On September 11, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Refugio, TX, transition area (49 FR 35653).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will alter the transition area of Refugio, TX, as proposed in the notice.

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

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

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

Refugio, TX [Revised]

That airspace extending upwards from 700 feet above the surface within a 5-mile radius of the Mellon Ranch Airport (latitude 28°16'50" N, longitude 97°12'40" W.), and within 3 miles each side of the 345° and 145° bearing on the Mellon Ranch NDB (latitude 28°16'41" N, longitude 97°12'31" W.) extending from the 5-mile radius area to 8.5 miles north and south of the NDB. (Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Fort Worth, TX, on November 13, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-31092 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 301

[Docket No. RM84-16-003]

Methodology for Sales of Electric Power to Bonneville Power Administration

Issued: November 21, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for purpose of further consideration.

SUMMARY: On October 1, 1984, the Federal Energy Regulatory Commission (Commission) issued a final rule, 49 FR 39293 (October 5, 1984) approving the Bonneville Power Administration's new methodology for determining the "average system cost" of a utility's resources for purposes of the power exchange program in the Pacific Northwest Electric Power Planning and Conservation Act. On October 30, 1984, the Commission received a petition for rehearing. By this order, the Commission grants rehearing for the purpose of further consideration of this petition.

EFFECTIVE DATE: This order is effective November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Jan Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On October 1, 1984, the Federal Energy Regulatory Commission issued a final

rule approving the Bonneville Power Administration's (BPA's) new methodology for determining the "average system cost" (ASC) of a utility's resources under the Northwest Power Act (NPA).²

On October 30, 1984, the Commission received a petition for rehearing from a number of utilities and State public utility commissions. The petitioners also requested that the rule be stayed pending a final Commission decision on their petition. To have sufficient time to consider the issues raised in this petition, the Commission grants rehearing of its final rule solely for the purpose of further consideration. Since the petitioners have presented no grounds for a stay, the stay is denied.

This order is effective on the date of issuance. This action does not constitute a grant or denial of the petition on its merits.

By the Commission.
Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31189 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 209, 210, 211, 212, 220, 222, and 250

Railroad Retirement Annuities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations concerning the reporting requirements for railroad employers, the creditability of compensation, the creditability of service, and the creditability of military service. Regulations concerning these subjects are contained in several sections of the Board's regulations, and this action will reorganize the rules concerning these subjects in a manner that should make them easier to use and understand. In addition, these rules contain provisions implementing amendments to the Railroad Retirement Act.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT:

Robert P. Elling, Chief of Coverage, Procedures and Administration, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4876 (FTS 387-4876).

SUPPLEMENTARY INFORMATION: On September 27, 1984, the Board published

Parts 209, 210, 211, and 212, as a proposed rule and invited comments for 30 days ending October 29, 1984 (49 FR 38143-38150). The Board received no comments on the proposed rule.

Some typographical errors appeared in the proposed rule document, but since they did not affect the intended meaning of the regulation, publication of a correction document was considered unnecessary. To avoid the possibility of the errors appearing in the final rule document and in the April 1, 1985 revision of Title 20 of the Code of Federal Regulations, they are identified below in this preamble. In addition, a number of minor amendments were made to clarify language or to otherwise improve the readability of the document. The amendments to the proposed rule document printed on September 27, 1984, are listed as follows:

1. On page 38143, column 3, table of contents for Part 209, in the title for § 209.10 the word "representative" should be "representatives".

2. On page 38144, column 2, § 209.9(a), line 11, the word "and" is added to clarify the language. That line should read "Compensation and Certification and mailed".

3. On page 38144, column 3, § 209.9, line 11 is amended to properly identify the section with which compliance is required. The line should read "in § 209.6(a) and shall be".

4. On page 38144, column 3, § 209.10, line 10, a comma is added after the word "Certification" to clarify the language. The line should read "Certification, status as an employee".

5. On page 38145, column 1, § 209.11(b), line 10, the word "and" is added to clarify the language. That line should read "magnetic tape or punchcards only, and".

6. On page 38145 column 2, § 210.1, last line, "the" should be "that".

7. On page 38145 column 2, § 210.3, line 11, "Title VI" should be "Title VII".

8. On page 38145, column 3, § 210.5(b), line 6, the words "first credited" are transposed to clarify the language. That line should read "after December 31, 1936, is credited first".

9. On page 38146, column 3, § 211.2, section title, "compensation." should be "compensation".

10. On page 38147, column 1, § 211.2(c)(3), line 2, the word "individual" is redundant and has been removed to simplify the language. That line should read "by a nonresident alien for the".

11. On page 38147, column 2, § 211.3(a)(1), line 1, "certain" should be "certain".

12. On page 38148, column 1, § 211.9, line 1, "allowance" should be

"allowances". That line should read "Dismissal allowances paid to an".

13. On page 38148, column 3, § 211.14(b), line 16, "retiremenet" should be "retirement".

14. On page 38149, column 1, § 212.1, line 6, "services" should be "service".

15. On page 38149, column 3, item 8 (Part 222), line 4, "Service" should be "Compensation". That line should read "Railroad Compensation; therefore, Part 222 is".

16. On page 38150, in the Derivation Table below the first "Note.—", in the reference to Section 250.3(b), the last line of that entry reads "ered in § 290.6(b)." That line should read "ered in § 209.6(b)".

17. On page 38150, in the Derivation Table, last column, in the reference to § 222.2(b), "Renumeration" should be "Remuneration".

18. On page 38150 in the Derivation Table, last column, in the reference to § 222.3, "222.3 Employee representa-" should read "222.3(c) Employee representa-".

19. On page 38150 in the Derivation Table, last column, in the reference to § 222.2(b)(2), "Renumeration" should be "Remuneration".

20. On page 38150 in the Derivation Table, last column, the references for § 209.4 were not clear in our proposed rule document submission. Section 209.4 reads:

"209.4(a) Crediting of military service.

(b) Covered by BRC in revised Part 226.

(c)." That portion should read:

"209.4(a) Crediting of military service.

(b) Covered by BRC in revised Part 226.

(c) Covered by BRC in revised Part 226."

Benefits under the Railroad Retirement Act are computed, in part, based on an individual's creditable railroad service and compensation and the Board is authorized by the Act to require railroad employers to furnish compensation and service records for their employees. The Board previously had regulations with respect to the information to be provided by employers which were found in Part 250 of the Board's regulations. In addition, the Board has issued instructions to Employers which provide more detail concerning the reporting requirements. The regulation on employer reports is moved to Part 209 of the regulations, incorporates revisions of the existing regulations, and includes certain items from the Instructions to Employers. Amended Part 209 provides the basic

¹ 49 FR 38293 (Oct. 5, 1984).

² Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839-839h (1982).

reporting requirements for employers and contains information which explains when how reports are to be made. In addition, Part 209 explains the penalties that may be imposed for failure to comply with the reporting requirements.

Part 220, Definition and Creditability of Service, is replaced with a new Part 210, Creditable Railroad Service. Part 210 provides a better explanation of the circumstances under which service will be credited under the Railroad Retirement Act and is easier to use than Part 220.

Part 211, Creditable Railroad Compensation, replaces Part 222, Definition and Creditability of Compensation. Part 211 explains the various types of payments that may be credited as compensation under the Railroad Retirement Act and how and when they are to be credited.

Finally, Part 212, Military Service, replaces Part 209, Military Service. Part 212 explains the conditions under which military service may be credited as service under the Railroad Retirement Act and used in determining eligibility for and the amount of railroad retirement benefits.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

List of Subjects

20 CFR Part 209

Railroad employees, Railroad retirement, Railroads, Reporting and recordkeeping requirements.

20 CFR Part 210

Railroad employees, Railroad retirement, Reporting and recordkeeping requirements.

20 CFR Part 211

Railroad employees, Railroad retirement.

20 CFR Part 212

Railroad employees, Railroad retirement, Veterans.

Title 20 CFR Chapter II, is amended as follows:

1. Part 250, Reports and Information to be filed by Employers, is redesignated as Part 209, and is revised as follows:

PART 209—RAILROAD EMPLOYERS REPORTS AND RESPONSIBILITIES

Sec.

209.1 General.

Sec.

209.2 Duty to furnish information and records.

209.3 Information regarding change in status.

209.4 Employers' notices of death of employees.

209.5 Employers' supplemental reports of service and compensation.

209.6 Employers' annual reports of creditable service and compensation.

209.7 Employers' adjustment reports.

209.8 Employers' quarterly summary reports of compensation adjustments.

209.9 Terminated employers' reports.

209.10 Employee representatives' reports.

209.11 Certificates of service months and compensation.

209.12 Employers' gross earnings reports.

Authority: Sec. 7(b)(5) and (6), Pub. L. 93-445, 88 Stat. 1339, 1340 (45 U.S.C. 231f(b)(5) and (6)); Sec. 9, Pub. L. 93-445, 88 Stat. 1343, (45 U.S.C. 231h); Sec. 13(a), Pub. L. 93-445, 88 Stat. 1345 (45 U.S.C. 2311).

§ 209.1 General.

Benefits under the Railroad Retirement Act are based in part upon an individual's years of service and amount of compensation credited to the individual under the Act. It is the duty of the Board to gather, keep and compile such records and data as may be necessary to assure proper administration of the Act. This part sets forth the types of reports employers are required to make to the Board and states the penalties that the Board may impose upon employers and employees who fail or refuse to make required reports.

§ 209.2 Duty to furnish information and records.

In the administration of the Railroad Retirement Act of 1974, the Board may require any employer or employee to furnish or submit any information, records, contracts, documents, reports or other materials within their possession or control, that, in the judgment of the Board, may have any bearing upon:

- (a) The employer status of any individual, person or company,
- (b) The employee or pension status of any individual,

(c) The amount and creditability of service and compensation, or

(d) Any other matter arising which involves the administration of the Railroad Retirement Act. Any person who knowingly fails or refuses to make any report or furnish any information required by the Board, may be punished by a fine of not more than \$10,000 or by imprisonment not exceeding one year, or both.

§ 209.3 Information regarding change in status.

It is the duty of each employer to promptly notify the Board of:

- (a) Any change in the employer's operations, ownership or control of the

employer which affects its status as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act;

(b) Any change in the ownership or control by the employer in any company which may affect the status of the company as an employer under the Railroad Retirement Act or Railroad Unemployment Insurance Act; and

(c) The gain of ownership or control by the employer of any company which may give that company status as an employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act. The notice must fully advise the Board of the type of change in ownership, the date of the change, the number of employees affected by the change and any other information pertinent to the change.

§ 209.4 Employers' notice of death of employees.

Each employer shall notify the Board immediately of the death of an employee who, prior to the employee's death, performed compensated service which has not been reported to the Board. The notice of death shall be made on the form prescribed by the Board and mailed to the Director of Compensation and Certification.

(Approved by the Office of Management and Budget under Control No. 3220-0005)

§ 209.5 Employers' supplemental reports of service and compensation.

Each employer shall furnish the Board a report of the current year service and compensation of each employee who ceases work for the purpose of retiring under the provisions of the Railroad Retirement Act. The reports are to be made on the form prescribed by the Board and mailed to the address shown on the reverse side of the form.

(Approved by the Office of Management and Budget under Control No. 3220-0005)

§ 209.6 Employers' annual reports of creditable service and compensation.

(a) Each year, on or before the last day of February, each employer is required to make an annual report of the creditable service and compensation of employees who performed compensated service in the preceding calendar year. The annual report shall include service and compensation previously furnished in supplemental reports and notices of death. Annual reports are to be prepared in accordance with the instructions issued by the Director of Compensation and Certification and mailed directly to that office. The reports may be made on magnetic tape, punch cards or the form prescribed by

the Board as described in § 200.2 of this chapter. The reports must be accompanied by a report indication/specification sheet prescribed by the Board as described in § 200.2 of this chapter.

(b) Employers who do not have creditable service and compensation to report shall advise the Director of Compensation and Certification in writing, that they have no creditable service and compensation to report for the previous calendar year.

(Approved by the Office of Management and Budget under Control No. 3220-0008)

§ 209.7 Employers' adjustment reports.

(a) The Board may request employers to submit adjustments to correct employee accounts when:

- (1) Errors are detected in processing employers' annual report;
- (2) An employee shows that the amount of service or compensation reported by the employer to the employee's account was not correct; or
- (3) An employee shows that he or she should have been credited with service and compensation for a period for which the employer reported no service and compensation.

(b) Employers may submit adjustment reports to:

- (1) Correct service and compensation previously reported; and
- (2) Report service and compensation that was omitted from a previous report.

(c) Employers submitting adjustment reports covering pay for time lost as an employee shall report this compensation as provided for in § 211.3 of this chapter. Adjustment reports are to be prepared in accordance with the instructions issued by the Director of Compensation and Certification and mailed directly to that office. The reports may be made on magnetic tape, punch cards or the form prescribed by the Board as described in § 200.2 of this chapter. Adjustment reports may be submitted to the Board each month but shall be summarized quarterly on the form prescribed by the Board as provided for in § 209.8.

(Approved by the Office of Management and Budget under Control No. 3220-0008)

§ 209.8 Employers' quarterly summary reports of compensation adjustments.

Each employer submitting compensation adjustment reports shall, on or by the last day of each quarter in which a compensation adjustment report is made, submit a summary report of the adjustments on the form prescribed by the Board as described in § 200.2 of this chapter. Employers who do not make any adjustment reports in

any month of a quarter shall not submit a summary report for that quarter.

(Approved by the Office of Management and Budget under Control No. 3220-0008)

§ 209.9 Terminated employers' reports.

When an employer's status as an employer is terminated, a final report of creditable service and compensation shall be made. The final report shall be submitted to the Director of Compensation and Certification on or before the last day of the month following the final month for which there was compensated service. The report shall be completed as prescribed in § 209.6(a) and shall be marked Final Compensation Report.

(Approved by the Office of Management and Budget under Control No. 3220-0008)

§ 209.10 Employee representatives' reports.

Individuals claiming status as an employee representative shall describe their duties as an employee representative on the form prescribed by the Board and submit the form to the Director of Compensation and Certification. If the duties described in the status report are approved by the Director of Compensation and Certification, status as an employee representative is granted. The individual is then advised that he or she is required to make an annual report of creditable Railroad Retirement Act compensation. The compensation report shall be made on the form prescribed by the Board and is to be mailed to the Director of Compensation and Certification each year, or on or before the last day of February. When the employee representative's status is terminated, the last report of service and compensation shall be marked Final Compensation Report.

(Approved by the Office of Management and Budget under Control No. 3220-0014)

§ 209.11 Certificates of service months and compensation.

(a) Each year the Board prepares certificates of service months and compensation, as described in § 200.2 of this chapter, for employees who performed compensated service in the preceding calendar year. This certificate is the employee's record of the service and compensation credited to his or her account. The certificates are either mailed directly to employees or forwarded to employers for delivery to their employees. Certificates mailed directly to employees and returned to the Board as undeliverable, are forwarded to employers for distribution to employees. Employers are to distribute the certificates within 30 days

after they are received, and those certificates which are undeliverable within 30 days are to be returned to the Board. Employees who for any reason do not receive a certificate may obtain one from the nearest Board district office or may write to the Director of Compensation and Certification requesting one. Employers may also obtain certificates from the Director of Compensation and Certification for their employees.

(b) Employers currently receiving certificates for distribution to their employees, but who wish the Board to mail the certificates directly to the employees, shall each year, before May 1, submit the current addresses of all employees to the Director of Compensation and Certification. The address reports shall be submitted on magnetic tape or punch cards only, and prepared in accordance with the instructions issued by the Director of Compensation and Certification.

§ 209.12 Employers' gross earnings reports.

(a) Each employer is required to report the gross earnings of a one-percent sample group of railroad employees. The gross earnings sample is based on the earnings of employees whose social security numbers end with the digits 30. This report is used to determine:

- (1) Tax and benefit amounts involved in the Financial Interchange with the Social Security Administration; and
- (2) Estimated tax income accruing to the railroad retirement system in future periods.

(b) Employers shall report as gross earnings the employee's earnings up to \$100,000 a year which includes both taxable and non-taxable compensation for the year. All employers shall submit reports annually, or they may submit such reports more frequently if they desire. Employers with 5,000 or more employees shall provide a monthly or quarterly breakdown of the year's earnings. Employers with less than 5,000 employees may submit an annual amount only, although a monthly or quarterly breakdown is preferable. Gross earnings are to be counted for the same time period as used in determining the employer's annual report of creditable compensation. The reports are to be prepared in accordance with prescribed instructions and mailed to: U.S. Railroad Retirement Board, Bureau of Research, Division of Labor Studies.

(Approved by the Office of Management and Budget under control No. 3220-0132)

2. Part 220, Definition and Creditability of Service, is redesignated as Part 210, and is revised as follows:

PART 210—CREDITABLE RAILROAD SERVICE

Sec.

- 210.1 General.
- 210.2 Definition of service.
- 210.3 Month of service.
- 210.4 Year of service.
- 210.5 Creditability of service.
- 210.6 Service credited for creditable military service.
- 210.7 Verification of service claimed.

Authority: Sec. 1 (d), (e) and (f), Pub. L. 93-445, 88 Stat. 1307 and 1308 (45 U.S.C. 231 (d), (e) and (f); Sec. 3(i), Pub. L. 93-445, 88 Stat. 1325 and 1326 (45 U.S.C. 231(i)); Sec. 7(b)(5), Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

§ 210.1 General.

An individual's entitlement to benefits and the amount of benefits payable under the Railroad Retirement Act are determined based, in part, on the individual's years of service. This part defines what the term service means under the Railroad Retirement Act and sets forth what types of service are creditable under that Act.

§ 210.2 Definition of service.

Service means a period of time for which an employee receives payment from a railroad employer for the performance of work; or a period of time for which an employee receives compensation which is paid for time lost as an employee; or a period of time credited to an employee for creditable military service as defined in Part 212 of this chapter. Service shall also include the month in which an employee is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VII of the Regional Rail Reorganization Act of 1973.

§ 210.3 Month of service.

A month of service is any calendar month or any part of a calendar month for which an employee receives compensation for services performed for an employer; or receives pay for time lost as an employee; or is credited with compensation for a period of creditable military service; or is credited with compensation under § 211.12 of this chapter based on benefits paid under Title VII of the Regional Rail Reorganization Act of 1973.

§ 210.4 Year of service.

(a) A year of service is twelve months of service consecutive or not consecutive. A fraction of a year of service is taken at its actual value.

(b) The term years of service means the total number of years an employee is credited with service as defined in § 210.2.

§ 210.5 Creditability of service.

(a) *Service before January 1, 1937.* (1) Service performed before January 1, 1937, is called prior service. Prior service is creditable under the Railroad Retirement Act if the employee had an employment relation with a railroad employer on August 29, 1935. Prior service may be combined with creditable service performed after December 31, 1936, to make the employee's total years of service equal, but not exceed, 30 years (360 months).

(2) An employee is considered to have an employment relation on August 29, 1935, if:

(i) The employee was on that date in active railroad service for an employer; or

(ii) The employee was on that date on a leave of absence expressly granted by the employer or the employer's authorized representative, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(iii) The employee had 6 months of active railroad service for an employer during the period August 29, 1935, through December 31, 1945; or

(iv) The employee was not in the service of an employer by reason of a mental or physical disability from which the employee was continuously disabled until the employee attained age 65 or until August 1945; or

(v) Solely for the reason stated in paragraph (a)(2)(iv) of this section the employee was not recalled to active service before August 1945; or

(vi) If the employee was recalled, the employee was unable to perform 6 months of service during the period August 29, 1935, through December 31, 1945, solely for the reason stated in subsection (a)(2)(iv) of this section.

(b) *Service after December 31, 1936.* All service performed after December 31, 1936, is creditable. If an employee has service both before January 1, 1937, and after December 31, 1936, all service after December 31, 1936, is credited first; if this service totals less than 30 years (360 months), then the service before January 1, 1937, is included but only up to the amount sufficient to make the total years of service equal 30. Where the years of service include only part of the service performed before January 1, 1937, the part included is taken in reverse order beginning with the last calendar month of the service.

(c) *Service after December 31, 1936, to a local lodge or division.* Services

performed for a local lodge or division of a railway labor organization is creditable if the employee is credited with compensation as defined in § 211.2 of this chapter.

(d) *Service based on time lost.* Any month or any part of a month during which an employee performed no active service but received pay for time lost as an employee is counted as a month of service. Service for time lost as an employee shall be credited as provided for in § 211.3 of this chapter.

(e) *Place of performance of service.* (1) Service performed for an employer who conducts the Principal part of its business with the United States is creditable. However, service performed for an employer who conducts the principal part of its business outside the United States is creditable only when the service is performed in the United States. If an employer, other than a local lodge or division or a general committee of a railway labor organization, does not conduct the principal part of its business within the United States, the service performed outside the United States for that employer is not creditable.

(2) Service performed outside the United States by an employee who is not a citizen or resident of the United States is not creditable if the employer is required under the laws of that place to hire, in whole or in part, only citizens or residents of that place.

(f) *Service as employee representative.* Service performed as an employee representative is creditable in the same manner and to the same extent as through the organization by which the employee representative was employed were an employer.

(g) *Service performed after the beginning date of an annuity.* Service performed after the beginning date of an annuity shall be used in the annuity recomputation.

§ 210.6 Service credited for creditable military service.

Any calendar month in which an employee performed creditable military service, as defined in Part 212 of this chapter, shall be counted as a month of service and shall be included in the employee's years of service, as provided for in § 210.4, provided that the employee has not been credited for services performed to an employer for the same month(s).

§ 210.7 Verification of service claimed.

Service claimed by an employee, which is not credited in the records of the Board, must be verified to the satisfaction of the Board before it may

be credited. Verification of the Service claimed shall be as follows:

(a) Service claimed will be verified from the payroll or other detailed records of the employer.

(b) If the payroll or other detailed records are incomplete or missing, the service claimed and not established by these records will be verified from the personnel records of the employer.

(c) If the payroll, personnel and detailed records are incomplete or missing, the service claimed and not established by these records will be verified from any other books and records of the employer.

(d) If the employer's records do not establish the service claimed, the employee may submit affidavits and other evidence in support of the service claimed in either of the following instances:

(1) When there are not employer records available to show whether or not the service claimed was performed; or

(2) When there are employer records available which do not verify the service claimed and do not establish that the service claimed was not performed.

(e) When service is verified as to over-all dates, but is not supported in detail by employer records, and when there are no employer records showing in detail absences from service, a deduction shall be made to cover an average amount of the absences. The deduction shall be the absences shown by the applicant or 5 percent of the total period in question, whichever is greater. However, where the employee submits detailed records of the service claimed, properly identified and established as having been made at the time the employee performed the service for which detailed records of the employer are not available, full credit may be allowed for the service as may be verified from the records. Also, the employee may be permitted to establish in any other manner satisfactory to the Board the actual amount of his or her absences.

(f) For the purpose of verifying service before 1937, employers shall preserve through 1986, in accessible form, the original records of the service and compensation.

(g) For the purpose of verifying service after 1936, employers shall preserve in accessible form the original records of service and compensation for a period of five calendar years after the due date of the report.

3. Part 222, Definition and Creditability of Compensation, is redesignated as Part 211, and is revised as follows:

PART 211—CREDITABLE RAILROAD COMPENSATION

Sec.

211.1 General.

211.2 Definition of compensation.

211.3 Compensation paid for time lost.

211.4 Vacation pay.

211.5 Employee representative compensation.

211.6 Compensation based on waiver or refund of organization dues.

211.7 Compensation credited for creditable military service.

211.8 Displacement allowance.

211.9 Dismissal allowance.

211.10 Separation allowance.

211.11 Back pay.

211.12 Compensation credited for Title VII benefits.

211.13 Monthly maximum creditable compensation.

211.14 Verification of compensation claimed.

Authority: Sec. 1(h), Pub. L. 93-445, 88 Stat. 1310 (45 U.S.C. 231(h)); Sec. 7(b)(5), Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

§ 211.1 General.

Benefits under the Railroad Retirement Act are based in part on the individual's years of service and amount of compensation credited to the individual under the Act. This part defines what the term compensation means and sets forth the criteria applied in determining what payments are creditable as compensation under the Railroad Retirement Act.

§ 211.2 Definition of compensation.

(a) The term compensation means any form of payment made to an individual for services rendered as an employee for an employer; services performed as an employee representative; and any separation or subsistence allowance paid under any benefit schedule provided in conformance with Title VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act. Compensation may be paid as money, a commodity, a service or a privilege. However, if an employee is to be paid in any form other than money, the employer and employee must agree before the service is performed upon the following:

(1) The value of the commodity, service or privilege; and

(2) That the amount agreed upon to be paid may be paid in the form of the commodity, service or privilege.

(b) Compensation includes, but is not limited to, the following:

(1) Salary, wages and bonuses;

(2) Pay for time lost as an employee;

(3) Cash tips of \$20 or more received in a calendar month;

(4) Vacation pay;

(5) Military pay as determined in § 211.7 of this chapter;

(6) Displacement allowances as provided for in § 211.8 of this chapter;

(7) Dismissal allowances as provided for in § 211.9 of this chapter;

(8) Separation allowances as provided for in § 211.10 of this chapter;

(9) Back pay as provided for in § 211.11 of this chapter;

(10) Payments made under Title VII of the Regional Rail Reorganization Act of 1973 as provided for in § 211.12 of this chapter.

(c) Compensation does not include:

(1) Tips, except as provided in paragraph (b)(3) of this section;

(2) Amounts voluntarily paid by an employer without deducting from the employee's salary the taxes imposed by law;

(3) Payments for services performed by a nonresident alien for the period the individual is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 1101(a)(15) of Title 8, U.S.C. and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(4) Remuneration paid in certain cases, as described below, for services performed for a local lodge or division of a railway labor organization.

(i) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after 1936 and prior to April 1, 1940, shall not be creditable as compensation in a month unless taxes with respect to such remuneration were paid under the Railroad Retirement Tax Act prior to July 1, 1940.

(ii) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after March 31, 1940, and prior to January 1, 1975, shall not be creditable as compensation in a month if the amount of such remuneration earned in the month is less than \$3.00.

(iii) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after December 31, 1974, shall not be creditable as compensation in a month if the amount of such remuneration earned in the month is less than \$25.00.

(5) Payments for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering the service has not previously rendered service, other than as a delegate, which may be included in the individual's years of service;

(6) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer which makes provisions for employees generally (or for employees generally and their dependents), or for a class or classes of employees (or for a class or classes of employees and their dependents), on account of sickness or accident disability, or medical, or hospitalization expenses in connection with sickness or accident disability; and

(7) Any amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred, or reasonably expected to be incurred in the business of the employer, provided the payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

§ 211.3 Compensation paid for time lost.

(a) A payment made to an employee for a period during which the employee was absent from the active service of the employer is considered to be pay for time lost and is, therefore, creditable compensation. Pay for time lost as an employee includes:

(1) Pay received for a certain period of time due to personal injury, or

(2) Pay received for loss of earnings for a certain period of time, resulting from the employee being placed in a position or occupation paying less money. In reporting compensation which represents pay for time lost, employers shall allocate the amount paid to the employee to the month(s) in which the time was actually lost. The entire amount of any payment made to an employee for personal injury is considered pay for time lost unless, at the time of payment, the employer states that a particular amount of the payment was for reasons other than pay for time lost.

(b) Where pay for time lost is allocated to the month(s) in which the time was actually lost, the Board will accept the allocation made by the parties involved if it relates to the employee's normal monthly pay. A reasonable relationship to an employee's normal monthly pay is ordinarily no less than ten times the employee's daily pay rate.

§ 211.4 Vacation pay.

(a) *Employee deceased or retired.*

Where an employee has died, or ceased work for the purpose of retiring, the vacation pay due the employee shall be reported as compensation for the last day of service or as compensation for a period immediately after the last day of service, and during the employee's life, depending on whether the vacation pay is intended to make the employee's termination date effective on or after the last day of service. Vacation pay shall not be reported for a period after the date of death or date of termination.

(b) *Employee terminated.* Where an employee resigns his or her position or is discharged by the employer, any vacation pay due the employee shall be reported as compensation for the period prior to the effective date of the resignation or discharge. Vacation pay shall not be reported for a period after the date of termination.

(c) *Employee takes vacation.* Where an employee takes a vacation, the vacation pay shall be reported as compensation for the period the vacation is taken regardless of when the payment is made.

(d) *Employee does not take vacation.*

Where an employee receives pay for vacation but does not take the vacation, the vacation pay shall be reported as compensation for the period it is covered by the employer's payroll except for payments made in December of the vacation year, or thereafter. Vacation payments made in the month of December of the year, or thereafter, shall be reported as compensation for December of the vacation year.

§ 211.5 Employee representative compensation.

All payments made to an individual who occupies the position or office of employee representative are creditable compensation, including compensation paid for services not connected with the representation of employees provided the payments do not exceed the monthly amounts shown in § 211.13.

§ 211.6 Compensation based on waiver or refund of organization dues.

A waiver or refund of organization dues which were based solely on consideration for membership in the organization is considered creditable compensation if there is proof that the waiver or refund was intended to be, and was accepted as, a dismissal of an obligation of the organization to compensate the employee for services rendered.

§ 211.7 Compensation credited for creditable military service.

In determining the monthly maximum creditable compensation of an employee, the following amounts shall be credited for each month of military service, provided the employee's combined monthly railroad and military compensation does not exceed the limits shown in § 211.13:

(a) \$160 for each calendar month before 1968;

(b) \$260 for each calendar month after 1967 and before 1975;

(c) For years after 1974, the amount to be credited, up to the monthly maximum creditable amount, is the actual earnings reported as wages under the Social Security Act.

§ 211.8 Displacement allowance.

A displacement allowance paid to an employee is creditable as compensation and shall be added to the employee's regular earned compensation for the month(s) the allowance is payable, regardless of when the actual payment is made.

§ 211.9 Dismissal allowance.

Dismissal allowance paid to an employee under a protective labor agreement that covers the amounts paid for a specific period of time are creditable as compensation under the Railroad Retirement Act, provided the employee has not severed his or her employee-employer relationship. Subject to the proviso in the preceding sentence, dismissal allowances are to be reported as compensation in the month(s) for which the employee is paid in the allowance.

§ 211.10 Separation allowance.

A lump sum separation allowance paid to an employee is creditable as compensation under the Railroad Retirement Act. A separation allowance is to be reported as compensation for the month last worked or as compensation for the month the employee-employer relationship terminated.

§ 211.11 Back pay.

Employers may report back pay as creditable compensation for the month the compensation is paid or for the period earned. If the back pay is reported as creditable to the month paid, the employee may, within the four year period defined in § 211.14(b), request that the back pay be allocated to the month(s) in which earned. The employer will submit the necessary adjustment giving the employee the proper credits.

§ 211.12 Compensation credited for Title VII benefits.

Payments made to an employee under Title VII of the Regional Rail Reorganization Act of 1973 are creditable as compensation only for the month in which the employee first filed for benefits under the Act. The compensation to be credited cannot exceed the monthly creditable amounts shown in § 211.13.

§ 211.13 Monthly maximum creditable compensation.

The amount of compensation that may be creditable under the Railroad Retirement Act with respect to an employee's service is subject to monthly limits. The monthly maximum for any month is one-twelfth of the maximum annual taxable wage base as defined in section 3121 of the Internal Revenue Code of 1954 that would be applicable to the period which includes the month. The maximum annual taxable wage base is defined in section 3121 of the Internal Revenue Code of 1954 as the amount of the contribution and benefit base determined under section 230 of the Social Security Act. Section 230(c) of the Social Security Act provides, with respect to the computation of annuities under the Railroad Retirement Act, for two separate annual maximum amounts for years beginning with 1979. For purposes of computing the amount of an annuity under the Railroad Retirement Act, except the Tier I annuity component provided by section 3(a), 4(a), or 4(f) of the Railroad Retirement Act or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act, the annual maximum wage base is determined without regard to the increases in the annual amounts specified in clause (2) of subsection (c) of section 230. Those increases are, however, applicable in computing the Tier I component of an annuity or in computing the social security guaranty amount under section 3(f)(3) of the Railroad Retirement Act. The table below lists the maximum monthly creditable amounts beginning with 1937. The maximum monthly creditable amounts for purposes of computing the Tier I annuity component and the social security guaranty amount is, for the years beginning with 1979, shown in parentheses.

January 1937 through June 1954.....	\$300
July 1954 through May 1959.....	350
June 1959 through October 1963.....	400
November 1963 through December 1965.....	450
January 1966 through December 1967.....	550
January 1968 through December 1971.....	650
January 1972 through December 1972.....	750
January 1973 through December 1973.....	900

January 1974 through December 1974.....	1,100
January 1975 through December 1975.....	1,175
January 1976 through December 1976.....	1,275
January 1977 through December 1977.....	1,375
January 1978 through December 1978.....	1,475
January 1979 through December 1979.....	1,575 (1,908.33)
January 1980 through December 1980.....	1,700 (2,158.33)
January 1981 through December 1981.....	1,850 (2,475.00)
January 1982 through December 1982.....	2,025 (2,700.00)
January 1983 through December 1983.....	2,225 (2,975.00)

§ 211.14 Verification of compensation claimed.

Compensation claimed by an employee, which is not credited in the records of the Board, must be verified to the satisfaction of the Board before it may be credited. An employee's claim to compensation not credited shall be processed as follows:

(a) If the compensation claimed is in excess of the monthly maximum creditable amounts shown in § 211.13, the Director of Compensation and Certification shall inform the employee that the compensation claimed is not creditable.

(b) If the compensation is claimed within four years from the date the compensation was required to be reported to the Board as prescribed in § 209.6 of this chapter, the Director of Compensation and Certification shall contact the employer requesting a review of their records, and if the employee's claim is correct, the employer will submit an adjustment crediting the employee with the compensation claimed. If the employer states that the employee's claim is incorrect, the employee will be requested to submit check stubs to show railroad retirement taxes withheld from the compensation claimed. Upon receipt of the check stubs, the proof will be sent to the employer along with a request for the employer to submit an adjustment crediting the employee with the compensation claimed.

4. The former Part 209, Military Service, is redesignated as Part 212, and is revised as follows:

PART 212—MILITARY SERVICE**Sec.**

- 212.1 General.
- 212.2 Military service defined.
- 212.3 Crediting of military service.
- 212.4 Periods of creditable military service.
- 212.5 Verification of military service.
- 212.6 Board's determination for use of military service.

Authority: Sec. 1(g), Pub. L. 93-445, 88 Stat. 1309 (45 U.S.C. 231(g)); Sec. 3(i)(2), Pub. L. 93-445, 88 Stat. 1325 (45 U.S.C. 231b(i)(2)); Sec. 7(b)(5), Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

§ 212.1 General.

In determining an individual's entitlement and amount of benefits under the Railroad Retirement Act, an individual's military service creditable under the Railroad Retirement Act is used. This part defines military service as used under this Act and sets forth the criteria to determine the creditability of military service.

§ 212.2 Military service defined.

Military service is the performance of active service by an individual in the armed forces of the United States. An individual is considered to be in active military service when commissioned or enrolled in the land, naval or air forces of the United States until resignation or discharge therefrom. The service of an individual in any reserve component of the land, naval or air forces of the United States, during any period in which ordered to active duty, even though less than thirty days, is also considered active service. However, service in the Army Specialist Corps and the Merchant Marine is not creditable under the Railroad Retirement Act.

§ 212.3 Crediting of military service.

In determining an individual's entitlement to an annuity and the amount of annuity to be paid under the Railroad Retirement Act, a calendar month or part of a calendar month during which the individual was in the active military service of the United States in a war service period, or period of national emergency, as determined in § 212.4, may be included in the individual's years of service. Military service is credited as though the individual had performed service for a railroad employer as provided for in Part 210 of this chapter, provided that the individual is credited with railroad service in the year of or the year before entrance into active military service. Compensation for creditable military service shall be credited as provided for in § 211.7 of this chapter.

§ 212.4 Periods of creditable military service.

In order for military service to be considered to be creditable under the Railroad Retirement Act, it must have been performed during one of the following periods:

- (a) April 21, 1898 through August 13, 1898—Spanish American War;
- (b) February 4, 1899 through April 27, 1902—Philippine Insurrection;
- (c) May 9, 1916 through February 5, 1917—Mexican Border Disturbances;

(d) April 6, 1917 through November 11, 1918—World War I;

(e) September 8, 1939 through June 14, 1948—National Emergency and World War II. Individuals required to continue in service after this period may be credited with the service if:

(1) They were in military service on December 31, 1946, or

(2) They were required to remain in military service involuntarily after December 31, 1946;

(f) June 24, 1948 through December 15, 1950. This service is creditable only if entered into involuntarily;

(g) December 16, 1950 through September 14, 1978—National Emergency.

§ 212.5 Verification of military service.

Military service may be verified by the following proof:

(a) The original certificate of discharge or release to inactive duty from a branch of the armed forces that shows the beginning and ending dates of the individual's active military service; or a certified copy of the original certificate made by the Federal, State, county or municipal agency or department in which the original certificate is recorded; or

(b) A certificate from a branch of the armed forces that shows the beginning and ending dates of the individual's active military service; or

(c) A photocopy of the document described in (a) or (b) of this section.

§ 212.6 Board's determination for use of military service.

(a) Military service may be creditable under both the Railroad Retirement and Social Security Acts, but there are provisions under those Acts to prevent duplicate use of the service. The Railroad Retirement Board will determine whether an employee's military service should be used as railroad service or as Social Security service. The Board's determination is intended to be to the employee's advantage; however, if the employee does not agree with the Board's determination for use of the employee's military service, the employee may request that it be changed.

(b) Generally, it is to the employee's advantage for the employee's military service to be creditable as railroad service where any of the following conditions may be met with the use of the employee's military service as railroad service:

(1) It gives the employee 10 years of service (120 months), which is the minimum needed to qualify for an annuity based on age and service or

total disability, as provided for in Part 216, Subpart B; or

(2) It gives the employee 20 years of service (240 months), which is the minimum needed to qualify for an occupational disability annuity, as provided for in § 216.6 of this chapter; or

(3) It gives the employee 25 years of service (300 months), which is the minimum needed to qualify for a supplemental annuity, as provided for in Part 216, Subpart C; or

(4) It gives the employee 30 years of service (360 months), which would allow the employee to retire at age 60 with a full annuity and will also provide a full annuity to a qualified spouse at age 60, as provided for in Part 216, Subpart B and D; or

(5) It gives the employee sufficient railroad service to entitle the employee to vested dual benefit payments, as provided for in Part 216, Subpart H.

(c) In certain cases it may be to the employee's advantage for the employee's military service to be credited under the Social Security Act. This is generally true under the following conditions:

(1) Crediting the military service under the Social Security Act would entitle the employee and any eligible children to social security benefits, since direct benefits are not payable to children of retired employees under the Railroad Retirement Act; or

(2) Crediting the military service under the Social Security Act would entitle employee to vested dual benefit payments.

PART 220—[RESERVED]

5. Part 220, Definition and Creditability of Service is redesignated as Part 210, Creditable Railroad Service; therefore, Part 220 is reserved.

PART 222—[RESERVED]

6. Part 222, Definition and Creditability of Compensation, is redesignated as Part 211, Creditable Railroad Compensation; therefore, Part 222 is reserved.

PART 250—[RESERVED]

7. Part 250, Reports and Information to be Filed by Employers, is redesignated as Part 209, Railroad Employers Reports and Responsibilities; therefore, Part 250 is reserved.

8. In order to enable users to check the completeness, accuracy, and reasoning behind these revised regulations, a Derivation Table follows:

DERIVATION TABLE

New section and name	Current section and name
Part 209—Railroad Employers Reports and Responsibilities.	Part 250—Reports and information to be filed by employers.
209.1 General—New.	
209.2 Duty to furnish information and records.	250.1(a) Duty to furnish information and records—General.
209.3 Information regarding change in status.	250.1(b) Duty to furnish information and records—information concerning change of status.
209.4 Employers' notices of death of employees.	250.2 Employer to notify of death of employee.
209.5 Employer's supplemental reports of service and compensation.—New.	
209.6 Employers' annual reports of creditable service and compensation.	250.3 Employers' reports of compensation of employees.
(a).....	(a)(i).
(b).....	(b).
209.7 Employers' adjustment reports.	250.3 Employers' reports of compensation of employees.
(a) New.....	
(b).....	(a)(1)
(c) New.....	
209.8 Employers' quarterly summary reports of compensation adjustments.	250.3(a)(2) Employers' reports of compensation of employees.
209.9 Terminated employers' reports.	250.3(c) Employers' reports of compensation of employees.
209.10 Employee representative's reports.	250.6 Reports of employee representatives.
209.11 Certificates of service months and compensation.	250.5 Employers to transmit annual statements of compensation.
(b) New.....	
209.12 Employers' "gross earnings" reports.—New.	
NOTE.—Section 250.4, Registration of Employees, was deleted due to the discontinuance of Form CER-1.	
Section 250.3(b), Intermittent or Seasonal Employers Reports, was deleted. These employers' reports are now covered in § 209.6(b).	
Part 210—Creditable Railroad Service.	Part 220—Definition and Creditability of Service.
210.1 General—New.	
210.2 Definition of service. (Title VII service added).	220.1 Meaning of service.
210.3 Month of service. (Title VII service added).	220.2 What constitutes a month and a year of service.
210.4 Year of service.....	220.2 What constitutes a month and a year of service.
210.5 Creditability of service.	220.3 Creditability of service.
(a).....	(d) Service prior to Jan. 1, 1937.
(i).....	(e) Service prior to Jan. 1, 1937, where individual was employee on Aug. 29, 1935.
(ii)—New.....	
(iii)—New.....	
(iv)—New.....	
(v)—New.....	
(vi)—New.....	
(b).....	(f) Service subsequent to Dec. 31, 1936.
(c).....	(i), (j) Service after Dec. 31, 1936, to a local lodge or division.
(d).....	(c) Service based on time lost.
(e).....	(b) Place of performance of service.
(f).....	(h) Service as employee representative.
(g).....	(g) Service performed subsequent to the beginning date of an annuity.

NOTE.—Use of service after revised Part 218.16.
210.6 Service credited for creditable military service.

ABD furnished by BRC in 209.4 Crediting of military service.

DERIVATION TABLE—Continued

New section and name	Current section and name
NOTE.—Use of military service in annuity computation will be furnished by BRC in revised Part 226.	220.4 Verification of service claimed.
210.7 Verification of service claimed.	
(g)—New	
NOTE.—Section 220.3(a) was omitted as the term "employment" is defined in Part 202.	
Part 211—Creditable Railroad Compensation.	Part 222—Definition and Creditability of Compensation.
211.1 General—New.	222.2 Definition of compensation.
211.2 Definition of compensation.	222.2(a)(1)(2).
(a) (plus additions).....	222.1 Statutory provisions.
(b) (plus additions).....	222.1 Statutory provisions.
(c) (plus additions).....	222.2(b) Remuneration paid for time lost.
211.3 Compensation paid for time lost.	222.3(h) Allowances in lieu of vacation.
211.4 Vacation pay.....	
(c)—New	
(d)—New	
211.5 Employee representative compensation.	222.3(c) Employee representative compensation.
211.6 Compensation based on waiver or refund of organizational dues.	222.2(c) Waiver and refund of organization dues.
211.7 Compensation credited for creditable military service.	222.4 Amount of compensation attributable to each month of military service creditable.
(b)—New	
(c)—New	
211.8 Displacement allowance.	222.2(b)(2) Remuneration paid for time lost.
211.9 Dismissal allowance—New.	
211.10 Separation allowance—New.	
211.11 Back pay—New.....	
211.12 Compensation credited for title VII benefits—New.	
211.13 Monthly maximum creditable compensation.	222.3(a) Maximum creditable compensation for one month.
211.14 Verification of compensation claimed.	222.5 Verification of compensation claimed.
(a)—New	
(b)—New	
NOTE.—Section 222.3(b). Use of compensation after the ABD is furnished by BRC in revised Part 219.16 and § 222.3(f) was deleted.	
Part 212—Military Service.....	Part 209—Military Service.
212.1 General.....	209.1(a) Statutory provisions.
212.2 Military service defined.	(b) Statutory provisions.
212.3 Crediting of military service.	209.4(a) Crediting of military service.
	(b) Covered by BRC in revised Part 226.
	(c) Covered by BRC in revised Part 226.
212.4 Periods of creditable military service.	209.13 War period.
(a).....	(a).
(b).....	(b).
(c)—New	(c).
(d).....	(d).
(e).....	
(f)—New	
(g)—New	
212.5 Verification of military service.	209.14 Verification of military service claimed.
212.6 The Board's determination for use of military service—New.	

NOTE.—Use of military service in the annuity computation and Notices to SSA to be furnished by BRC in revised Part 226.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 84-30798 Filed 11-27-84; 8:45 am]

BILLING CODE 7905-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP-FRL-2726; FAP 9H5201 and 9H5217/R712; FAP 9H5217/R713]

Tolerances for Pesticides in Food Administered by the Environmental Protection Agency, and Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency; Pirimiphos-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules extend a food additive regulation and a feed additive regulation to permit the combined residues of the insecticide pirimiphos-methyl and its metabolites in or on certain food and feed commodities in accordance with an experimental program. These regulations are being extended in conjunction with experimental use permits requested by ICI Americas, Inc.

EFFECTIVE DATE: Effective on November 28, 1984.

ADDRESS: Written objections, identified by the document control number [FAP 9H5201 and 9H5217/R712 and 713], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the *Federal Register* of December 28, 1978 (43 FR 60652) (FAP 9H5201) and April 20, 1983 (48 FR 16962) (FAP 9H5217), which announced that ICI Americas, Inc., Wilmington, DE 19897, had submitted food/feed additive petitions proposing to amend 21 CFR Part 193 and 561 by establishing regulations permitting the combined residues of the insecticide pirimiphos-methyl (*O*-[2-(diethylamino)-

6-methyl-4-pyrimidinyl] *O*,*O*-dimethylphosphorothioate, the metabolite *O*-[2-ethylamino-6-methylpyrimidin-4-yl] *O*,*O*-dimethylphosphorothioate and in free and conjugated form the metabolites 2-ethylamino-6-methylpyrimidin-4-ol, 2-ethylamino-6-methylpyrimidin-4-ol and 2-amino-6-methylpyrimidin-4-ol in or on certain food and feed commodities. FAP 9H5201 requested a tolerance of 50 parts per million (ppm) in or on the food commodity peanut oil, and FAP 9H5217 requested tolerances for the food/feed commodities rice and wheat millings fractions at 50 ppm and the feed commodity rice hulls at 60 ppm.

EPA added a regulation to apply to peanut oil: 21 CFR 193.468 (48 FR 41157; Sept. 14, 1983). EPA revised § 193.468 to add rice and wheat milling fractions and added 21 CFR 561.432 to apply to rice hulls and rice and wheat milling fractions (48 FR 51453; Nov. 9, 1983). At the request of ICI Americas, Inc., EPA is extending §§ 193.468 and 561.432 to expire September 27, 1985.

Related documents [PP 9G2154/T470 and PP 9G2200/T469] extending temporary tolerances for pirimiphos-methyl and its metabolites in or on certain raw agricultural commodities appear elsewhere in this issue of the *Federal Register*.

The metabolism of pirimiphos-methyl and its metabolites is adequately understood, and an adequate analytical method, gas chromatography mass spectrometry, is available for enforcement purposes. The pesticide is considered useful for the purpose for which the regulations are sought, and it is concluded that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat 973; 7 U.S.C. 136 et seq.). Therefore, the regulations are extended as set forth below.

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

The Office of Management and Budget has exempted this rule from the

Dated: November 16, 1984.

By Authority of the Board.

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Feed additives, Pesticides and pests.

Dated: November 4, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Chapter I is amended as follows:

PART 193—[AMENDED]

1. In Part 193, § 193.468 is amended in the table in paragraph (b) by revising the expiration dates, to read as follows:

§ 193.468 Pirimiphos-methyl.

(b) * * *

Foods	Parts per million	Expiration date
Peanut oil	50.0	Sept. 27, 1985.
Rice, milling fractions	50.0	Sept. 27, 1985.
Wheat, milling fractions	50.0	Sept. 27, 1985.

PART 561—[AMENDED]

2. In Part 561, § 561.432 is amended in the table in paragraph (b) by revising the expiration dates, to read as follows:

§ 561.432 Pirimiphos-methyl.

(b) * * *

Feeds	Parts per million	Expiration date
Rice, hulls	60.0	Sept. 27, 1985.
Rice, milling fractions	50.0	Sept. 27, 1985.
Wheat, milling fractions	50.0	Sept. 27, 1985.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Cotton Dust

AGENCY: Occupational Safety and Health, Administration (OSHA), Labor.
ACTION: Administrative stay.

SUMMARY: The current OSHA cotton dust standard (29 CFR 1910.1043) requires that by March 27, 1984, all textile operations to which the standard applies must be in compliance with the permissible exposure limit using engineering and work practice controls. Pending completion of an ongoing review of the standard, OSHA issued a stay of the effective date of this provision until September 27, 1984 for some operations of ring spinning of coarse count cotton yarns (February 23, 1984; 49 FR 6717). OSHA has not completed its review, and it is therefore extending the stay for the same operations until January 27, 1985. During this period all other applicable provisions of the standard apply. It appears that some coarse count cotton ring spinning operations have feasibility problems coming into compliance, and the stay will give OSHA time to review the record and make final determinations.

DATE: This stay is effective from September 27, 1984 to January 27, 1985.

FOR FURTHER INFORMATION CONTACT: James Foster, Occupational Safety and Health Administration, Room N-3657, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Act requires OSHA to set occupational health standards which most adequately assure employee safety and health "to the extent feasible." In the preamble to the 1978 OSHA cotton dust standard (43 FR 27350, June 23, 1978), the Agency presented a substantial amount of evidence to demonstrate the technical feasibility of the standard in the textile industry based on the evidence then available.

Beginning in 1981 as evidence of actual implementation of the cotton dust standard became available, OSHA undertook a further review of the feasibility of the standard. As part of this review, OSHA hired a consulting firm, Centaur Associates, to examine a number of issues including the current state of compliance and to review the technological feasibility of completing

the compliance programs within the deadline specified by the standard (March 27, 1984).

After visiting 15 plants and interviewing numerous industrial engineers and manufacturers of dust control equipment, Centaur reported that textile experts generally consider the requirements of the 1978 standard to come into compliance with the engineering control provisions by March 27, 1984 to be feasible. The Centaur Report (Exhibit 185) documented that in 1982, a large percentage of textile operations were already in compliance with the permissible exposure limit.

Nevertheless, Centaur found that a problem does exist for specific processes in the manufacturing of certain types of yarn to come into compliance with engineering controls by March 27, 1984. These problem areas were concentrated in the ring spinning operations for high-control-content, coarse count yarn. These yarns are used in denim, duck, heavy terry cloth, and heavy industrial fabrics. Recent experience with these particular ring spinning processes indicates that ventilation systems may not always be effective and that this production equipment cannot generally be isolated.

There are several possible solutions to the dust control problem, including the rapid advent of open-end spinning systems. This relatively new technology reduces the dust levels because the fibers are spun within enclosed rotors and ventilation is designed into the machinery. There are, however, currently some problems with open-end spun yarn. For instance, open-end yarn is generally weaker than ring-spun yarns, and broken ends in weaving operations may sometimes result in negative wear and appearance properties in the finished fabric. These factors have led some garment manufacturers to insist that fabric for their apparel be made with ring-spun yarn.

It appeared, therefore, that it might not be feasible for employers to lower dust levels to the permissible exposure limit by March 27, 1984 for high-cotton-content, coarse count ring spinning operations. However, it also appeared that these problems could be overcome in several years. Control technology, including open-end spinning, is rapidly advancing and compliance with the standard should be possible in all operations in the relatively near future.

Based on this information, OSHA proposed in its June 10, 1983 *Federal Register* notice (48 FR 26962) to extend the deadline for compliance using engineering and work practice controls

found in § 1910.1043(m)(2)(ii). The deadline was proposed to be extended from March 27, 1984 to March 27, 1986. The proposed extension would cover only ring spinning, spooling and winding of coarse (yarn count of 14 or lower), high-cotton-content (equal to or greater than 80%) yarn.

This proposal was discussed at length by some of the commenters and additional evidence and testimony were presented on this issue at the hearings. Percy Thackston, Executive Vice President of the Bahnsen Company, a supplier of ventilation equipment, testified to the inadequacy of control equipment for these operations (Tr. at 676). James A. King, Vice President of the Textile Manufacturing Division of Cone Mills Corporation, gave examples of his company's efforts to reduce dust levels below the PEL in the ring spinning of coarse count yarns (Tr. at 682-683). Commissioner John Brooks of North Carolina stated that these operations were the primary component of spinning areas which are not in compliance with the PEL in the State of North Carolina and concurred that a two-year extension would be reasonable (Tr. 1274, 1283). However, the evidence indicated that there are some coarse count, high-cotton-content yarn spinning operations which have already achieved the limit by switching to open end spinning.

The post-hearing briefs of both the Amalgamated Clothing and Textile Workers Union (Exhibit 279) and the American Textile Manufacturers Institute (Exhibit 280) recommended, based on the above evidence, that the two year extension proposed by OSHA be granted but with some slight modification to the specifications that OSHA originally proposed for the yarn operations to be covered. The testimony of Percy Thackston (Tr. at 698) and James King (Tr. at 684, 699) pointed out that a somewhat broader range of criteria for the yarn was needed.

The record for OSHA's June 10, 1983 proposal closed December 14, 1983. In February 1984, it became clear that OSHA could not complete the analysis of the record by the March 27, 1984 deadline to achieve compliance with the engineering control requirements. However, based on its preliminary review of the evidence and the recommendations of both the affected union and industry association, it appeared likely that OSHA's final decision would be to incorporate an extension similar to that recommended by the union and trade association. In addition, if the original deadline is extended, it would be wasteful for employers in the meantime to have to

install ventilation equipment which would probably not achieve the permissible exposure limit, since better and more efficient equipment would be available shortly which would achieve the level. Based on this factor, the evidence in the record, and the recommendation of the interested parties, OSHA stayed the effective date of the engineering control requirement for ring spinning of coarse count cotton yarns as defined until September 27, 1984 in Federal Register notice of February 23, 1984 (49 FR 6717).

Final review of the amendments to the standard resulting from the June 10, 1983 proposal has not been completed. For the reasons just stated, it continues to be appropriate to stay the enforcement of the engineering control provisions solely for ring spinning using coarse count, high cotton content cotton yarns as defined in this notice. Accordingly, OSHA is hereby temporarily staying the effective date of the engineering control requirement of 29 CFR 1910.1043(m)(2)(ii) for the operations of ring spinning and winding, twisting, spooling, beaming, and warping following ring spinning, where the yarns meet the following criteria:

Where the weight of the yarn being run is 100 percent cotton, the stay applies where the average yarn count by weight is 18 or below.

Where the average by weight of the yarn being run is 80 percent or more cotton, the stay applies where the average yarn count by weight is 16 or below.

Where the average by weight of the yarn being run is 50 percent or more cotton, the stay applies where the average yarn count by weight is 14 or below.

This stay of enforcement is for a four month period, beginning on September 27, 1984 and ending on January 27, 1985. This stay will permit the Agency to make appropriate final decisions with full supporting rationale. In the interim, all the other provisions of the standard are in effect for these operations including the respiratory protection provisions which should reduce employee exposures below the permissible exposure limit. Except for this stay all provisions of the cotton dust standard 29 CFR 1910.1043 became fully effective for yarn production and slashing and weaving operations on March 27, 1984.

The matters temporarily stayed have already been subject to a specific proposal and comment by interested parties. The extent of the stay reflects both the record evidence and the views of both union and industry participants.

The stay is for a brief fixed period to permit appropriate final decisions to be taken after careful and complete review of the record. Accordingly, the Agency determines that further notice and comment on this limited stay would serve no useful informational purpose and finds that this is good cause for finding further notice and comment unnecessary within the meaning of the Administrative Procedure Act, 5 U.S.C. 553(b).

List of Subjects in 29 CFR Part 1910

Cotton dust, Occupational safety and health.

Authority: This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, D.C. It is issued pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act. (84 Stat. 1593, 1600, 29 U.S.C. 655, 657), 29 CFR Part 1911; Secretary of Labor's Order No. 9-83 (48 FR 35736) and 5 U.S.C. 551 et seq.

Signed at Washington, D.C. this 19th day of November, 1984.

Robert A. Rowland,
Assistant Secretary of Labor.

[FR Doc. 84-30844 Filed 11-27-84; 8:45 am]
BILLING CODE 4510-26-M

POSTAL SERVICE

39 CFR Part 111

Additional Specifications for the Testing of Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends postal specifications for testing postage meters to include auxiliary equipment required for the operation of postage meters. This includes such items as carrying cases with built-in power supplies, postage meter bases which would effect the operation of the meters, and other equipment which could cause failures of postage meters. Testing meters without testing auxiliary equipment may not be sufficient to assure accuracy in collecting postage.

EFFECTIVE DATE: December 28, 1984.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 245-4565.

SUPPLEMENTARY INFORMATION: On September 18, 1984, the Postal Service published for comment in the Federal Register (49 FR 36510) proposed changes to Part 144 of the Domestic Mail Manual (DMM), dealing with specifications for the testing of postage meters. Interested persons were invited to submit written

comments concerning the proposed changes on or before October 17, 1984. No comments were received. Before publishing the proposal in the *Federal Register*, however, we conferred with meter manufacturers about the proposed change. Two of them concurred at once with our proposal; one objected, but later concurred after the change was explained in greater detail.

Accordingly, the Postal Service hereby adopts, without change, the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations [39 CFR 111.1].

List of Subjects in 39 CFR Part 111

Postal Service.

PART 144—POSTAGE METERS AND METER STAMPS

In 144.9, add new .92j reading as follows:

144.9 Manufacture and distribution of postage meters.

.92 Specifications.

.92j Auxiliary equipment required for the operation of the postage meters must be a part of the final production models submitted for postal approval. Failure of the auxiliary equipment, which could cause malfunction in postage meter operation, will be considered the same as a postage meter failure.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be provided in the *Federal Register* as published in 39 CFR 111.3.

(39 U.S.C. 401 (2), (10), 404(a)(2)(4))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-31147 Filed 11-27-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3026/R706; FRL-2722-8]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Acephate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide acephate and its cholinesterase-inhibiting metabolite in or on the raw agricultural commodity macadamia nuts. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Effective on November 28, 1984.

ADDRESS: Written objections, identified by the document control number [PP 4E3026/R706], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA issues a proposed rule, published in the *Federal Register* of September 26, 1984 (49 FR 37812), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3026 to EPA on behalf of the IR-4 National Director, Dr. Robert H. Kupelian, and the Agricultural Experiment Station of Hawaii.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *O,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodity macadamia nuts at 0.05 part per million (ppm).

There were no comments nor requests for referral to the advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The Agency has determined that the establishment of the

tolerance will protect the public health and is established as set forth below.

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

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

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

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

Dated: November 13, 1984.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.108 is amended by adding and alphabetically inserting the raw agricultural commodity macadamia nuts to read as follows:

§ 180.108 Acephate; tolerances for residues.

Commodities	Parts per million
Macadamia nuts	0.05

[FR Doc. 84-30706 Filed 11-27-84; 8:45 am]

BILLING CODE 6550-50-M

40 CFR Part 712

[OPTS-82008; FRL 2724-8]

Toxic Substances Control Act; Chemical Information Rules; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding seven chemicals to the Toxic Substances Control Act section 8(a) Preliminary Assessment Information rule. The seven

chemicals were recommended by the Interagency Testing Committee (ITC) in its Fifteenth Report and designated for priority consideration by EPA within 1 year. An amendment to the Preliminary Assessment Information rule, which was published in the *Federal Register* of May 11, 1983 (48 FR 21294), provides that chemical substances and designated mixtures that have been recommended for testing by the ITC and designated for 12-month response may be made subject to the rule by the publication of an amendment to that effect in the *Federal Register*. Thirty days after the publication of this amendment to the regulation, these chemicals will become subject to 40 CFR Part 712.

Manufacturers of these chemicals will then have 60 days to submit a completed Preliminary Assessment Information report (EPA Form No. 7710-35) for each plant site at which they manufacture or import one of these seven chemicals.

EFFECTIVE DATE: This regulation becomes effective on December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2000-0420.

I. Background

Under section 8(a) of the Toxic Substances Control Act (TSCA), EPA issued the Preliminary Assessment Information rule, which was published in the *Federal Register* of June 22, 1982 (47 FR 26992), for reporting by chemical manufacturers. Those companies which manufactured, produced, or imported one of the approximately 250 chemical substances listed were to report general production, use, and exposure data to the Agency by November 19, 1982. An amendment to the rule, published in the *Federal Register* of May 11, 1983 (48 FR 21294), added 40 CFR 712.30(c) which provides that chemicals designated by the Interagency Testing Committee may be made subject to the rule by the publication of a regulation to that effect in the *Federal Register*. Today's final rule uses the authority of 40 CFR 712.30(c) to add seven chemicals to the list for reporting of preliminary assessment information.

Elsewhere in today's *Federal Register*, EPA is issuing a notice announcing the receipt of the Fifteenth Report of the Interagency Testing Committee, which was transmitted to the Administrator of

EPA on November 6, 1984. The Fifteenth Report, which revises and updates the Committee's priority list of chemicals, adds seven chemicals to the list for priority consideration within 12 months by EPA in the promulgation of test rules under section 4(a) of TSCA. In addition to adding the seven chemicals designated by the ITC to the section 8(a) Preliminary Assessment Information rule, the Agency, in a separate action, is adding these chemicals to the list of substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under section 8(d) of TSCA.

II. Chemicals To Be Added

The seven ITC designated chemicals for which reporting is required under section 8(a) are as follows:

CAS No.	Name
84-85-1	Anthraquinone.
85-22-35	Pentabromomethylbenzene.
98-82-8	Cumene.
126-99-8	2-Chloro-1,3-butadiene (Chloroprene).
137-20-2	Sodium N-methyl-N-oleoyltaurine.
149-30-4	Mercaptobenzothiazole.
555-67-2	Octamethylcyclotetrasiloxane.

III. Reporting Requirements

All persons who manufactured or imported the chemical named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each importing or manufacturing site which produces a subject chemical substance. A separate form must be completed for each chemical and submitted to the Agency no later than February 26, 1985. Copies of the form are available from the TSCA Assistance Office at the address given above.

Manufacturers who qualify as small with respect to the previously prescribed standards are exempt from this rule under 40 CFR 712.25(c).

Under § 712.30(a)(3) of the Preliminary Assessment Information rule, a company which has voluntarily submitted a Manufacturer's Report to the ITC will be allowed to submit a copy of the original Report to EPA. Also under § 712.30(a)(3), persons who previously and voluntarily provided EPA with a Manufacturer's Report on one of the seven substances listed in § 712.30(k) must notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission and must follow all other procedures outlined in that section.

Any person who believes that reporting on a chemical is unnecessary should promptly submit to the Agency

his reasons in detail for that belief. The chemical may then be removed from the rule at the Agency's discretion, for good cause. When withdrawing a chemical from the rule, the Agency will issue a rule amendment for publication in the *Federal Register*.

IV. Release of Aggregate Data

The Agency will follow the procedures for release of aggregate data and requesting exemptions from release of aggregate statistics as prescribed in the rule related notice published in the *Federal Register* of June 13, 1983 (48 FR 27041). Requests for exemptions from release of aggregate data for any substance must be received by EPA no later than February 26, 1985.

V. Economic Impact

Employing the analysis prepared for the Preliminary Assessment Information rule published in the *Federal Register* of June 22, 1982, as well as other relevant data, the Agency has estimated the impact of the addition of these chemicals on the firms that must report and upon the Agency in terms of data processing costs.

The Agency used the TSCA Inventory to generate a list of manufacturers and importers of the seven chemicals. After excluding firms which reported no production for the Inventory, 59 companies operating 63 sites were listed as manufacturers of the chemicals and 28 importers of the chemicals were identified. Five of the manufacturers subject to reporting for this rule qualify as a small business as defined in 40 CFR 712.25(c). Thus, 82 firms (or 58 U.S. sites plus 28 importers) are expected to report for this rule. A total of 86 reports are expected.

The costs for reporting are broken down as follows:

Reporting Cost	
(a) 86 reports expected at \$707 per report	\$60,802
(b) 86 familiarization cases at \$590 per case	50,740
Total	111,540
Average cost per site equals	\$1,300
Average cost per firm equals	\$1,360
Reporting Burden	
(a) Familiarization (18 hours per site times 86 sites per importers)	1,550
(b) Reporting (16 hours per report times 86 reports)	1,380
Total ¹	2,930
EPA Cost	
Processing Cost equals \$80 per report times 86 reports	\$6,880

¹Hours.

VI. Rulemaking Record

EPA has established a public record (docket number OPTS-82014) for this rulemaking document. All documents, including the index to this public record, are available for inspection in the OTS Reading Room, Rm. E-107, 401 M Street, SW., Washington, D.C. from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. This record includes basic information considered in developing this rule.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of \$100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 712.30(C)—a final rule which had been previously reviewed by OMB under the terms of the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2000-0420.

(Sec. 8(a), Pub. L. (94-469, 90 Stat. 2027 (15 U.S.C. 2607(a)))

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Reporting and recordkeeping requirements.

Dated: November 15, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 712—[AMENDED]

Therefore, Chapter I of 40 CFR Part 712 is amended by adding § 712.30(m) and OMB control number 2000-0420 to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(i) [Reserved]

(m) A Preliminary Assessment Information Manufacturer's Report must be submitted by February 26, 1985, for each chemical substance listed below.

CAS No.	Name
84-65-1	Anthraquinone.
85-22-3	Pentabromoethylbenzene.
98-82-8	Cumene.
126-99-8	2-Chloro-1,3-butadiene (Chloroprene).
137-20-2	Sodium N-methyl-N-oleoyltaurine.
149-30-4	Mercaptobenzothiazole.
556-67-2	Octamethylcyclotetrasiloxane.

(Approved by the Office of Management and Budget under control number 2000-0420).

[FR Doc. 84-30906 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 716

[OPTS-84013 FRL 2725-1]

Toxic Substances Control Act; Health and Safety Data Reporting; Submission of Lists and Copies of Health and Safety Studies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This amendment will add seven chemicals to the list of chemical substances and mixtures for which lists and copies of unpublished health and safety studies must be submitted under section 8(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(d). The chemical substances to be added were recommended for testing by the Interagency Testing Committee (ITC) in its Fifteenth Report to EPA and designated for priority consideration by EPA within 12 months. Under 40 CFR 716.18(b), chemical substances and designated mixtures that have been designated for testing by the ITC may be made subject to the rule by the publication of an amendment to that effect in the Federal Register. Thirty days after publication of this amendment to the regulation, these chemicals will become subject to 40 CFR, Part 716, Subpart A.

EFFECTIVE DATE: This regulation becomes effective on December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), In Washington, D.C.: (554-1404), outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number: 2070-0004.

I. Background

EPA issued regulations under section 8(d) of TSCA, which were published in the Federal Register of September 2, 1982 (47 FR 38780), to require submission of lists and copies of unpublished health and safety studies on specifically listed chemicals by chemical manufacturers and processors. Other persons in possession of such studies may be asked to submit them on a voluntary basis. The rule established standardized reporting requirements and provides for amending the list of chemicals subject to the rule.

Section 716.18(b) provides that ITC-designated chemicals may be made subject to the rule by the publication of a regulation to that effect in the Federal Register. Therefore, this regulation adding these chemicals to 40 CFR 716.17 constitutes the notice required by 40 CFR 716.18(b). On December 28, 1984, the chemical substances listed below will become subject to 40 CFR Part 716, Subpart A.

Elsewhere in today's Federal Register, EPA is issuing a notice announcing the receipt of the Fifteenth Report of the Interagency Testing Committee, which was transmitted to the Administrator of EPA on November 6, 1984. The Fifteenth Report, which revises and updates the Committee's priority list of chemicals, adds seven chemicals to the list for priority consideration within 12 months by EPA in the promulgation of test rules under section 4(a) of TSCA. In addition to adding the seven chemicals designated by the ITC to the section 8(d) Health and Safety Data Reporting rule, the Agency, in a separate action, is adding these chemicals to the list of substances and mixtures for which a completed Preliminary Assessment Information report must be submitted under section 8(a) of TSCA.

The seven new designated chemicals are listed below.

II. Chemicals To Be Added

CAS No.	Name
84-65-1	Anthraquinone.
85-22-3	Pentabromoethylbenzene.
98-82-8	Cumene.
126-99-8	2-Chloro-1,3-butadiene (Chloroprene).
137-20-2	Sodium N-methyl-N-oleoyltaurine.
149-30-4	Mercaptobenzothiazole.
556-67-2	Octamethylcyclotetrasiloxane.

III. Economic Impact

EPA estimates that submitting the required data on these additional chemicals will cost industry \$70,800. This consists of the following:

Corporate rule review.....	\$39,670
Corporate review (site identification).....	4,100
File search.....	7,940
Title listing.....	340
Photocopying (materials and labor).....	2,020
Managerial review.....	14,900
Ongoing reporting.....	1,830
Total.....	70,800

If the Agency assumes ± 30 percent margin of error in these estimates, the range of probable cost varies from \$92,040 to \$49,560. These costs are minimal compared to the importance of obtaining information in time to evaluate ITC-designated chemicals within statutory deadlines.

IV. Rulemaking Record

EPA has established a public record (docket number OPTS-84013) for this rulemaking document which, along with a complete index, is available for inspection in Rm. E-108, 401 M St., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. This record includes information considered by the Agency in adding the ITC chemicals to this rule. The record includes the following:

1. Health and Safety Study Reporting Regulations (40 CFR Part 716), Public Record, Docket No. 84003.
2. Reports Impact Analysis for 40 CFR Part 716 and this regulation.
3. Fifteenth Report of the Interagency Testing Committee (ITC).

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of \$100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive order.

This final rule was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 716.18(b)—a final rule which had been previously reviewed by OMB under the terms of the Executive order.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0004.

(Sec. 8(d), Pub. L. 94-469, 90 Stat. 2029 (15 U.S.C. 2607(d)))

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements.

Dated: November 15, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, Title 40, Chapter I, Part 716 is amended by adding § 716.17(a)(10) and OMB control number 2070-0004 to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(10) As of December 28, 1984, the following chemical substances are subject to this subpart.

CAS No.	Name
84-65-1	Anthraquinone.
85-22-3	Pentabromomethylbenzene.
98-82-8	Cumene.
126-99-8	2-Chloro-1,3-butadiene (Chloroprene).
137-20-2	Sodium N-methyl-N-oleoyltaurine.
149-30-2	Mercaptobenzothiazole.
556-67-2	Octamethylcyclotetrasiloxane.

* * *

(Information collection requirements approved by the Office of Management and Budget under control number 2070-0004)

[FR Doc. 84-30898 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-2-FRL-2726-7]

New Jersey; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of New Jersey for final authorization, public hearing and public comment period.

SUMMARY: New Jersey has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed New Jersey's application and has determined that the State must adopt two regulatory amendments for final authorization. The State must amend its exemption for incinerator facilities under N.J.A.C. 7:26-10.7(a)(1) to make it equivalent to the Federal exemption found at 40 CFR 264.340(b). The State must also amend N.J.A.C. 7:26-12.2 (f) through (k) to

include all of the groundwater information that must be submitted as part of a land disposal facility's permit application, pursuant to the Federal requirements found at 40 CFR 270.14(c) (1) through (8). The State has already proposed the incinerator amendment in the August 6, 1984 State Register (CITE 16 N.J.R., page 2046) and the land disposal amendment in the October 1, 1984 State Register (CITE 16 N.J.R., page 2478). The State intends to adopt the necessary amendments by December 31, 1984. Thus, EPA tentatively intends to grant final authorization to the State to operate its program in lieu of the Federal program. New Jersey's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application.

DATES: A public hearing is scheduled for January 3, 1985. New Jersey will participate in the public hearing held by EPA on this subject. All comments on the New Jersey final authorization application must be received by the close of business on January 10, 1985.

ADDRESSEES: Copies of New Jersey's final authorization application are available during normal business hours at the following addresses for inspection and copying:

New Jersey Department of Environmental Protection, Division of Waste Management, Office of the Director, 32 East Hanover Street, Trenton, New Jersey 08625, Telephone (609) 292-1250

New Jersey Department of Environmental Protection, Southern Field Office, R.D. #1 Route 70, Vincentown, New Jersey 08088, Telephone (609) 859-2958

New Jersey Department of Environmental Protection, Northern Field Office, 1259 Route 46, Parsippany, New Jersey 07054, Telephone (201) 648-3669

New Jersey Department of Environmental Protection, Central Field Office, 120 Route 156, Yardville, New Jersey 08620, Telephone (609) 292-9592

Environmental Protection Agency, Region II Library, 26 Federal Plaza, Room 734, New York, New York 10278. Telephone (212) 264-2881

Environmental Protection Agency, Headquarters Library PM 211A, 401 M Street, SW, Washington, DC 20460. Telephone (202) 382-5926.

Written comments on the application and requests to speak at the hearing should be sent to: Deborah A. Craig, New Jersey State Coordinator, Solid Waste Branch, U.S. EPA, Region II, 26

Federal Plaza, Room 906, New York, New York 10278. Telephone (212) 264-0504.

The public hearing will be held on January 3, 1985 at 10:00 a.m. in the First Floor Conference Room, State Library, West State Street, Trenton, New Jersey.

FOR FURTHER INFORMATION CONTACT:

Deborah A. Craig, New Jersey State Coordinator, Solid Waste Branch, U.S. EPA, Region II, 26 Federal Plaza, Room 906, New York, New York 10278. Telephone (212) 264-0504.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6226(c)). EPA's implementing regulations at 40 CFR 271.121-271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260-263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks, and, in certain instances (see item B. below for discussion), for surface impoundments and waste piles as well. Phase II B covers incinerator facilities, and Phase II C addresses landfills and land treatment facilities.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1-271.23.

B. New Jersey

New Jersey received Phase I interim authorization on February 2, 1983 and

Phase II A and B interim authorization on April 6, 1984. Since New Jersey's application for Phase II A and B interim authorization was submitted after the January 26, 1983 deadline for inclusion of certain waste piles and surface impoundments in Component A, the State's Phase II authorization includes only responsibility for permitting storage and treatment in tanks, containers and incinerators. (See 47 FR 32379, July 26, 1982.) It does not include responsibility for permitting treatment, storage or disposal in surface impoundments, waste piles, land treatment facilities or landfills. New Jersey applied for permitting authority for land disposal facilities as part of its final authorization application submission.

New Jersey solicited public comment and held a public hearing, on June 22, 1984, on its draft application for final authorization. On August 3, 1984, New Jersey submitted its application for final authorization to EPA. On August 20, 1984, New Jersey submitted to EPA an addendum to its application which was the transcript of the State's public hearing on the draft application. Upon receipt of this addendum, EPA considered the State's final authorization application to be complete.

EPA has reviewed New Jersey's application and has determined that the State must adopt two regulatory amendments for final authorization. The State must amend its exemption for incinerator facilities under N.J.A.C. 7:26-10.7(a)(1) to make it equivalent to the Federal exemption found at 40 CFR 264.340(b). The State must also amend N.J.A.C. 7:26-12.2(f) through (k) to include all of the groundwater information that must be submitted as part of a land disposal facility's permit application, pursuant to the Federal requirements found at 40 CFR 270.14(c)(1) through (8). The State has already proposed the incinerator amendment in the August 6, 1984 State Register (CITE 16 N.J.R., page 2046) and the land disposal amendment in the October 1, 1984 State Register (CITE 16 N.J.R., page 2478). The State intends to adopt the necessary amendments by December 31, 1984. Consequently, EPA intends to tentatively grant final authorization to New Jersey.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on January 3, 1985 at 10:00 a.m., in the First Floor Conference Room, State Library, West State Street, Trenton, New Jersey. The public may also submit written comments on EPA's tentative determination up until the close of business on January 10, 1985.

Copies of New Jersey's application are available for inspection and copying at the location indicated in the "ADDRESSEES" section of this notice.

In making its final decision, EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a decision to deny final authorization to New Jersey. EPA expects to provide public notice, in January 1985, of its final decision on whether or not to approve New Jersey's program. The notice will be published in the *Federal Register* and will include a summary of the reasons for the final determination and a response to all major comments.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indians-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Dated: November 5, 1984.

Christopher Daggett,
Regional Administrator.

[FR Doc. 84-31160 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL SCIENCE FOUNDATION

48 CFR Ch. 25

Acquisition Regulation; Establishment of Chapter

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: These regulations establish the National Science Foundation Acquisition Regulation (NSFAR) as Chapter 25 of the Federal Acquisition Regulation System. The NSFAR implements and supplements the FAR and supersedes the current NSF Procurement Regulations (41 CFR Chapter 25).

EFFECTIVE DATE: November 28, 1984.

ADDRESS: Division of Grants and Contracts, Policy Office, Room 201, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Kirby (202) 357-7880.

SUPPLEMENTARY INFORMATION: The NSFAR is based primarily on the current NSF Procurement Regulations (41 CFR Chapter 25). NSF published these regulations in a notice of proposed rulemaking in the *Federal Register* on March 15, 1984 (49 FR 9757). Requesting return of comments on or before May 15.

1984. No substantive comments were received.

A minor correction was made to a typographical error in section 2527.7002(a). Title 48 of the Code of Federal Regulations is amended as set forth below.

List of Subjects in 48 CFR Ch. 25

Government procurement.

Francis G. Naughten,
Acting Director, Division of Grants & Contracts.

November 19, 1984.

NSF amends Title 48 by establishing Chapter 25 to read as follows:

CHAPTER 25—NATIONAL SCIENCE FOUNDATION ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

Part 2501—Federal Acquisition Regulations System

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 2515—Contracting by Negotiation

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 2527—Patents, Data, and Copyrights
Part 2532—Contract Financing

SUBCHAPTER A—GENERAL

PART 2501—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2501.1—Purpose, Authority, Issuance

Sec.

- 2501.101 Purpose.
- 2501.102 Authority.
- 2501.103 Applicability.
- 2501.104 Issuance.
- 2501.104-1 Publication and code arrangement.
- 2501.104-2 Arrangement of regulations.

Subpart 2501.4—Deviations From the FAR.

- 2501.403 Individual deviations.
- 2501.404 Class deviations.

Subpart 2501.6—Contracting Authority and Responsibilities

- 2501.601 General.
- 2501.602 Contracting officers.
- 2501.602-1 Authority.

Authority: (42 U.S.C. 1870(a)).

Subpart 2501.1—Purpose, Authority, Issuance

2501.101 Purpose.

These regulations implement and supplement the Federal Acquisition Regulations (FAR).

2501.102 Authority.

The NSF Acquisition Regulations are issued under the authority of Section 11(a) of the National Science Foundation

Act of 1950, as amended (42 U.S.C. 1870(a)).

2501.103 Applicability.

Except where a deviation is specifically authorized in accordance with Subpart 2501.4 or otherwise authorized by law, the FAR and the NSFAR govern all NSF acquisitions.

2501.104 Issuance.

2501.104-1 Publication and code arrangement.

(a) The NSFAR is published in the daily issues of the *Federal Register* and, in cumulative form, in the Code of Federal Regulations.

(b) The NSFAR is issued as Chapter 25 of Title 48, CFR.

2501.104-2 Arrangement of regulations.

The NSFAR uses the same numbering system and arrangement used in the FAR. Where the NSFAR implements the FAR it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, Parts 70 and up are used by the NSFAR. Where the subject matter in the FAR requires no implementation the NSFAR contains no corresponding part.

Subpart 2501.4—Deviations From the FAR

2501.403 Individual Deviations.

Individual deviations, affecting only one contracting action may be authorized by the NSF Procurement Executive.

2501.404 Class Deviations.

Class deviations may be authorized by the NSF Procurement Executive subject to the limitations set forth in FAR Subpart 1.4.

Subpart 2501.6—Contracting Authority and Responsibilities

2501.601 General.

Authority and responsibility to contract for authorized supplies and services is vested in the Director, NSF, within the limits expressly provided by the National Science Foundation Act of 1950 (42 U.S.C. 1861-et seq.) The NSF Procurement Executive is delegated overall responsibility by the Director for the Foundation's contracting activities.

2501.602 Contracting Officers.

2501.602-1 Authority.

NSF Contracting Officers have authority to enter into, administer, or terminate contracts and make related determinations and findings to the extent of the authority delegated to them

in writing by the NSF Procurement Executive.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2515—CONTRACTING BY NEGOTIATION

Subpart 2515.2—Negotiation Authorities

2515.215-70 NSF Negotiation Authorities.

(a) *Authorities.* Citation: 42 U.S.C. 1870(c).

(b) *Application.* When an NSF contract is for scientific activities which are determined by the NSF contracting officer to be "necessary to carry out the purposes of the NSF Act," then 41 U.S.C. 252(c)(15) is applicable and the contract may be entered into through negotiation rather than formal advertising. The Foundation's contracting officer may, in lieu of reliance on 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15), utilize other applicable negotiating authorities at his or her discretion. 42 U.S.C. 1870(c) and 41 U.S.C. 252(c)(15) may also be used to authorize negotiation if the Foundation is carrying out, "at the request of the Secretary of State or Secretary of Defense, specific scientific activities in connection with matters relating to international cooperation or national security." Contracts or their modifications entered into under this authority may be done so without legal consideration and without performance or other bonds.

(42 U.S.C. 1870(c))

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2527—PATENTS, DATA, AND COPYRIGHTS

Subpart 2527.70—Disposition of Rights in Inventions

Sec.

- 2527.7001 General.
- 2527.7002 NSF patent policy.

Subpart 2527.71—Data Rights [Reserved]

Authority: 35 U.S.C. 200 et seq., commonly called the Bayh-Dole Act, as implemented by Office of Management and Budget Circular A-124; Secs. 11(e) and 12(a) of the National Science Foundation Act, as amended (42 U.S.C. 1870(e) and 1871(a)); and the Presidential Memorandum entitled "Government Patent Policy", issued February 18, 1983.

Subpart 2527.70—Disposition of Rights in Inventions

2527.7001 General.

The policies, procedures, and clauses that govern allocation of rights to

inventions made in performance of NSF sponsored research were published in the **Federal Register** on May 2, 1983 at 48 FR 19860 as 45 CFR Part 650. These regulations shall also apply to contracts entered into by the National Science Foundation.

2527.7002 NSF patent policy.

As authorized by the National Science Board at its 230th meeting, October 15-16, 1981, the Director of the National Science Foundation adopted the following statement of NSF patent policy:

(a) As required by the Bayh-Dole Act and the Presidential Memorandum entitled "Government Patent Policy" issued February 18, 1983, the Foundation will use the Patent Rights clause prescribed by the Office of Management and Budget in all its funding agreements for the performance of experimental, developmental, or research work, including contracts for the operation of Government-owned research facilities, unless the Foundation determines that some other provision would better serve the purposes of that Act or the interests of the United States and the general public.

(b) In funding agreements covered by a treaty or agreement that provides that an international organization or foreign government, research institute, or inventor will own or share patent rights, the Foundation will acquire such patent rights, as are necessary to comply with the applicable treaty or agreement.

(c) The Foundation will claim no rights to inventions in funding agreements made primarily for the support of education or training, such as fellowships and traineeships. A disclaimer of interest in inventions will be included in such awards.

(d) If an awardee elects not to retain rights to an invention, the Foundation will allow the inventor to retain the principal patent rights unless the awardee shows that it would be harmed by that action.

(e) The Foundation will normally allow any patent rights not wanted by the awardee or inventor to be dedicated to the public through publication. However, if another Federal agency is known to be interested in the relevant technology, the Foundation may give it an opportunity to review and patent the invention so long as that does not inhibit the dissemination of the research results to the scientific community.

(f) The Foundation will waive the restrictions imposed by the Bayh-Dole Act on the assignment or exclusive licensing of NSF-supported inventions by a nonprofit organization when that appears to serve the policy and objective of the Act. For identified inventions, the Foundation will waive the restrictions if the nonprofit organization obtains from the prospective assignee or licensee a firm commitment to develop and commercialize the invention. In any industry-university joint research award, the Foundation will waive the restrictions at the time of award if the nonprofit organization shows that they are unfair considering the industrial participant's contribution or that the project will not be undertaken unless they are waived.

(g) In funding agreements not controlled by the Bayh-Dole Act, the Foundation will waive any of the rights or conditions normally reserved or imposed if the grantee or contractor demonstrates (i) that the interests of the United States and the general public will

be better served thereby, or (ii) that it is making a substantial contribution of funds, facilities, or equipment to the work performed under the funding agreement.

(h) As far as practical, the Foundation will apply the intent of this policy to funding agreements entered into before the effective dates of the Bayh-Dole Act and the Presidential Memorandum.

Subpart 2527.71—[Reserved]

PART 2532—CONTRACT FINANCING

Subpart 2532.4—Advance Payments

Sec.

2532.401 Statutory authority.

2532.403 Applicability.

Authority: (42 U.S.C. 1870(d)).

Subpart 2532.4—Advance Payments

2532.401 Statutory authority.

The NSF Act (42 U.S.C. 1870(d)) provides that advance, progress, or other payments which relate to scientific activities or scientific information may be made without regard to the provisions of Section 3548 Revised Statutes (31 U.S.C. 529)

2532.403 Applicability.

Advance payments may be made in any amount not exceeding the contract price, provided (a) the amount of the advance payment is based upon an analysis of the financing required by the contractor for the contract and does not exceed reasonable financial requirements between payments, and (b) such advance payment is appropriate in order to contract for the required work.

[FR Doc. 84-31121 Filed 11-26-84; 8:45 am]

BILLING CODE 7555-01-M

Proposed Rules

Federal Register

Vol. 49, No. 230

Wednesday, November 28, 1984

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ASW-50]

Proposed Removal of Transition Area: Cleveland, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area at Cleveland OK. The intended effect of the proposed action is to release controlled airspace no longer required for the protection of aircraft executing standard instrument approach procedure (SIAPs). This action is necessary since the proponent of the proposed nonfederal nondirectional radio beacon (NDB) has notified the agency the NDB will not be installed, thereby canceling the need for a 700-foot transition area.

DATE: Comments must be received by January 14, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 84-ASW-50, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O.

Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2463.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ASW-50." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may change in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communication must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area at Cleveland, OK. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

Aviation safety.

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Cleveland, OK [Removed]

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65.)

Issued in Fort Worth, TX, on November 13, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-31090 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-AAL-16]

Proposed Alteration of Colored Federal Airway A-1, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to move Colored Federal Airway A-1

approximately six miles northeastward because of the relocation of the Farewell, AK, Nondirectional Radio Beacon (NDB). The NDB will better serve the users at Farewell Lake, AK, Airport where it is to be relocated.

DATES: Comments must be received on or before January 11, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-16, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AAL-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All

comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.105 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to relocate Colored Federal Airway, Amber 1 approximately six miles northeastward between Pantilla Lake, AK, NDB and Takoma River, AK, NDB. This action is necessitated by the relocation of existing Farewell, AK, NDB to a location in the proximity of Farewell Lake, AK, Airport. Section 71.105 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

Colored Federal airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation

Administration proposes to amend § 71.105 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

A-1 [Amended]

By removing the words "Farewell, AK, RBN;" and substituting the words "Farewell Lake, AK, NDB;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 19, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-31094 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-AAL-12]

Proposed Designation of Transition Area—Hooper Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a 700 foot transition area in the vicinity of Hooper Bay, AK. A new very high frequency omni-directional radio range distance measuring equipment (VOR/DME) has been installed at Hooper Bay and three new instrument approach procedures have been developed using this navigational aid. The transition area would provide controlled airspace from 700 feet above the surface for departure/arrival aircraft.

DATES: Comments must be received on or before January 11, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 84-AAL-12, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-

Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following is made: "Comments to Airspace Docket No. 84-AAL-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a 700 foot

transition area in the vicinity of Hooper Bay, AK. A new VORTAC has been installed at Hooper Bay and three new instrument approach procedures have been developed that have Hooper Bay in their descriptions. This action provides controlled airspace for IFR arrival/departure operations. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and

Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Hooper Bay, AK [New]

That airspace extending upward from 700 feet AGL within 9.5 miles southwest and 4.5 miles northeast of the 315° radial from the Hooper Bay VORTAC and from the Hooper Bay VORTAC extending from 18.5 miles northwest, and within 4.5 miles southwest, and 9.5 miles northeast of the 135° radial from the Hooper Bay VORTAC extending from the VORTAC to 23.5 miles southeast.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9585); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on November 19, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-31095 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 84-ASW-49]

Proposed Designation of Control Zone: Ardmore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a part-time control zone at Ardmore, OK. The intended effect of the

proposed action is to provide controlled airspace for aircraft executing standard instrument approach procedures (SIAPs) to the Ardmore Municipal Airport. This action is necessary since a part-time nonfederal airport traffic control tower (ATCT) has been commissioned, which will provide communications to the surface and weather reports, which will qualify the airport for a control zone during the hours the ATCT is operational.

DATES: Comments must be received by January 14, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. _____, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2463.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 49." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered

before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) since there is a part-time nonfederal ATCT now at the airport which will provide communications to the surface and take the required weather reports to qualify the airport for a control zone while the ATCT is operational. Section 171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

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

List of Subjects in 14 CFR Part 71

Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Ardmore, OK [New]

Within a 5-mile radius of the Ardmore Municipal Airport (latitude 34°18'12" N., longitude 97°01'01" W.) and within 1.5 miles each side of the Ardmore Vortac 055 degree radial extending from the 5-mile radius area to 8 miles southwest of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory. (Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Fort Worth, TX, on November 13, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-31091 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

[Docket No. 24339; Notice No. 84-20]

14 CFR Part 91

General Operating and Flight Rules; Proposed Change in Two-Way-Radio Communications; Failure Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to change two-way radio communications failure requirements for operations conducted under instrument flight rules (IFR), to clarify when a pilot must leave a clearance limit and begin descent and approach.

DATES: Comments must be received on or before: January 28, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24339, 800 Independence Avenue, SW., Washington, D.C., 20591; or deliver comments in duplicate to FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C., 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Davis, Airspace and

Air Traffic Rules Branch (AAT-230), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C., 20591, telephone (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. (24339)." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 91.127 of Part 91 of the Federal Aviation Regulations (14 CFR Part 91) to clarify when a pilot must leave a clearance limit and begin

descent and approach. The current rule, § 91.127, provides that a pilot may expect to receive either an "expect further clearance time (EFC)" or an "expect approach clearance time (EAC)" when air traffic control (ATC) issues holding instructions. In the event of two-way radio communications failure, a pilot predicates certain actions on an EAC or EFC if one or the other is received from ATC. However, effective January 21, 1982, ATC discontinued the use of EAC's and adopted a procedure that provides pilots with more accurate and real-time delay information, and thus, a basis for simpler and more precise actions when they experience two-way radio communications failure. This new ATC procedure retains the traditional use of EFC's while providing pilots with additional information on delays that may be expected (e.g., "EXPECT FURTHER CLEARANCE ONE TWO ONE FIVE ANTICIPATE ADDITIONAL TWO ZERO MINUTE DELAY AT (fix)"). This proposed change would bring the rule into line with ATC procedures which are based on the exclusive use of EFC's. Since a simple editorial elimination from the rule of the term "expect approach clearance time" would result in procedural ambiguities, this change would clarify and simplify the rule by indicating the precise pilot responsibilities in terms of when to leave a clearance limit and when to begin the descent and approach.

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

List of Subjects in 14 CFR Part 91

Aviation safety and Air traffic control.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Part 91 of the Federal Aviation Regulations (14 CFR Part 91) by amending § 91.127 to remove paragraphs § 91.127 (c)(4) and

(c)(5), and adding a new paragraph § 91.127(c)(3) to read as follows:

§ 91.127 IFR Operations: Two-way radio communications failure.

* * * * *

(c) * * *

(3) *Leave Clearance Limit.* (i) When the clearance limit is a fix from which an approach begins, commence descent or descent and approach as close as possible to the expect further clearance time if one has been received, or if one has not been received, as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

(ii) If the clearance limit is not a fix from which an approach begins, leave the clearance limit at the expect further clearance time if one has been received, or if none has been received, upon arrival over the clearance limit, and proceed to a fix from which an approach begins and commence descent or descent and approach as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

(Secs. 307 and 313(a), Federal Aviation Act of 1958, as amended (49 U.S.C. Sections 1348 and 1354(a)); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.45; and 14 CFR 11.65)

Issued in Washington, D.C., on November 7, 1984.

Norbert A. Owens,

Deputy Associate Administrator for Air Traffic.

[FR Doc. 84-31066 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6558]

Definition of "Annuity Contract or Optional Annuity Contract"

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule that would define the phrase "annuity contract or optional annuity contract," as used in section 3(a)(8) of the Securities Act of 1933, to include any contract with certain features. The rule would create a "safe harbor" by specifying conditions under which a particular contract will not be deemed subject to the federal securities laws. The release also addressed several related matters.

DATE: Comments must be received by February 15, 1985.

ADDRESS: Comments should be sent in triplicate to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-38-84. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Special Counsel, (202) 272-2061, or Karen L. Skidmore, Attorney, (202) 272-3017, Office of Insurance Products and Legal Compliance, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is proposing for public comment rule 151 under the Securities Act of 1933 [15 U.S.C. 77a et seq.] ("Act") relating to certain types of annuity contracts generally known as "guaranteed investment contracts,"¹ a category which includes single premium deferred annuities. The proposed rule would define the phrase "annuity contract or optional annuity contract," as used in section 3(a)(8) of the Act, to include any annuity contract that (1) is offered by an insurance company or other entity subject to regulation by a state as an issuer of insurance (an "insurer"), (2) includes certain guarantees or principal and interest by the insurer sufficient for it to be deemed to assume the investment risk, and (3) is not marketed primarily as an investment. The proposed rule would in large measure codify the rationale underlying the Commission's generally statement of policy regarding the availability of section 3(a)(8) for these contracts,² although the rule would

modify and clarify particular aspects of that release. The creation of a "safe harbor" will benefit the public by providing greater certainty in this area, while permitting the Commission to administer its statutes effectively. The Commission also is setting forth its views on several matters relating to the proposed rule.

I. Background and Discussion

Determining the status under the Act of any guaranteed investment contract involves certain factual and legal questions, e.g., whether the insurer or the contractowner is assuming the investment risk under the contract. To the extent the insurer assumes this risk, the contract is similar to the traditional annuity contract³ that Congress, in section 3(a)(8) of the Act, deemed to be "insurance" not subject to the Act.⁴ However, to the extent the insurer does not assume that risk (and thus it is assumed by the contractowner), the contract appears more like the variable annuity contract⁵ which the Supreme Court in *Securities and Exchange Commission v. Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959) ("VALIC"), and in *Securities and Exchange Commission v. United Benefit Life Ins. Co.*, 387 U.S. 202 (1967) ("United Benefit") held to be a "security" not entitled to rely on section 3(a)(8). Since under a guaranteed investment contract the insurer and the contractowner may share the investment risk to varying degrees, depending on the facts and circumstances involved,⁶ this type of

³ Under a traditional annuity contract, the insurer assumes the investment risk because it guarantees for the life of the contract (1) the principal amount of purchase payments made and interest credited thereto, and (2) to pay a specified rate of interest.

⁴ See *Securities and Exchange Commission v. Variable Annuity Life Ins. Co.*, 359 U.S. 65, 77-78 (1959).

⁵ Under a variable annuity contract, the contractowner generally assumes all the investment risk because the insurer's obligation to the contractowner is only to pay him his proportionate share of the present value of the investment portfolio underlying the contract. See *VALIC*, 359 U.S. at 71.

⁶ While the insurer assumes the investment risk to the extent it guarantees principal and a specified rate of interest for the life of the contract, it only shares this risk in the case of discretionary excess interest. The insurer, in initially establishing an excess rate, assumes the risk of that rate, but only for the period of the guarantee. Similarly, in each period thereafter in which discretionary excess interest is declared, the insurer assumes the investment risk of that rate for the period of the guarantee. On the other hand, in each period after the first, the contractowner assumes the investment risk that (1) no discretionary excess interest will be declared or (2) the rate actually declared will fluctuate (up or down) from the rate guaranteed in the immediately preceding period.

contract cannot always readily be characterized either as "insurance" or as a "security" for purposes of section 3(a)(8).

Faced with a proliferation of these contracts that were being marketed with particular emphasis on investment features, the Commission in 1979 issued Securities Act Release 6051, setting forth its views as to the factors an insurer should consider in determining whether a contract is within section 3(a)(8).⁷ Release 6051 sets forth a facts and circumstances approach, with substantial emphasis on the method of marketing. Notwithstanding its basically sound rationale, some of Release 6051's factors are not objective. The Commission now believes that it would be appropriate to propose a "safe harbor" rule that would prescribe, to the extent possible, an objective test for these contracts for purposes of section 3(a)(8).

II. Proposed Rulemaking

1. The Safe Harbor Concept

As a "safe harbor" rule, rule 151 is not intended to define the features of all guaranteed investment contracts that presently, or in the future, may be entitled to rely on section 3(a)(8).⁸ Accordingly, the fact that a contract does not satisfy all of the rule's conditions shall not raise any presumption that it is not entitled to rely on section 3(a)(8). Rather, an insurer may seek to rely directly on the statute, in accordance with relevant judicial interpretations, just as an insurer relying on the rule would not be precluded from also claiming the availability of section 3(a)(8) outside the rule. In addition, while the rule is designed to provide a reasonably objective test, the insurer claiming the availability of the rule has the burden of establishing compliance with all of its conditions.⁹ Finally, in view of the rule's objectives, and the purposes and policies underlying the Act, the rule would not be available to any contract in apparent technical compliance with the rule, if the contract is being sold as part of a plan to evade the provisions of the Act.

⁷ The actions of the Commission preceding the issuance of Release 6051 are set forth in Securities Act Rel. No. 6050 (April 5, 1979) [44 FR 21565 (April 11, 1979)]; Securities Act Rel. No. 5933 (May 17, 1978) [43 FR 22053 (May 23, 1978)]; and Securities Act Rel. No. 5838, *supra* note 1.

⁸ Clearly, however, the rationale underlying the conditions set forth in the rule are, in the Commission's view, relevant to any section 3(a)(8) determination.

⁹ See, e.g., *Lively v. Hirschfeld*, 440 F.2d 631 (10th Cir. 1971).

¹ The contracts included within this term are discussed in Securities Act Rel. No. 5838 [June 22, 1977] [42 FR 32861 (June 28, 1977)]. As relevant here, these contracts, generally speaking, are deferred annuities under which the purchaser agrees to pay money to an insurer (either in a lump sum or in installments) and the insurer promises to pay interest at a guaranteed rate for the life of the contract and, in some contracts, the insurer may periodically pay discretionary excess interest over and above the guaranteed rate. In addition, all of these contracts allow the purchaser to buy an annuity with the monies accumulated under the contract.

² See Securities Act Rel. No. 6051 (April 5, 1979) [44 FR 21626 (April 11, 1979)] ("Release 6051").

2. Proposed Rule 151

Rule 151 would define the phrase "annuity contract or optional annuity contract," as used in section 3(a)(8), to include any contract meeting the three conditions discussed below.

A. The Contract Must Be Issued by a Corporation Subject to Regulation as an Issuer of Insurance by Any State

Any contract seeking to rely on section 3(a)(8), must in the first instance be a "contract of insurance." Consistent with this requirement, and with the language of section 3(a)(8), paragraph (a)(1) of rule 151 requires the contract to be offered by a corporation subject to insurance regulation by any state.¹⁰ The purpose of this initial requirement is to determine whether the status under the Act of the investment vehicle in question should be analyzed pursuant to section 3(a)(8). It must be emphasized that even if the contract satisfies this initial requirement, it nevertheless must be measured against the next two requirements of rule 151 to determine whether it is the type of "contract of insurance" that Congress sought to leave *exclusively* to state regulation.¹¹

Release 6051 approaches this initial question from a different perspective by requiring not only that the contract be issued by a company subject to state insurance regulation, but also that it contain certain insurance-related features. One important feature is the requirement that the insurer assume a "meaningful mortality risk" under the contract by guaranteeing "permanent" annuity purchase rates that are not "significantly lower than those otherwise commercially available." This requirement has proven difficult for the Commission to administer because it does not provide specific guidance for making the necessary economic determinations. Accordingly, this aspect of Release 6051 has not been incorporated into the rule. At the same time, the Commission recognizes that there is authority for the proposition that the assumption of mortality risk by an insurer is a necessary feature of insurance under the federal definition.¹²

Therefore, while the proposed rule does not require an assumption of mortality risk by an issuer, the Commission specifically requests comments regarding whether a requirement of the assumption of mortality should be an element of the rule and, if so, how best to implement such a requirement.

B. The Insurer Assumes the Investment Risk Under the Contract

VALIC and *United Benefit* emphasize that Congress intended section 3(a)(8) to be available to annuity contracts under which the insurer assumes the investment risk. Although these cases, particularly *United Benefit*, do not require the insurer to assume *all* investment risk for a contract to be insurance under section 3(a)(8), they make clear that the degree of investment risk assumed by the insurer is the critical factor.¹³ Paragraph (a)(2) of the rule requires that the insurer must assume the investment risk under the contract, as prescribed by paragraph (b) of the rule. Paragraph (b), in turn, prescribes an objective test which provides that the insurer will be deemed to assume the investment risk sufficient for purposes of section 3(a)(8) if the following three conditions are satisfied:

i. The Value of the Contract Does Not Vary According to the Investment Experience of a Separate Account.

Where the value of an annuity contract varies according to the investment experience of a separate account¹⁴ the insurer promises to pay the contract owner only his proportionate share of the account's income and gains (or deduct his share of losses), similar to a variable annuity contract. Clearly in such a case the insurer is not assuming any investment risk, while the contract owner is assuming all investment risk and thus needs, and is entitled to, the disclosures the Act requires to be provided to an investor so he can intelligently appraise the risks involved in entrusting his money to the insurer. Paragraph (b)(1) of the rule precludes a contract from relying on the rule if its value varies according to the investment experience of a separate account.

¹⁰ See, e.g., *United Benefit*, 387 U.S. at 210.

¹¹ Section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)] ("1940 Act") defines a "separate account" as an account established by an insurer under which income, gains and losses are credited to or charged against such account without regard to other income, gains, or losses of the insurer. A substantially identical definition of this term, as it is used in various rules under the 1940 Act, is contained in rule 0-1(e)(1) under the 1940 Act [17 CFR § 270.0-1(e)(1)].

ii. The Insurer Guarantees Principal and a Specified Rate of Interest For the Life of the Contract.

As stated in *VALIC* and *United Benefit*, the hallmark of a traditional annuity contract is that the insurer assumes the investment risk by guaranteeing principal and interest for the life of the contract. This section of the rule's investment risk test is based on that conclusion. Paragraphs (b)(2) (i) and (ii) require that the insurer must, for the life of the contract, (1) guarantee the principal amount of purchase payments (net of deductions for sales, administrative, or other expenses) and interest credited thereto;¹⁵ and (2) credit a specified rate of interest to purchase payments and interest credited thereto.¹⁶ These requirements will ensure that, consistent with applicable precedent, a contract relying on the rule includes a guarantee by the insurer that at least some portion of benefits will be paid in a fixed amount.¹⁷

iii. The Insurer Guarantees That It Will Not Modify the Rate of Any Discretionary Excess Interest More Frequently Than Once Per Year.

As discussed above, the insurer assumes investment risk under the contract to the extent it guarantees principal and interest. In the case of discretionary excess interest, the longer the period for which such interest is guaranteed, the greater the degree of investment risk assumed by the insurer.¹⁸ Paragraph (b)(3) of rule 151

¹⁵ This requirement would work as follows. If in year one interest is credited under the contract at a rate of 10%, the rule requires the insurer to guarantee, for the remaining life of the contract, the principal amount of the dollar equivalent of the 10% interest actually credited in that year.

¹⁶ The specified rate under the contract must at least be equal to the minimum rate required to be credited by the Standard Nonforfeiture Law used by the states. See, e.g., 27 N.Y. Ins. Law § 208-c [McKinney's 1983-1984 Pocket Part].

¹⁷ See *VALIC*, 359 U.S. at 71. The requirements of this part of the rule would preclude a contract with a "market value adjustment feature" from relying on the rule because the insurer does not guarantee the principal amount of purchase payments and interest credited thereto under the contract. Under this feature, the insurer adjusts the proceeds a contractowner receives upon an early surrender (i.e., a surrender made before the end of a period of guaranteed discretionary excess interest) generally based upon the disparity between the rate of interest being credited to the withdrawn amount and the rate the insurer is crediting to new contracts. Thus, for surrenders made at a time of increasing rates, the adjustment could affect interest credited and principal.

While the rule has been drafted in a manner which precludes a contract with a market value adjustment feature from relying on it, the Commission does not intend to imply that no such contract can properly rely on section 3(a)(8).

¹⁸ Of course, the degree of investment risk assumed by the insurer also is based on the amount

Continued

¹⁰ Like section 3(a)(8), the rule would be available to any annuity contract or optional annuity contract issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or officer performing like functions of any state or territory of the United States or the District of Columbia.

¹¹ See *VALIC*, 359 U.S. at 74-75.

¹² See *Helvering v. Le Gierse*, 312 U.S. 531, 539-41 (1941); Kroll & Cohen, *The Insurance-Security Identity Crisis*, 46 Geo. Wash. L. Rev. 790, 793 (1978).

prescribes what the Commission believes is a reasonable balance by requiring that the insurer guarantee that it will not modify the rate of any discretionary excess interest credited under a contract more frequently than once per year. The Commission recognizes that any time period will necessarily be somewhat arbitrary, since neither Congress nor the courts have provided direct guidance on this issue. However, the Commission believes that Congress' 1982 decision to provide special tax treatment for discretionary excess interest only if it is guaranteed for at least one year supports using a one year time period.¹⁹ While clearly Congress was dealing with the tax treatment to be afforded a guaranteed investment contract, rather than its status under section 3(a)(8), the concerns it sought to address are analogous to those of the Commission. Congress was concerned that this type of contract was being used extensively for a purpose not originally contemplated (*i.e.*, a vehicle for the short-term accumulation of tax-deferred interest rather than a long-term retirement vehicle), and it determined that this concern would, in part, be alleviated by the one year requirement.²⁰ The Commission similarly has been concerned that the discretionary excess interest provision makes such a contract operate less like a traditional annuity and more like a security and that the one year standard is also appropriate to meet those concerns.

C. The Contract Must Not Be Marketed Primarily as an Investment

The third condition of rule 151, set forth in paragraph (a)(3), is that the contract not be marketed primarily as an investment. This condition is derived

principally from *United Benefit*, where the Supreme Court, in holding the annuity contract before it to be outside the scope of section 3(a)(8), found significant the fact that the contract was "considered to appeal to the purchaser not on the usual insurance basis of stability and security but on the prospect of 'growth' through sound investment management."²¹ Under these circumstances, the Court concluded "it is not inappropriate that promoters' offerings be judged as being what they were represented to be."²² Similarly, the Commission believes that insurers and others marketing a contract with primary emphasis on discretionary excess interest and other investment-oriented features, while relegating mention of the traditional retirement planning features or an annuity contract to the "fine print," must be viewed as offering a security and not insurance.²³

The Commission recognizes it is difficult to identify precisely the circumstances under which a contract is being marketed *primarily* as an investment, since all annuity contracts contain some investment features. In the Commission's view, among the factors relevant to this determination are whether the contract is promoted (1) with substantial emphasis on current discretionary excess interest, and the possibility of future interest, or other investment-oriented features of the contract,²⁴ and (2) as one type of tax-sheltered investment that is interchangeable with other such investments. In those instances where the insurer does not have direct control over the distribution of its contracts, the insurer nevertheless has the responsibility to take reasonable steps to ensure that its contracts are not

marketed in a manner that would cause them to be outside rule 151.

IV. Other Matters

Several related matters are addressed below.

1. Status of Release 6051

Since rule 151 will apply only prospectively, Release 6051 will continue to be the Commission's statement of views and method for analyzing guaranteed investment contracts until a final rule is adopted. At that time, the Commission intends to withdraw Release 6051.

2. Section 3(a)(8) as an "Exclusion"

In the Commission's view, there can be no serious question that Congress intended any insurance contract (including any annuity contract or optional annuity contract) falling within section 3(a)(8) of the Act to be excluded from all provisions of the Act, notwithstanding the plain language of the Act that section 3(a)(8) is an "exemption" from the registration but not the antifraud provisions.²⁵ Similarly, in the Commission's view, a contract which satisfies rule 151 would be excluded from all provisions of the Act.

3. Deposit Fund Riders

Release 6051 prescribes different approaches for determining the availability of section 3(a)(8) to a "deposit fund rider," depending upon its size.²⁶ While this bifurcated approach may have been appropriate in the context of Release 6051, it is not consistent with the approach of rule 151, which does not include quantitative distinctions. Accordingly, the insurer must, irrespective of the size of the rider, determine its status under section 3(a)(8) or the rule separately.

of discretionary excess interest it guarantees. But that risk, *i.e.*, the risk that the insurer, by making imprudent investments or because of insolvency, will not be able to satisfy its contractual obligations, is the type of risk that Congress deemed to be adequately addressed by state insurance regulation. See VALIC, 359 U.S. at 77.

¹⁹ See Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324 (1982). Section 805(f) of the Internal Revenue Code generally permits an insurer, in computing taxable gain or loss from operations, to take a full deduction for discretionary excess interest determined under (1) a rate guaranteed in advance for not less than 12 months or (2) a formula or index guaranteed in advance for not less than 12 months, provided the terms of the formula are beyond the insurer's control and are independent of its investment experience. The Commission has determined it would not be appropriate to incorporate the latter test into rule 151 because an insurer which "externalizes" its discretionary excess interest rate shifts to the contractowner all of the investment risk regarding fluctuations in that rate.

²⁰ See, e.g., *Tax Equity and Fiscal Responsibility Act of 1982*, S. Rep. No. 94, 97th Cong., 2d Sess. 350 (1982) ("S. Rep. No. 94").

²¹ *United Benefit*, 387 U.S. at 211.

²² *Id.* Citing *Securities and Exchange Commission v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 352-353 (1943); *Accord Grainger v. State Sec. Life Ins. Co.*, 547 F.2d 303, *reh'g denied*, 563 F.2d 215 (5th Cir. 1977), *cert. denied*, 436 U.S. 932 (1978) (in determining the availability of section 3(a)(8), it is appropriate to consider, along with the provisions of the contracts, "the circumstances surrounding their sale, including any oral representations made, in determining whether defendants were selling securities").

²³ *CF. S. Rep. No. 94, supra* note 20 350 ("The Committee believes that the use of . . . [guaranteed investment contracts] to meet long-term investment goals, such as income security, is still a worthy goal. However, the committee believes that their use for short-term investment and income tax deferral should be discouraged.").

²⁴ In particular, one feature that can be marketed in a manner that gives a contract the appearance of a short-term liquid investment, rather than insurance, is an "opt out" provision, under which the insurer agrees to waive the withdrawal charge otherwise applicable to a redemption if at any time the rate of discretionary excess interest falls below a rate specified in the contract.

²⁵ Section 3(a) exempts the instruments therein from all provisions of the Act "except as hereinafter expressly provided." The fraud provisions of sections 12(2) and 17 of the Act [15 U.S.C. 77(2) and 77q] are specifically made applicable to instruments exempted by section 3. Support for the view that Congress intended section 3(a)(8) to be an exclusion is found in the Act's legislative history (see *H.R. Rep. No. 85*, 73d Cong., 1st Sess. 15 (1933)), Supreme Court decisions (see, e.g., *Tcherepnin v. Knight*, 389 U.S. 332, 342 n.30 (1967); *VALIC*, 359 U.S. at 68), and commentators (see, e.g., L. Loss, *Securities Regulation* 496-497 (2d ed. 1961)).

²⁶ A deposit fund rider typically is associated with an insurance contract and permits monies in excess of the minimum purchase payments for the principal contract to be deposited with the insurer and credited with interest at a discretionary rate. Release 6051 views a "minor" rider as an incidental part of the principal contract, whereas a "significant" rider is viewed essentially as a separate instrument which must be analyzed independent of the principal contract in order to determine the availability of section 3(a)(8).

4. Accounting Treatment of Single Premium Deferred Annuities

Rule 151 is not intended to address the appropriate accounting treatment for any guaranteed investment contracts, including single premium deferred annuities.

5. No-Action and Interpretative Requests

To the extent an insurer is unable, or chooses not, to rely on rule 151, it has the responsibility for determining the status of its contracts under section 3(a)(8). For this reason, and because of the significant administrative burden which might otherwise ensue, the Commission has instructed the staff not to consider requests for no-action or interpretative advice regarding the status of a specific contract under the rule or section 3(a)(8) except in the most compelling circumstances.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule 151

It is proposed that Part 230 of Chapter II of Title 17 of the Code of Federal Regulations be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By adding § 230.151 to read as follows:

§ 230.151 Definition of "annuity contract or optional annuity contract" in Section 3(a)(8), for certain contracts.

(a) Any annuity contract or optional annuity contract (a "contract") shall be deemed to be within the provisions of section 3(a)(8) of the Securities Act of 1933 [15 U.S.C. 77c(a)(8)], *Provided*, That

(1) The contract is issued by a corporation subject to regulation as an issuer of insurance by any agency or officer of any State or Territory of the United States or the District of Columbia (the "insurer");

(2) The insurer assumes the investment risk under the contract as prescribed in paragraph (b) of this section; and

(3) The contract is not marketed primarily as an investment.

(b) The insurer shall be deemed to assume the investment risk under the contract if:

(1) The value of the contract does not vary according to the investment experience of a separate account;

(2) The insurer for the life of the contract

(i) Guarantees the principal amount of

purchase payments (net of deductions for sales, administrative, or other expenses) and interest credited thereto; and

(ii) Credits a specified rate of interest to net purchase payments and interest credited thereto; and

(3) The insurer guarantees that the rate of any interest to be credited in excess of that described in paragraph (b)(2)(ii) will not be modified more frequently than once per year.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chairman of the Commission has certified that the proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Paperwork Reduction Act

The proposed rule is not subject to the Act because it does not impose an information collection requirement.

Statutory Authority

The Commission is proposing rule 151 pursuant to the provisions of section 19(a) [15 U.S.C. 77s(a)] of the Act.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

November 21, 1984.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that Rule 151 under the Securities Act of 1933 [15 U.S.C. 77a et seq.], if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that, whether or not a substantial number of small entities offer contracts described in the rule, the economic impact of the rule, if any, on any entity offering such contracts will not be significant, because the rule would, in large part, codify the rationale underlying the Commission's general statement of policy regarding such contracts. The added certainty given by the rule may result in more of these contracts being offered and sold, but the general conditions for application of the securities laws will remain the same.

Dated: November 21, 1984.

John S.R. Shad,

Chairman.

[FR Doc. 84-31122 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

Joint Bidding Requirements; Request for Comments in Response to Petition for the Amendment of a Rule

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments.

SUMMARY: This notice is published pursuant to 43 CFR 14.4. The purpose of this notice is to request comments from all interested parties on the existing joint bidding requirements under 30 CFR 256.43; specifically, § 256.43(a)(3) which defines the term "subsidiary". A request to change or consider a change to 30 CFR 256.43 has been received. Information in response to this notice will be used to determine if an amendment of this particular section of the joint bidding regulations is recommended by those affected by it and therefore warrants further investigation and action by the Department of the Interior. As currently written, the term subsidiary means "a company 50-percent or more of whose stock or other interest having power to vote for the election of directors, trustees, or other similar controlling body of the company is directly or indirectly owned, controlled, or held with the power to vote by another company; a subsidiary shall be deemed a subsidiary of the other company owning, controlling, or holding 50-percent or more of the stock or other voting interest." If comments received indicate a change in the "50 percent or more" restriction is justifiable, the Department would consider amending this language to read "more than 50-percent" or some other variation.

DATE: Written comments must be received no later than December 28, 1984.

ADDRESS: Written comments should be submitted to the Chief, Offshore Leasing Management Division, Minerals Management Service, Mail Stop 645, 12201 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Chris Oynes, Chief, Offshore Leasing Management Division at (202) 343-6906.

Dated: November 13, 1984.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 84-31110 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Wyoming Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Wyoming to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed program amendment consists of proposed provisions to implement a blaster training, examination and certification program as required by 30 CFR Part 850.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on December 28, 1984, will not necessarily be considered. A public hearing on the proposal will be held on December 24, 1984, at the location listed below under "SUPPLEMENTARY INFORMATION." Any person interested in making an oral or written presentation at the hearing should contact Mr. William R. Thomas, OSM Casper Field Office by 4:00 p.m. on December 13, 1984. If no one has contacted Mr. Thomas to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644.

The public hearing, if requested will be at Federal Building, 100 B Street,

Casper, Wyoming 82601. See "SUPPLEMENTARY INFORMATION" for addresses where copies of the Wyoming program amendment and administrative record on the Wyoming program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, P.O. Box 1420, Mills, Wyoming 82644; Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION: Copies of the Wyoming program amendment, the Wyoming program and the administrative record on the Wyoming program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240.

Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

Wyoming Department of Environmental Quality, Land Quality Division, Herschler Office Building, 122 W. 25th Street, Cheyenne, Wyoming 82002.

The Wyoming program was approved by the Secretary of the Interior on November 26, 1980, *Federal Register* (45 FR 78634-78637). On October 12, 1984, the State of Wyoming submitted to OSM an amendment to its approved permanent regulatory program. The proposed program amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of proposed regulations governing the standards for certification of blasters and a proposed training and certification program for blaster certification. A discussion of each area of concern is provided in an outline which follows the Federal regulations at 30 CFR Part 816, 817, and 850 as published in the March 4, 1983 *Federal Register* (48 FR 9486).

In accordance with the provisions of 30 CFR 732.17, OSM is seeking comments from the public on the adequacy of the proposed program amendment. If the proposed amendment is found by the Director to be in accordance with SMCRA and no less

effective than the Federal regulations, the amendment will be approved and codified at 30 CFR Part 950 as part of the approved Wyoming program.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

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

List of Subjects in 30 CFR Part 950

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

Authority: Pub. L. 95-87, Sec. 503 (30 U.S.C. 1253).

Dated: November 20, 1984.

Wesley R. Booker,
Acting Director, Office of Surface Mining.

[FR Doc. 84-31140 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF EDUCATION

34 CFR Part 750

Excellence in Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education (the Secretary) proposes to issue regulations for the implementation of the Excellence in Education Program. The Excellence in Education Program assists

projects in individual public schools designed to achieve excellence in education through activities that are consistent with the purposes of the Excellence in Education Act.

DATE: Comments must be received on or before January 14, 1985.

ADDRESS: Comments should be addressed to Mary Jean LeTendre, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4181, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Enderlein, (202) 472-1762 or at the address above.

SUPPLEMENTARY INFORMATION:

Background

The Excellence in Education Act was enacted as Title VI of the Education for Economic Security Act of 1984, Pub. L. 98-377. The Excellence in Education Act (the EEA) was designed to maintain the momentum for achieving educational excellence that was fostered by the report of the National Commission on Excellence in Education, "A Nation At Risk: The Imperative for Educational Reform," and other reports. In "A Nation At Risk," the Commission detailed the need to reverse the decline in educational quality in this Nation and made specific recommendations for achieving the goal of excellence.

The Excellence in Education program is intended to provide grant assistance for individual public schools across the country that are implementing the recommendations of the Commission or otherwise striving to improve the quality of elementary or secondary education.

Section 602 of the EEA provides for assistance to local educational agencies to carry out projects of excellence in individual public schools through activities that: (1) Demonstrate successful techniques for improving the quality of education, (2) can be disseminated and replicated, and (3) are conducted with the participation of school principals, school teachers, parents, and business concerns in the locality of the school. In addition to these purposes, section 607 of the EEA authorizes special school awards for those schools that obtain financial contributions from the private sector in order to support activities proposed for Federal assistance under the EEA. The Congress has appropriated \$5 million for this program in Fiscal Year 1985.

Summary of Major Provisions

(1) Types of Grants

Proposed § 750.10 would implement provisions in sections 604, 605, and 607 of the EEA, establishing two types of

awards under this program. Section 750.10 of the proposed regulations would authorize the Secretary to award two types of grants under this program: (1) School excellence grants and (2) special school grants. Special school grants would require the assurance of private sector financial contributions as part of the application, as described in proposed § 750.20(b)(6)(ii). Those schools making such an assurance would be eligible for more funds under this program.

(2) Eligibility

Consistent with section 605(a)(1) of the EEA, under proposed § 750.2(a), a local educational agency (LEA) would be eligible to be considered for a grant under this program if a specific school or schools of that LEA were nominated by the chief State school officer or chief educational officer in accordance with proposed § 750.21. Proposed § 750.2(b) implements the requirement of section 606(b) of the EEA that no individual school is eligible to receive more than one grant award under this program.

(3) Establishing Priorities

Section 750.11 of the proposed regulations would allow the Secretary to establish priorities for this program consistent with section 605(c)(2) of the EEA. Proposed § 750.11(a) would implement the requirement of section 605(a)(2) of the EEA that the Secretary give priority to applications that have the highest potential for successfully demonstrating techniques to improve the quality of education and that can be disseminated and replicated. Under proposed § 750.11(B), the Secretary could also give priority to applications that have as their purposes one or more (or combinations) of those listed in section 605(c)(2)(A)-(G) of the EEA. Additionally, proposed § 750.11(c) would permit the Secretary to select as a priority other types of projects as announced in the *Federal Register*. The Secretary could establish a separate competition for each priority selected pursuant to proposed § 750.11(d).

In addition to establishing funding priorities under paragraphs (a) and (b) of proposed § 750.11, the Secretary could invite applicants to propose projects in any area of education within the purposes of the Excellence in Education Act. The purpose of the EEA is to provide funds to individual public schools to implement projects designed to achieve excellence.

(4) The Application and Selection Process

Proposed §§ 750.20 and 750.21 would implement the application procedures

required by section 605(a) and (b) of the EEA. Under proposed § 750.20, a local educational agency would have to submit to the chief State school officer or to the chief educational officer an application for each school for which the local educational agency applied for a grant. Under proposed § 750.21, the chief State school officer could select from those applications up to twenty-five for submission to the Secretary. In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the chief educational officer could select up to five applications. Proposed § 750.21 would establish the process for use by the chief State school officer or the chief educational officer in selecting schools to nominate to the Secretary.

(5) Selection Criteria

Proposed § 750.31 would implement the requirement of section 605(c)(1) of the EEA that applications be selected for funding under this program based on uniform criteria. Section 750.31 of the proposed regulations would establish selection criteria for use by the Secretary in evaluating applications nominated by the chief State school officers or chief educational officers for school excellence grants and special school grants. In addition to the points indicated in parentheses following each criterion in proposed § 750.31, proposed § 750.30 would permit the Secretary to distribute a reserved 15 points among the applicable criteria. The Secretary would announce, in a notice published in the *Federal Register*, how the reserved points would be distributed for each competition.

(6) Funding Limitations

Proposed § 750.33 would implement the requirements of section 606 of the EEA that the Secretary base the amount of a grant award to an individual school on the size of the school, specifically, the number of students enrolled in the school and the number of teachers teaching in the school.

For school excellence grants, schools with fewer than 1,000 students and teachers would receive up to \$15,000 for a one-year project or up to \$30,000 for a two-year project under proposed § 750.33(b). Schools with 1,000 or more students and teachers could receive up to \$20,000 for a one-year project or up to \$35,000 for a two-year project.

For special school grants, schools with fewer than 1,000 students and teachers could receive up to \$20,000 for a one-year project or up to \$35,000 for a two-

year project under § 750.33(c). Schools with 1,000 or more students and teachers could receive up to \$25,000 for a one-year project or up to \$40,000 for a two-year project.

Proposed § 750.33(d), in implementing section 606(b) of the EEA, would limit the length of a grant under this program to a project period no longer than two years.

(7) Cost Sharing

Cost sharing would be a required post-award condition for a grantee receiving a special school grant. Proposed § 750.40 would implement the requirement of section 607(b) of the EEA that the Federal share for each year of the grant be not less than 67 2/3 percent nor more than 90 percent of the total cost of the project. The Secretary would announce, in a notice published in the *Federal Register*, the Federal share for each category of special school grants. Proposed § 750.40(c) would implement section 607(b) of the EEA, requiring the Secretary to base the Federal share for each category of special school grants upon uniform selection criteria. Under proposed § 750.40(c), the Secretary would base the Federal share for each competition established in any year on the following criteria: (1) If the Secretary has selected a priority for the competition, the extent to which private sector contributions will enhance the implementation of projects under that priority, and (2) the amount of funds appropriated or likely to be appropriated for this program in a particular year. For example, the Secretary could select as a priority, demonstrations of new and promising models of school-community and school-to-school relationships including the use of nonschool personnel to alleviate shortages in areas such as mathematics, science, and foreign language instruction, as well as other partnerships between business and education, including the use of equipment. Since projects addressing this priority would require private sector support, the Secretary could establish the Federal share as 67 2/3 percent. By requiring a larger non-Federal share, the Secretary would make it necessary for local schools to seek maximum private sector contributions.

As defined in the Education Department General Administration Regulations (EDGAR), 34 CFR 77.1, "project" means only the activity described in an application. Accordingly, a special school project could be part of one or more larger programs conducted at the local level.

Although proposed § 750.20(b)(8)(ii) would require an assurance that some

private funds would be contributed to meet the cost of a special school project, the non-Federal share of the project costs would not have to be borne entirely by the private sector.

Executive Order 12291

These proposed 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 proposed regulations will not have a significant economic impact on a substantial number of small entities. In fiscal year 1985, it is anticipated that 250 or fewer grants not in excess of \$25,000 each will be awarded under this program to LEAs for individual public schools. The proposed regulations would impose minimal burden on States, LEAs, and schools.

Paperwork Reduction Act of 1980

The information collection requirements contained in these regulations at §§ 750.20 and 750.21 will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Comments that concern only information collection requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4181, 400 Maryland Avenue, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 750

Education, Grant program—education, Reporting and recordkeeping requirements.

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 proposed regulations.

(Catalog of Federal Domestic Assistance number —, Excellence in Education Program)

Dated: November 23, 1984.

T.H. Bell

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 750 to read as follows:

PART 750—EXCELLENCE IN EDUCATION PROGRAM

Subpart A—General

Sec.

750.1 What is the Excellence in Education Program?

750.2 What parties are eligible for a grant under the Excellence in Education Program?

750.3 What regulations apply to this program?

750.4 What definitions apply to this program?

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

750.10 What types of grants does the Secretary award under this program?

750.11 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

Sec.

750.20 How does a local educational agency apply for a grant under this program?

750.21 How does a State educational agency nominate a school for a grant under this program?

Subpart D—How Does the Secretary Make a Grant?

750.30 How does the Secretary evaluate an application?

750.31 What selection criteria does the Secretary use?

750.32 How does the Secretary consider fair and equitable distribution of projects?

750.33 What funding limitations apply to grants under this program?

Subpart E—What Conditions Must Be Met by the Grantee?

750.40 Is cost sharing required for grants under this program?

750.41 Are there restrictions on the use of funds for equipment under this program?

Authority: Excellence in Education Act (the EEA), Title VI of the Education for Economic Security Act (the EESA), Pub. L. 98-377, 98, Stat. 1267 (20 U.S.C. 4031), unless otherwise noted.

Subpart A—General**§ 750.1 What is the Excellence in Education Program?**

The Excellence in Education Program assists local educational agencies to carry out, in individual schools of those agencies, projects designed to achieve excellence in elementary and secondary education that—

(a) Demonstrate successful techniques for improving the quality of education;

(b) Can be disseminated and replicated; and

(c) Are conducted with the participation of school principals, school teachers, parents, and business concerns in the locality.

(Sec. 602 of the EEA)

§ 750.2 What parties are eligible for a grant under the Excellence in Education Program?

(a) Subject to the limitation in paragraph (b) of this section, a local educational agency is eligible to receive a grant under the Excellence in Education Program if a specific school or schools of that local educational agency have been nominated in accordance with § 750.21.

(b) A local education agency may not receive more than one grant award under this program for each individual school of the local educational agency.

(Sec. 604, 605, and 606 of the EEA)

§ 750.3 What regulations apply to this program?

(a) The following regulations apply to grants under the Excellence in Education Program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grants), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs).

(2) The regulations in this Part 750 do not apply to contracts awarded under the Excellence in Education Program.

(Sec. 604 of the EEA)

§ 750.4 What definitions apply to this program?

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in sections 3 and 603 of the Education for Economic Security Act:

Elementary school
Local educational agency
Secondary school
Secretary
State
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal year
Grant
Grant period
Project
Public

(c) *Additional definitions.* The following terms are used in this part:

"Chief educational officer" means the chief educational officer of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"Chief State school officer" means the chief educational officer of each State other than the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"EEA" means the Excellence in Education Act, Title VI of Public Law 98-377.

"EESA" means the Education for Economic Security Act, Public Law 98-377.

(Sec. 3 of the EESA and Sec. 603 of the EEA)

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?**§ 750.10 What types of grants does the Secretary award under this program?**

The Secretary awards two types of grants under this program:

(a) *School excellence grants.* The Secretary awards school excellence grants to carry out the purposes of this program described in § 750.1.

(b) *Special school grants.* The Secretary awards special school grants to encourage contributions of funds from the private sector to carry out further the purposes of this program.

(Sec. 605 and 607 of the EEA)

§ 750.11 How does the Secretary establish priorities for this program?

(a) The Secretary gives priority to applications proposing projects that have the highest potential for successfully demonstrating techniques to improve the quality of education and that can be disseminated and replicated.

(b) The Secretary also gives priority to applications that have as their purposes one or more (or combinations) of the following—

(1) Modernization and improvement of secondary school curricula to improve student achievement in academic or vocational subjects, or both, and competency in basic functional skills;

(2) Elimination of excessive electives and the establishment of increased graduation requirements in basic subjects;

(3) Improvement in student attendance and discipline through the demonstration of innovative student motivation techniques and attendance policies with clear sanctions to reduce student absenteeism and tardiness;

(4) Demonstrations to increase learning time for students;

(5) Experimentation providing incentives to teachers and teams of teachers for outstanding performance, including financial rewards, administrative relief such as the removal of paperwork and extra duties, and professional development;

(6) Demonstrations to increase student motivation and achievement through creative combinations of independent study, team teaching, laboratory experience, technology utilization, and improved career guidance and counseling; or

(7) Demonstrations of new and promising models of school-community and school-to-school relationships including the use of nonschool personnel to alleviate shortages in areas such as mathematics, science, and foreign language instruction, as well as other partnerships between business and education, including the use of equipment.

(c) In addition to establishing priorities for this program pursuant to paragraphs (a) and (b) of this section, the Secretary may also give priority to other types of projects as announced in the **Federal Register**.

(d) The Secretary may establish a separate competition for any or each priority selected. If a separate competition is established for a priority, the Secretary may reserve all applications that relate to the priority for review under the separate competition.

Note.—EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

(Sec. 605 of the EEA)

Subpart C—How Does One Apply for a Grant?

§ 750.20 How does a local educational agency apply for a grant under this program?

(a) A local educational agency shall submit to the chief State school officer (or chief educational officer) of the State in which the local educational agency is located a separate application for each school with respect to which the local educational agency is applying for a grant. In any fiscal year in which the Secretary establishes separate grant competitions within this program, a local educational agency may apply for more than one grant for an individual school by submitting separate applications to each or any of the grant competitions. Pursuant to § 750.2(b), a local educational agency may receive only one grant under this program for each individual school.

(b) In addition to the information required in EDGAR, 34 CFR 75.107, the local educational agency must include in its application the following information:

(1) The type of grant under § 750.10 for which the local educational agency is applying.

(2) The name and location of the school.

(3) School size in terms of the number of students enrolled and the number of teachers teaching in the school.

(4) The size, socioeconomic conditions, location of the community in which the school is located, and the local governmental arrangements between the government and the local

educational agency submitting the application.

(5) A description of the activities, including information designed to meet the selection criteria listed in § 750.31, that will be conducted in the school nominated.

(6) Assurances that—

(i) The school nominated for a grant will carry out the activities proposed in the application; and

(ii) If a school is nominated for a special school grant as described in § 750.10(b), it will receive contributions of funds from the private sector to help carry out the activities proposed in the application.

(7) An assessment of the potential for the proposed project to successfully demonstrate techniques for improving the quality of education that can be disseminated and replicated.

(Sec. 605 of the EEA)

§ 750.21 How does a State educational agency nominate a school for a grant under this program?

(a) In each fiscal year, the chief State school officer of each State may select for nomination to the Secretary up to twenty-five applications from those submitted in accordance with § 750.20(a). In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the chief educational officer may select up to five applications.

(b) In selecting schools to nominate under this section, the chief State school officer or chief educational officer shall assure a fair and equitable distribution of schools within the State after considering—

(1) All categories of public elementary and secondary schools within the State, including elementary schools, junior high schools, secondary schools, vocational-technical schools, or any combination of two or more schools;

(2) Socioeconomic conditions of the State;

(3) Geographic distribution within the State;

(4) School size;

(5) The size and location of the community in which the school is located;

(6) The local governmental arrangements between the government and the local educational agency submitting the application;

(7) The potential for the proposed project to demonstrate successfully techniques for improving the quality of education in ways that can be disseminated and replicated; and

(8) Other relevant information provided by the local educational agency in its application, including information that addresses each selection criterion in § 750.31.

(c) In order to nominate individual schools in local educational agencies for grants under this program, each chief State school officer or chief educational officer shall send to the Secretary the following information regarding each individual school to be nominated to the Secretary:

(1) The application submitted by the local educational agency that nominated the school.

(2) Any additional information considered under paragraph (b) of this section that is not included in the application and that is needed to enable the Secretary to make a determination under § 750.32.

(3) Any additional information that the chief State school officer (or chief educational officer) and local educational agency consider appropriate.

(Sec. 605 of the EEA)

Subpart D—How Does the Secretary Make a Grant?

§ 750.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 750.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 750.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the criteria in § 750.31.

(Sec. 605 of the EEA)

§ 750.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the school's need and to the purposes of this program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that traditionally have been underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) The quality of the work plan as evidenced by the specification and schedule of well-planned, creative, and innovative activities designed to achieve the project objectives; and

(vii) The participation of school principals, school-teachers, parents, and business concerns in the locality.

(b) *Quality of key personnel.* (15 Points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel that the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 Points)

(1) The Secretary reviews each application for information that shows

that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget of the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows the methods of assessing and reporting the outcomes of the project are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(3) The Secretary looks for information that shows reporting methods that enhance the potential for disseminating and replicating the project.

(e) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improving elementary or secondary education.* (15 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project contributes to the improvement of the quality of elementary or secondary education in the applicant's school through activities designed to implement recommendations from the Report of the National Commission on Excellence in Education, other national reports on the status of American education, or current research findings on approaches to making schooling more effective.

(2) The Secretary looks for information such as—

(i) The extent to which the project's objectives apply, to the school's particular circumstances and needs, current recommendations and findings concerning ways to improve the quality of education;

(ii) The process by which the applicant identified its needs;

(iii) The manner in which those objectives form the basis of the activities designed to demonstrate successful techniques for improving the

quality of education in the applicant's school;

(iv) The extent to which the project provides potential to experiment with standards of quality; and

(v) The benefit to the applicant from meeting the project's objectives.

(g) *National significance.* (15 Points)

(1) The Secretary reviews each application for information that shows the national significance of the project.

(2) The Secretary looks for information that shows the extent to which the project makes a contribution of national significance, as measured by factors such as—

(i) A demonstrated national need for the project in terms of the recommendations to improve the quality of education in the Report of the National Commission on Excellence in Education, other national reports on the status of American schools, or current research findings on ways to improve the effectiveness of schools;

(ii) The extent to which the project meets specific national needs as shown by—

(A) The national needs addressed by the project;

(B) The potential benefit to other schools in the Nation from successfully addressing the needs;

(C) The extent to which the project involves creative or innovative techniques to improve educational quality in the school;

(D) The extent to which the project builds upon and adds to current educational information or research; and

(E) The extent to which the project is designed to yield outcomes that can be readily disseminated and replicated in other school settings, such as products, materials, processes, or techniques.

(h) *Applicant's commitment and capacity.* (5 Points) The Secretary looks for information that shows the extent of the applicant's commitment to the project, its efforts to generate community support for the project, and the likelihood that it will build on the project when Federal assistance ends.

(Sec. 602 and 605 of the EEA)

§ 750.32 How does the Secretary consider fair and equitable distribution of projects?

(a) After evaluating the applications according to the criteria contained in § 750.31 of these regulations, the Secretary determines whether the most highly rated applications are fairly and equitably distributed throughout the Nation and throughout each State. In determining whether the most highly rated applications are fairly and equitably distributed, the Secretary considers—

(1) All categories of public elementary and secondary schools within each State and within the Nation, including elementary schools, junior high schools, secondary schools, vocational-technical schools, or any combination of two or more schools;

(2) Socioeconomic conditions within the State and the Nation;

(3) Geographical distribution within the State and the Nation;

(4) School size;

(5) The size and location of the community in which the school is located;

(6) The local governmental arrangements between the government and the local educational agency submitting the application; and

(7) The potential for the proposed project to demonstrate successfully techniques for improving the quality of education that can be disseminated and replicated.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under a particular competition or under this program.

(Sec. 605 of the EEA)

§ 750.33 What funding limitations apply to grants under this program?

(a) The amount of a grant awarded to a local educational agency for an individual school must be based on the size of the school, the number of students enrolled in the school, and the number of teachers teaching in the school.

(b) With respect to school excellence grants, the amount of the grant may exceed the following:

(1) For schools with a size of fewer than 1000 students and teachers combined, \$15,000 for a one-year project and \$30,000 for a two-year project.

(2) For schools with a size of 1000 or more students and teachers combined, \$20,000 for a one-year project and \$35,000 for a two-year project.

(c) With respect to special school grants, the amount of the grant may not exceed the following:

(1) For schools with a size of fewer than 1000 students and teachers combined, \$20,000 for a one-year project and \$35,000 for a two-year project.

(2) For schools with a size of 1000 or more students and teachers combined, \$25,000 for a one-year project and \$40,000 for a two-year project.

(d) A grant under this program may not be made for a project period longer than two years.

(Sec. 606 and 607 of the EEA)

Subpart E—What Conditions Must Be Met by the Grantee?

§ 750.40 Is cost sharing required for grants under this program?

(a) The Secretary requires cost sharing only for grantees that receive special school grants.

(b) The Federal share for each year of the grant may not be less than 67½ percent nor more than 90 percent of the total cost of the project for which a special school grant is awarded.

(c) The Secretary announces, in a notice published in the Federal Register, the Federal share for each competition established for special school grants. The Secretary bases the Federal share for each competition on the following criteria:

(1) If the Secretary has selected a priority for the competition, the extent to which private sector contributions will enhance the implementation of projects under that priority; and

(2) The amount of funds appropriated (or likely to be appropriated) for this program in a particular year.

Note.—EDGAR establishes the rules governing cost sharing. See 34 CFR 74.50–74.57.

(Sec. 607 of the EEA)

§ 750.41 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used to purchase equipment.

(Sec. 605 of the EEA)

[FR Doc. 84-31117 Filed 11-27-84; 8:45 am]

BILLING CODE 4000-01-M

34 CFR Part 755

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages

AGENCY: Department of Education.

ACTION: Proposal rule.

SUMMARY: The Secretary of Education (the Secretary) proposes to issue regulations for the implementation of the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, as authorized by the Education for Economic Security Act. This program assists projects of national significance in: (1) Mathematics and science instruction, computer learning, and critical foreign language instruction, designed to improve the skills of teachers and instruction and to increase

access of all students to this instruction; and (2) critical foreign languages, designed to improve or expand instruction.

DATES: Comments must be received on or before January 14, 1985.

ADDRESS: Comments should be addressed to Mary Jean LeTendre, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue SW., Room 4181, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Enderlein, (202) 472-1762 or at the address above.

SUPPLEMENTARY INFORMATION:

Background

Section 212, Title II of the Education for Economic Security Act (EESA), Pub. L. 98-377, authorizes the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages. The EESA was enacted to help meet the needs identified in "A Nation At Risk: The Imperative for Educational Reform," the report of the National Commission on Excellence in Education, and other national reports. Specifically, "A Nation at Risk" details a need to reverse the decline in mathematics and science competency in this country. This decline results in part from a shortage of qualified teachers as well as a reduction in the number of students taking courses in mathematics and science. Mathematics, science, computer technology, and foreign languages have a special importance in this country because continuing development in these areas is vital to the economic security of the Nation. In order to maintain economic strength, the skills of citizens in these fields must not be permitted to decline further. The purpose of the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages is to reverse this decline by funding projects designed to have nationwide impact in these critical areas. The Congress has appropriated \$9.9 million for this program in Fiscal Year 1985.

Summary of Major Provisions

(1) Types of Grants

Section 755.10 of the proposed regulations would authorize the Secretary to award two types of grants under this program: (1) nationally significant project grants, as described in § 755.11, and (2) critical foreign language grants, as described in § 755.12. State educational agencies

(SEAs), local educational agencies (LEAs), institutions of higher education, and private nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations could apply for nationally significant project grants under proposed § 755.2(a). For critical foreign language grants, under proposed § 755.2(b), only institutions of higher education could apply.

(2) Establishing Priorities

Under proposed § 755.13(a), with respect to nationally significant project grants, the Secretary would give priority for funding to (1) LEAs, or consortia thereof, proposing to establish or improve magnet schools for gifted and talented students, and (2) applicants proposing to provide special services to historically underserved and underrepresented populations in the fields of mathematics and science. (For the purposes of this program, magnet schools are those designed to attract gifted and talented students in the areas of mathematics, science, computer learning, or critical foreign languages and are distinct from magnet schools under Title VII of the EESA, which are for the purpose of achieving desegregation). Proposed § 755.13(a) would implement the requirement of section 212(b)(1) of the EESA that the Secretary give "special consideration" to these types of projects.

In addition, under proposed § 755.13(b), the Secretary could give priority to other types of projects listed in proposed §§ 755.11 and 755.12 or announced in the *Federal Register*. Proposed § 755.13(b) would also permit the Secretary to limit a priority to particular critical areas (including mathematics, science, computer learning, or particular critical foreign languages), particular educational levels, or any combination. Pursuant to proposed § 755.4, the Secretary would publish a list of critical foreign languages in the *Federal Register*. Levels of education would include, for example, preschool, elementary, secondary, or postsecondary education. The Secretary could establish a separate competition for each priority selected.

Sections 755.11 through 755.13 of the proposed regulations would incorporate the statutorily broad discretion of the Secretary to exercise leadership in education by focusing national attention on national needs within the scope of section 212 of the EESA. Under proposed § 755.13(b), the Secretary could invite applicants to propose projects in any area of education within

the purpose of section 212 of the EESA. The purpose of section 212 of the EESA is to fund projects designed to have nationwide impact in mathematics, science, computer learning, or critical foreign languages. Proposed §§ 755.11(c) and 755.12(d) would make clear that the Secretary does not provide general operating revenue to any applicant, including an LEA, an institution of higher education, or any other agency that needs or wishes additional resources to meet its own local needs.

(3) Participation of Children and Teachers From Private Schools

Proposed § 755.20 would implement the requirements in section 211 of the EESA for the equitable participation of private school children and teachers in the purposes and benefits of Title II of the EESA. As indicated in proposed § 755.20(a), the requirement for the equitable participation of children applies to States (including SEAs and State agencies for higher education) and LEAs. To make the requirements for the equitable participation of teachers in section 211(b) of the EESA consistent with other statutory provisions, proposed § 755.20 makes that requirement applicable to LEAs as well as to States (including SEAs and State agencies for higher education).

Section 755.20(b) of the proposed regulations would require an applicant that is a State (including an SEA or a State agency for higher education) or an LEA to provide an assurance in its application that it will comply with the requirements of section 211 of the EESA, governing the equitable participation of private school children and teachers, if such an applicant proposes to provide benefits under the EESA to public school children and teachers. Specific requirements are established in the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.650. Applicants other than those described above are not subject to the equitable participation requirements in section 211 of the EESA or in EDGAR.

(4) Selection Criteria

Selections 755.31 and 755.32 of the proposed regulations would establish selection criteria for use by the Secretary in evaluating applications for nationally significant project grants and for critical foreign language grants, respectively. In addition to the points indicated in parentheses following each criterion in proposed §§ 755.31 and 755.32, proposed § 755.30 would permit the Secretary to distribute a reserved 15 points among the applicable criteria for each grant competition. The Secretary would announce, in a notice published

in the *Federal Register*, how the reserved points would be distributed for each competition.

(5) Funding Considerations

Under proposed § 755.33 (a) and (b), the Secretary could fund applications other than the most highly rated applications if doing so would improve the geographical distribution of projects receiving funding in a particular competition or under this program. Proposed § 755.33 (a) and (b) would implement the requirement of section 212 of the EESA that projects assisted under this program have national significance by permitting the Secretary to assist projects that are best located to serve as resources for solving nationwide educational problems. Under proposed § 755.33(c), the Secretary could decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program. Under proposed § 755.33(d), the Secretary would not fund a project that receives Federal funds for the same project activities under title II of the EESA.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These regulations will not affect a substantial number of small entities. Only a small number of awards is planned for fiscal year 1985, and the proposed regulations would impose minimal burden on applicants and grantees.

Paperwork Reduction Act of 1980

The information collection requirements contained in §§ 755.20, 755.31, and 755.32 of these proposed regulations will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Comments that concern *only* information collection requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue NW., Washington, D.C. 20503. Attention:

Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Intergovernmental Review

The Secretary particularly requests comments on the proposed exclusion of this program from the requirements of Executive Order 12372, entitled "Intergovernmental Review of Federal Programs," as implemented by 34 CFR Part 79 (48 FR 29158; June 24, 1983). The bases for the proposed exclusion are categories 2b and 4b of the general Government-wide criteria (which are contained in appendix A to a notice published June 24, 1983, at 48 FR 29169). Criterion 2b excludes a research, development, and demonstration program other than those described in criterion 4b. Criterion 4b includes such a program within coverage of Executive Order 12372 if the program has a unique geographic focus, or is directly relevant to the governmental responsibilities of a State or local government within that geographic area. In contrast, this program assists nationally significant projects and activities that are designed to have nationwide impact.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4181, 400 Maryland Avenue SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 755

Education, Grants program—
education, Reporting and recordkeeping requirements.

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 proposed regulations.

Dated: November 23, 1984.

T.H. Bell,

Secretary of Education.

(The Catalog of Federal Domestic Assistance number is not available.)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 755 to read as follows:

PART 755—SECRETARY'S DISCRETIONARY PROGRAM FOR MATHEMATICS, SCIENCE, COMPUTER LEARNING, AND CRITICAL FOREIGN LANGUAGES

Subpart A—General

Sec.

755.1 What is the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages?

755.2 What parties are eligible for a grant under this program?

755.3 What regulations apply to this program?

755.4 What definitions apply to this program?

Subpart B—What Types of Projects Does the Secretary Assist Under This Program?

755.10 What types of grants does the Secretary award under this program?

755.11 What types of projects does the Secretary assist under a nationally significant project grant?

755.12 What types of projects does the Secretary assist under a critical foreign language grant?

755.13 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

755.20 What assurance must an applicant make?

Subpart D—How Does the Secretary Make a Grant?

755.30 How does the Secretary evaluate an application?

755.31 What are the selection criteria for nationally significant project grants?

755.32 What are the selection criteria for critical foreign language grants?

755.33 What special considerations may the Secretary use in selecting an application for funding?

755.34 Are there restrictions on the use of funds for equipment under this program?

Authority: Section 212, Title II of the Education for Economic Security Act (the

EESA), Pub. L. 98-377, 98 Stat. 1281 (20 U.S.C. 3972), unless otherwise noted.

Subpart A—General

§ 755.1 What is the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages?

The Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages assists projects of national significance in—

(a) Mathematics and science instruction, computer learning, and critical foreign language instruction, designed to improve the skills of teachers and instruction in these areas and to increase the access of all students to this instruction; and

(b) Critical foreign languages, designed to improve and expand instruction in those languages.

(Sec. 212 of the EESA)

§ 755.2 What parties are eligible for a grant under this program?

(a) The Secretary may award nationally significant project grants under § 755.11 to State educational agencies, local educational agencies, institutions of higher education, and private nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations.

(b) The Secretary may award critical foreign language grants under § 755.12 to institutions of higher education only.

(Sec. 212 of the EESA)

§ 755.3 What regulations apply to this program?

(a) The following regulations apply to grants made under this program:

(1) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 755.

(b) The regulations in this Part 755 do not apply to contracts awarded under this program.

(Sec. 212 of the ESSA)

§ 755.4 What definitions apply to this program?

(a) *Definitions in the Education for Economic Security Act.* The following terms used in this part are defined in Section 3 of the Education for Economic Security Act:

Elementary school
Institution of higher education
Local educational agency
Secondary school
Secretary
State
State agency for higher education
State educational agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal Year
Grant
Nonprofit
Private
Project
Public

(c) *Additional definitions.* The following terms are used in this part: "Critical foreign languages" means language designated by the Secretary in a notice published in the *Federal Register* as critical to national security, economic, or scientific needs.

"EESA" means the Education for Economic Security Act, Public Law 98-377.

"Gifted and talented student" means a student, identified by various measures, who demonstrates actual or potential high performance capability in the fields of mathematics, science, foreign languages, or computer learning.

(Sec. 212 of the EESA)

Subpart B—What Types of Projects Does the Secretary Assist under This Program?

§ 755.10 What types of grants does the Secretary award under this program?

The Secretary awards two types of grants under this program:

(a) Nationally significant project grants, as described in § 755.11.

(b) Critical foreign language grants, as described in § 755.12.

(Sec. 212 of the EESA)

§ 755.11 What types of projects does the Secretary assist under a nationally significant project grant?

(a) The Secretary funds applications proposing projects of national significance in mathematics and science instruction, computer learning, and critical foreign language instruction.

(b) Projects funded under this section may include, but are not limited to, those designed to—

(1) Improve teacher recruitment and retention in the fields of mathematics, science, computer learning, and critical foreign languages;

(2) Improve teacher qualifications and skills in the fields of mathematics, science, computer learning, and critical foreign languages; and

(3) Improve curricula in mathematics, science, computer learning, and critical foreign languages, including the use of new technologies.

(c) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Sec. 212 of the EESA)

§ 755.12 What types of projects does the Secretary assist under a critical foreign language grant?

(a) The Secretary funds applications proposing projects that are designed to improve or expand instruction in critical foreign languages.

(b) Projects to improve instruction in critical foreign languages may include, but are not limited to, those designed to—

(1) Provide short- or long-term advanced training to foreign language instructors;

(2) Provide training in new teaching methods and proficiency evaluation techniques; and

(3) Improve teaching methods through curriculum development, including the use of new technologies.

(c) Projects to expand instruction in critical foreign languages may include, but are not limited to, those designed to—

(1) Add to the curriculum languages not currently offered;

(2) Add to the curriculum advanced language courses;

(3) Devise instructional approaches suited to diverse student populations and learning needs; and

(4) Use technology to increase access to instruction in critical foreign languages.

(d) The Secretary does not provide operating revenue to meet local needs to any applicant under this program.

(Sec. 212 of the EESA)

§ 755.13 How does the Secretary establish priorities for this program?

(a) With respect to nationally significant project grants, the Secretary gives priority to—

(1) Local educational agencies, or consortia thereof, proposing to establish or improve magnet schools for gifted and talented students; and

(2) Applicants proposing to provide special services to historically underserved and underrepresented populations in the fields of mathematics and science.

(b) In addition to the priorities established in paragraph (a) of this section, each year the Secretary may

select as a priority one or more of the types of projects listed in § 755.11 or § 755.12, or other types of projects as announced in the *Federal Register*. The Secretary may limit any priority to particular critical subjects (including mathematics, science, computer learning, or particular critical foreign languages), particular educational levels, or any combination.

(c) The Secretary selects priorities by taking into consideration the unmet national needs to improve the quality of teaching and instruction in mathematics, science, computer learning, and critical foreign languages and the unmet national needs to improve or expand instruction in critical foreign languages.

(d) The Secretary may establish a separate competition for any or each priority selected. If a separate competition is established for a priority, the Secretary may reserve all applications that relate to that priority for review under the separate competition.

Note.—EDGAR establishes the method for applying priorities. See 34 CFR 75.105.

(Sec. 212 of the EESA)

Subpart C—How Does One Apply for a Grant?

§ 755.20 What assurance must an applicant make?

(a) An applicant that is a State (including a State educational agency or a State agency for higher education) or a local educational agency shall comply with the provisions of section 211 of the EESA, governing the equitable participation of private school children and teachers in the purposes and benefits of the EESA.

(b) An applicant described in paragraph (a) of this section shall include an assurance in its application that, in accordance with section 211 of the EESA, it will provide for the equitable participation of children and teachers in private elementary or secondary schools if the applicant proposes to use grant funds to provide benefits to children and teachers in public elementary or secondary schools, including the provision of services, materials, equipment, and inservice or teacher training and retraining.

Note.—EDGAR established requirements for participation of private school children. See 34 CFR 75.650.

(Sec. 211 of the EESA)

Subpart D—How does the Secretary Make a Grant?**§ 755.30 How does the Secretary evaluate an application?**

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the applicable selection criteria in § 755.31 or § 755.32.

(b) The Secretary awards up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the applicable criteria in § 755.31 or § 755.32.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion in § 755.31 or § 755.32 is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the *Federal Register*, the Secretary distributes the reserved 15 points among the applicable criteria listed in § 755.31 or § 755.32.

(Sec. 212 of the EESA)

§ 755.31 What are the selection criteria for nationally significant project grants?

The Secretary uses the following criteria in evaluating each application for a nationally significant project grant under § 755.11:

(a) Plan of operation. (15 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(vi) For applicants required to provide an opportunity for equitable participation of private school students and teachers—a clear description of

how the applicant will provide that opportunity.

(b) Quality of key personnel. (10 Points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) Budget and cost effectiveness. (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) Evaluation plan. (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) Adequacy of resources. (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Improvement of the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages. (20 Points)*

(1) The Secretary reviews each application for information that shows the extent to which the project will contribute to the improvement of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.

(2) The Secretary looks for information such as—

(i) The objectives of the project; and

(ii) The manner in which the objectives of the project further the purpose of improving the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages.

(g) National significance. (15 Points)

(1) The Secretary reviews each application for information that shows the national significance of the project.

(2) The Secretary looks for information that shows the extent to which the project makes a contribution of national significance, as measured by factors such as—

(i) A demonstrated national need for the project in terms of the recommendations to improve the quality of education in the Report of the National Commission on Executive in Education, other national reports on the status of American education, or current research findings on ways to improve the effectiveness of schools;

(ii) The extent to which the project meets specific national needs as shown by—

(A) The national needs addressed by the project;

(B) The benefits to be gained by meeting the objectives of the project; and

(C) The potential benefit to others from successfully addressing the needs;

(iii) The extent to which the project involves creative or innovative techniques to improve the quality of teaching and instruction in mathematics, science, computer learning, or critical foreign languages;

(iv) The extent to which the project builds upon and adds to current educational information and research; and

(v) The extent to which the project will provide a model or other

information that could be used by others to solve educational problems.

(h) Applicant's commitment and capacity. (10 Points)

The Secretary looks for information that shows the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Sec. 212 of the EESA)

§ 755.32 What are the selection criteria for critical foreign language grants?

The Secretary uses the following criteria in evaluating each application for a critical foreign language grant under § 755.12:

(a) Plan of operation. (20 Points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(vi) For applicants required to provide an opportunity for equitable participation of private school students and teachers—a clear description of how the applicant will provide that opportunity.

(b) Quality of key personnel. (15 Points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and

(ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly; and

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) Budget and cost effectiveness. (5 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) Evaluation plan. (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. Cross-reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable, including, for example, foreign language proficiency examinations of individual students.

(e) Adequacy of resources. (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities, such as language laboratories, that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) Improvement or expansion of instruction in critical foreign languages. (20 Points)

(1) The Secretary reviews each application for information that shows the extent to which the project contributes to the improvement or expansion of instruction in one or more critical foreign languages.

(2) The Secretary looks for information such as—

(i) The objectives of the project;

(ii) The manner in which the objectives of the project further the purpose of improving or expanding instruction in critical foreign languages;

(iii) The extent to which the project involves techniques that are innovative;

(iv) The extent to which the project builds upon and adds to current educational information and research on instruction in critical foreign languages; and

(v) The extent to which the project will provide a model or other information that could be used by others to solve education problems.

(g) Applicant's commitment and capacity. (15 Points)

The Secretary looks for information that shows the extent of the applicant's commitment to the project, its capacity to continue the project, and the likelihood that it will build upon the project when Federal assistance ends.

(Sec. 212 of the EESA)

§ 755.133 What special considerations may the Secretary use in selecting an application for funding?

(a) After evaluating applications according to the criteria contained in § 755.31 or § 755.32, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition or under this program.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under a particular competition or under this program.

(c) The Secretary may decline to fund a project that is eligible for funding by the Secretary under a different, specific Department of Education competition or program.

(d) The Secretary shall not fund a project that receives Federal funds for the same project activities under Title II of the EESA.

(Sec. 212 of the EESA)

§ 755.34 Are there restrictions on the use of funds for equipment under this program?

Of the funds made available through a grant under this program, the Secretary may restrict the amount of funds used under Part 755 to purchase equipment.

(Sec. 212 of the EESA)

[FR Doc. 84-31119 Filed 11-27-84; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[A-5-FRL-2725-8]****Approval and Promulgation of Implementation Plans; Illinois****AGENCY:** Environmental Protection Agency (USEPA).**ACTION:** Proposed rule; extension of the public comment period.

SUMMARY: On August 15, 1984 (49 FR 32601), USEPA proposed action on revisions to the draft Illinois 1982 ozone and carbon monoxide SIP. On October 2, 1984, (49 FR 38962), the public comment period was extended until October 13, 1984. On October 26, 1984, (49 FR 43072), the public comment period was extended until November 12, 1984. The State of Illinois has requested a further extension of the public comment period to allow a reasonable opportunity to comment on unresolved issues identified in the supplemental proposed rulemaking. Therefore, the public comment period is extended until December 3, 1984.

DATE: Comments must be received on or before December 3, 1984.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, (312) 886-6035.

Dated: November 15, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84-31161 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 52 and 81**[FL-011; A-4-FRL-2726-6]****Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Florida: Redesignation of SO₂ and Ozone Nonattainment Areas and Minor Rule Changes****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

SUMMARY: EPA today proposes to redesignate as attainment the Pinellas County sulfur dioxide primary and secondary nonattainment area and the Duval County ozone nonattainment area. Also, EPA proposes to approve a

State Implementation Plan (SIP) revision which provides that these redesignated areas be listed as air quality maintenance areas under a new rule also being approved today. EPA is also approving changes which the Florida Department of Environmental Regulation (DER) made in other rules to improve their wording, clarify their intent, and strengthen their prevention of significant deterioration (PSD) provisions.

DATE: To be considered, comments must be submitted on or before December 28, 1984.

ADDRESSES: Written comments should be addressed to Cheryl Espy of EPA, Region IV, Air Management Branch (see EPA, Region IV address below). Copies of the materials submitted by the States may be examined during normal business hours at the following locations:

Environmental Protection Agency,
Region IV, Air Management Branch,
345 Courtland Street, NE., Atlanta,
Georgia 30365.

Florida Department of Environmental
Regulation, Bureau of Air Quality
Management, Twin Towers Office
Building, 2600 Blair Stone Road,
Tallahassee, Florida 32301-8241.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Espy, Air Management Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, telephone 404/881-2864 (FTS: 257-2864).

SUPPLEMENTARY INFORMATION: On February 16, 1982, EPA granted full approval of the Florida State Implementation Plan. On August 12, 1983, DER submitted to EPA a revision to Florida's SIP. This revision consists of amendments to Florida Administrative Code Rules 17-2.100, 17-2.300, 17-2.400, 17-2.410, 17-2.460, 17-2.500, 17-2.510, and 17-2.650. On December 30, 1983 and June 13, 1984, DER submitted revisions to Rules 17-2.410 and 17-2.460 which modified the effective date of the redesignations of the nonattainment areas in their rules. In addition, on November 30, 1983, DER submitted a withdrawal of Rule 17-2.500 Prevention of Significant Deterioration, specifically addressing applicability for section (2)(e)4.a. (i) and (ii) from consideration as part of the August 12, 1983, SIP revision. An error was made in the wording of this portion of the rule and DER plans to correct it (by changing "or" to "and") as soon as possible. The change will provide a more restrictive application of creditable emissions when the new wording is added. The revisions's intent is to disallow PSD credits for nonattainment-related

emission reduction in the redesignated areas.

The amendments to Rule 17-2.410 redesignate the Pinellas County sulfur dioxide primary and secondary nonattainment area and the Duval County ozone nonattainment area to attainment. This SIP revision provides that the Pinellas County area and the Duval County area be listed as air quality maintenance areas under Rule 17-2.460, Designation of Air Quality Maintenance Area. This special designation, in combination with amendments to 17-2.400, Procedures of designation and Redesignation of Areas, 17-2.400, Procedures of Designations and Redesignation of Areas, 17-2.510 New Source Review in Nonattainment Areas, (8) Construction/Operating Permit Requirements, (d) Operating Permits, 2, and 17-2.650 Reasonably Available Control Technology (RACT), (1) Volatile Organic Compounds, (a) Applicability, provides that all emission limiting standards, permit limitation, and other air pollution control measures that were established as a result of the nonattainment corrective plans for these areas—including those measures identified in the transportation control plans comprising the 1982 SIP update—shall remain in effect. However, new and modified facilities in the air quality maintenance areas will no longer be subject to nonattainment new source review requirements.

By listing the redesignated counties as air quality maintenance areas under the SIP, DER and EPA will have the regulatory authority to enforce all emission limiting standards, permit limitation and other air pollution control measures that were established as a result of the nonattainment corrective plans. EPA is approving the Duval County area and the Pinellas County area air quality maintenance areas under Florida's Rule 17-2.460, Designation of Air Quality Maintenance Areas. This does not constitute an approval of control strategies under EPA's Air Quality Maintenance Areas (AQMA's) concept as found in the Code of Federal Regulations (CFR) 52.529, Maintenance of National Standards.

These area redesignations and the accompanying rule amendments were approved by the Florida Environmental Regulation Commission at a duly noticed public hearing on June 15, 1983, and adopted by the Department (by filing of the rules with the Florida Secretary of State) on July 1, 1983. The revised effective dates of the State redesignations were approved by DER at the December 15, 1983 and April 17, 1984 hearings.

Other Regulation Amendments

DER also made related amendments to Rules 17-2.100, Definitions, (132) Redesignation of an Area, and 17-2.300, Ambient Air Quality Standards, (1) General and (2) Prohibition and Restrictions, to improve their wording, and clarify their intent. In response to a previous RPA suggestion, DER made a minor change of wording in Rule 17-2.500 Prevention of Significant Deterioration, (2) Applicability, (e) Emission Increases, 3. Contemporaneous Emissions Changes, Rule 17-2.500, Prevention of Significant Deterioration, (2) Applicability, (e) Emission Increases, 4. Creditable Emissions Changes, was amended to add RACT allowable emissions in the calculation of creditable emissions and decreases. Rule 17-2.500, Prevention of Significant Deterioration, (4) General Provisions, (b) Baseline Related Provisions, was amended so that any decrease in actual emissions which was relied on in demonstrating attainment defining, reasonable further progress, or issuing a permit under the nonattainment new source review or RACT rules shall be included in the baseline emissions and shall not be considered in calculating the amount of any maximum allowable increases remaining available. These changes are minor and clarify the intent of the SIP; therefore, EPA proposes to approve them.

Action

The Agency finds Florida's redesignation requests for the two counties to be consistent with the provisions of section 107 of the Clean Air Act, and proposes to grant them. The Agency also proposes to approve the rule changes described above.

Under 5 U.S.C. section 605(b), the Administrator has certified that area redesignations and SIP revisions 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 rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 52 and 81

Air pollution control, Intergovernmental relations, National Parks, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulated matter, Carbon monoxide, Hydrocarbons, wilderness areas.

(Sec. 107, 110, 161, and 172 of the Clean Air Act (42 U.S.C. 7407, 7410, 7471, and 7502))

Dated: September 11, 1984.

John A. Little,
Acting Regional Administrator.
[FR Doc. 84-31159 Filed 11-27-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[OPP-300106; FRL-2726-5]

Camphor; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that camphor be exempted from the requirement of a tolerance when used as a deodorant and melting point adjustment agent in pesticide formulations. This proposed regulation was requested by W.R. Landis Associates, Inc.

DATE: Written comments, identified by the document control number [OPP-300106], must be received on or before, December 28, 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, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava,
Registration Support and Emergency Response Branch, Environmental

Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-7700.

SUPPLEMENTARY INFORMATION: At the request of W.R. Landis Associates, Inc., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for camphor not exceeding 5 percent weight to weight (w/w) when used as a deodorant and melting point adjustment agent in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Camphor.

Name and address of requestor. W. R. Landis Associates, Inc., Valdosta, GA 31603-5126.

Bases for approval. (1) Camphor is cleared under 21 CFR 175.105 for indirect food additive usage as a component of adhesives.

(2) The dextrorotatory form (d isomer) of camphor is cleared under 21 CFR 172.515 as a synthetic flavoring substance and adjuvant.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal

Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, "[OPP-300106]." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: November 20, 1984.

Douglas D. Campit,

Director, Registration Division, Office of Pesticide Programs

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(d) ***		
Inert ingredients	Limits	Uses
Camphor (CAS Registry No. 76-22-2).	Not more than 5% weight to weight (w/w) of pesticide formulations.	Deodorant, melting point adjustment.

[FR Doc. 84-31154 Filed 11-27-84; 8:45 am]

BILLING CODE 6580-50-M

40 CFR Part 180

[OPP-300107; FRL-2726-4]

Methyl Esters of Fatty Acids; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that methyl esters of fatty acids derived from edible fats and oils be exempted from the requirement of a tolerance when used as a solvent, cosolvent in pesticide formulations. This proposed regulation was requested by Stepan Co.

DATE: Written comments, identified by the document control number [OPP-300107], must be received on or before December 28, 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, deliver comments to: Registration Support and Emergency Response Branch, Registration Division (TS-767), Environmental Protection Agency, Rm. 716A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22203, 703-557-7700.

SUPPLEMENTARY INFORMATION: At the request of the Stepan Co., the Administrator proposes to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for methyl esters of fatty acids derived from edible fats and oils when used as a solvent, cosolvent in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Methyl esters of fatty acids derived from edible fats and oils.

Name and address of requestor. Stepan Co., Northfield, IL 60093.

Bases for approval. (1) Methyl esters of fatty acids derived from edible fats and oils are cleared as a direct food additive under 21 CFR 172.225, with a 200-ppm residue tolerance in raisins.

(2) Methyl esters of higher fatty acids conforming to 21 CFR 573.640 are cleared under 40 CFR 180.1001(c) for use as an antidusting agent, when used in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is

proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP-300107]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

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

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

List of Subjects in 40 CFR Part 180

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

Dated: November 20, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(c) be amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

(c) * * *

Inert ingredients	Limits	Uses
Methyl esters of fatty acids derived from edible fats and oils.		Solvent, cosolvent.

[FR Doc. 84-31155 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 761

[OPTS-62035B; TSH-FRL 2727-6]

Polychlorinated Biphenyls (PCBs); Use in Electrical Transformers; Change of Hearing Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Change of hearing date of proposed rule.

SUMMARY: EPA issued a proposed rule, published in the **Federal Register** of October 11, 1984 (49 FR 39966), to address the risks posed by fire-related events involving electrical transformers containing PCBs. An informal hearing, if requested was to be held on December 26, 1984, in Washington, D.C. Today's action changes only the date of the hearing.

DATE: The informal hearing, if requested will begin on January 14, 1985, in Washington, D.C. The exact time and location of the hearing will be available by calling the TSCA Assistance Office toll free at 800-424-9065 or, in Washington, D.C., by calling 554-1404. Comments on the issues raised on the proposed rule and requests to participate in the informal hearing must be submitted by December 10, 1984.

ADDRESS: Comments should include the docket number OPTS-62035 and should be submitted in triplicate to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

List of Subjects in 40 CFR Part 761

Hazardous substances, Labeling, Polychlorinated biphenyls,

Recordkeeping and reporting requirements, Environmental protection. (15 U.S.C. 2605)

Dated: November 21, 1984.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84-31286 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 761

[OPTS 62035A; TSH FRL-2665-1]

Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers

Correction

In FR Doc. 84-26812, beginning on page 39966, in the issue of Thursday, October 11, 1984, make the following corrections:

1. On page 39966, in column one, the docket number should read as set forth above.
2. On page 39966, column two, under I. Background, line eleven, add a quotation mark (") before the word "any".
3. On page 39967, column one, fourth paragraph, line twenty-one, "dioxin" should read "dioxin".
4. On page 39969, column one, first complete paragraph, fifth line, the fourth word should read "potential".
5. On the same page, same column, last paragraph, sixth line from the bottom insert "6," in between "3", and "7".
6. In column two, second complete paragraph, fourth line, the first word should read "Contents" and the fourth word should read "transformer".
7. On page 39970, column three, first complete paragraph, line three, the last word should read "tetrachlorodibenzo-".
8. On page 39972, in column three, line seven, the second word should read "arcing".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

Passenger Automobile Average Fuel Economy Standards; Model Year 1987 and Beyond; Grant of Petition for Rulemaking

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

ACTION: Grant of petition for rulemaking.

SUMMARY: This notice grants a petition for rulemaking submitted by the Center for Auto Safety (CFAS), requesting that the agency increase the automotive fuel economy standards for passenger cars in the 1987 model year and beyond. The Motor Vehicle Information and Cost Savings Act specifies a standard of 27.5 mpg for passenger automobiles for those model years, but allows amending that standard and establishing a higher one if the maximum feasible average level of fuel economy is higher than 27.5 mpg. The agency believes that the issues raised by the CFAS petition should be analyzed in the context of rulemaking, and the CFAS petition is granted to that extent. The granting of a petition does not mean that a rule will necessarily be issued. The determination of whether to issue a rule is made in the course of the rulemaking proceeding, in accordance with statutory criteria.

FOR FURTHER INFORMATION CONTACT: Mr. William Boehly, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1740).

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

(Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); Sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on November 23, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-31176 Filed 11-23-84; 4:46 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 663**

[Docket No. 41155-4155]

Pacific Coast Groundfish Fishery

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

ACTION: Preliminary fishery specifications and request for comment.

SUMMARY: In this document the NMFS announces and requests comments on the preliminary 1985 specifications for groundfish taken in the fishery conservation zone (FCZ) and territorial waters off the coasts of Washington, Oregon, and California. These preliminary specifications estimate the

acceptable level of biological catch (ABC) as well as the optimum yield (OY) and its distribution among domestic and foreign fishing operations for groundfish species or species groups as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan.

DATE: Comments on the preliminary specifications for 1985 must be received by December 13, 1984. The aggregate data upon which these preliminary specifications are based are available for public inspection at the Regional Directors' offices during business hours (8:00 a.m. until 4:30 p.m. PST weekdays) until the end of the comment period.

ADDRESSES: Send comments to Dr. T.E. Kruse, Acting Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115 or Mr. E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: T.E. Kruse at 206-526-6150 or E.C. Fullerton at 213-548-2575.

SUPPLEMENTARY INFORMATION: OMB Control Number 0648-0114. The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved by the Assistant Administrator for Fisheries, NOAA, on January 4, 1982. The FMP, as amended, and its implementing regulations at 50 CFR Part 663 (47 FR 43964, October 5, 1982, and 49 FR 27518, July 5, 1984) state that management specifications for certain species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39°N. latitude, jack mackerel) will be evaluated each calendar year, that preliminary specifications for the succeeding calendar year will be published in the *Federal Register*, public comment will be requested, and final specifications for that year will be published in the *Federal Register*. The management specifications are made for the ABC, an estimate of the annual catch that could be taken without jeopardizing a resource's productivity, and the OY, which is based on socioeconomic as well as biological factors and thus is not necessarily equal to the ABC. The OYs for these six species set the maximum amounts of fish (in round weight) that

may be taken and retained or landed each year from the FCZ (3-200 nautical miles) and the territorial sea (0-3 nautical miles off Washington, Oregon, and California).

The OY for each of these six species comprises several components that will be reassessed near July 1. The domestic annual harvest (DAH), which consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP), is verified by surveys in November and June of the needs of the domestic fishing and processing industries. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated, a reserve of 20 percent of OY is established in case the domestic industry needs more Pacific whiting than initially estimated.

The OYs and ABCs may be changed during the year, within limits, under the procedures outlined at 50 CFR 663.22.

The Pacific Fishery Management Council (Council) reviewed and approved the preliminary specifications for ABCs for 1985 and received public comment at its September 19-20, 1984, meeting in Portland, Oregon. The Council made no recommendations regarding OY estimates, consequently NMFS proposes maintaining the same proportion between OY and ABC as in 1984; OY equals the ABC for all species except sablefish, for which OY is 30 percent higher.

Between the time the Council adopted the preliminary ABC specifications and this notice was published, updated biological analyses were received from the Council's Groundfish Management Team and released to the public by the Council. These revisions contain the best available data at this time. The revised specifications are presented below, and in some cases differ from the numbers the Council recommended in September as preliminary ABC estimates.

The 1985 preliminary management specifications are listed in Tables 1 and 2, followed by a discussion of the specifications for each species with a numerical OY and any changes made from the 1984 ABC estimates. These specifications of OYs and ABCs do not exceed the coastwide OYs and ABCs specified in 1984 by more than 30 percent.

TABLE 1.—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1985

(In thousands of metric tons)

Species	Total OY	DAP	JVP ¹	DAH	Reserve	TALFF ¹
Pacific whiting.....	175.0	10.0	20.0	130.0	35.0	10.0
Sablefish.....	216.0	16.0	0.0	16.0	0.0	0.0

TABLE 1.—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1985—Continued

(In thousands of metric tons)

Species	Total OY	DAP	JVP ¹	DAH	Reserve	TALFF ¹
Pacific ocean perch	*1.55	1.55	0.0	1.55	0.0	0.0
Shortbelly rockfish	10.0	3.4	0.0	10.0	0.0	6.6
Widow rockfish	7.4	7.4	0.0	7.4	0.0	0.0
Jack mackerel	12.0	2.0	10.0	12.0	0.0	0.0
Other species	(?)					

¹ In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.478%, Pacific ocean perch 0.062%, rockfish excluding Pacific ocean perch 0.738%, flatfish 0.1%, jack mackerel 3.0%, and other species 0.5%. In foreign trawl and joint venture fisheries, "other species" means all species, including non-groundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.20(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

² Of this 16,000 metric tons, 2,500 metric tons is for part of the Monterey subarea. See § 603.21(a)(2).
³ Of this 1,550 metric tons, 800 metric tons is for the Vancouver subarea and 950 metric tons is for the Columbia subarea. Pacific ocean perch from other subareas are included in the OY for "other species." See § 603.21(a)(3).

⁴ The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 603. See § 603.2 for species listing.

TABLE 2.—PRELIMINARY ESTIMATES OF ABC FOR 1985 FOR THE CALIFORNIA/WASHINGTON REGIONS BY INPFC AREAS

(In metric tons)

Species	Vancouver ¹	Columbia	Eureka	Monterey	Conception	Total
Roundfish						
Lingcod	1,000	4,000	500	1,100	400	7,000
Pacific cod	2,200	900	(?)	(?)	(?)	3,100
Pacific whiting						*175,000
Sablefish				*2,500		12,300
Rockfish						
Pacific ocean perch	600	950	(?)	(?)	(?)	1,550
Shortbelly						*10,000
Widow						*7,400
Other Rockfish²						
Bocaccio	(?)	(?)	(?)	4,100	2,000	6,100
Canary	800	2,100	600	(?)	(?)	3,500
Chilipepper	(?)	(?)	(?)	1,300	1,000	2,300
Yellowtail	600	2,100	300	(?)	(?)	3,000
Remaining rockfish	800	3,700	1,900	4,300	3,300	14,000
Flatfish						
Dover Sole	2,400	11,500	8,000	5,000	1,000	27,900
English Sole						*1,500
Petrale Sole	800	1,100	500	800	200	3,200
Other flatfish (except arrowtooth flounder)	700	3,000	1,700	1,800	500	7,700
Other Fish³						
Jack mackerel						*12,000
Others	2,500	7,000	1,200	2,000	2,000	14,700

¹ U.S. portion.

² These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in "Other" category for the areas footnoted and rockfish species are included in the "Remaining Rockfish" category for the areas footnoted only.

³ Total all areas.⁴ Monterey Bay only.⁵ "Other rockfish" means rockfish species, listed at § 603.2, which do not have a numerical OY.

⁶ "Other fish" includes sharks, skates, rattfish, monies, grenadiers, jack mackerel, arrowtooth flounder, and, in the Eureka, Monterey, and Conception area, Pacific cod. "Other fish" is part of the "other species" category listed at § 603.2.

⁷ North of 39° N. latitude.

Species with a Numerical OY (Table 1)

Pacific whiting. Although the ABC/OY for Pacific whiting has not been reached in the past seven years and the very strong 1980 year class has entered the fishery, reproduction apparently has been poor since 1980. Until further stock analyses are completed, it is prudent to maintain ABC at a level that should produce the maximum sustainable yield (MSY).

Data available after the September Council meeting indicate that the 1985 ABC for Pacific whiting should be 175,000 metric tons (mt), 500 mt lower than in 1984. Pacific whiting apparently did not grow during 1982 and 1983 at the

rate normally expected, possibly due to the effects of abnormally warm water ("El Nino"); a slowdown in the growth rate also was observed in anchovy, salmon, and herring stocks during those years. As a result, the numbers of fish taken per metric ton is greater than normally would be the case and the effect on the resource is one of higher mortality than would be expected for the tonnage of fish taken. For these reasons, the ABC for Pacific whiting may need to be decreased in the future.

As in 1984, MSY, ABC, and OY are proposed to be equal in 1985. Shore-based processors indicate their intent to process more Pacific whiting than in

1984, but the 1984 DAP estimate of 10,000 mt is estimated to be sufficient to cover their needs in 1985. Joint venture processing estimates are 20,000 mt larger than for 1984 at 120,000 mt. Accordingly, DAH is preliminarily estimated at 130,000 mt and initial TALFF will be 10,000 mt. The reserve, which is established in case domestic industry needs more fish than originally projected, is maintained at 35,000 mt (20 percent of OY).

Sablefish. The 1985 preliminary ABC for sablefish is 12,300 mt, eight percent below the 1984 ABC of 13,400 mt. This decrease resulted from new methodology in estimating SY. This ABC estimate is at the upper end of the MSY range (6,200 to 12,300 mt). There is some indication of a strong influx of young fish into the fishery which could allow the fishery to operate in excess of MSY levels for a few years. However, there also are indications of an absolute decrease in numbers of medium- and small-sized fish. If the 1984 OY (17,400 mt) were maintained in 1985, OY would be over 40 percent greater than ABC. Such a large difference is not supported with current data. Accordingly, the 1985 OY is reduced proportionately, with the OY preliminarily set at 16,000 mt, 30 percent above ABC as was the case in 1983 and 1984. Because the shore-based industry intends to process all available sablefish, none is available for joint venture or foreign fishing in 1985, except for minimal allowances for unavoidable incidental catches.

Pacific ocean perch. Pacific ocean perch have been overfished and are managed under the rebuilding schedule specified in the FMP. The rebuilding schedule sets OY at 600 mt in the Vancouver area and 950 mt in the Columbia area. Domestic processors will fully utilize OY so there is no Pacific Ocean perch available for joint venture or foreign fishing in 1985 except for minimal allowances for unavoidable incidental catches.

Shortbelly rockfish. The preliminary 1985 ABC and OY estimates for shortbelly rockfish are 10,000 mt, the same as in 1983 and 1984. As in 1984, a DAP of 3,400 mt, as indicated by the year-end survey, should adequately supply shore-based processing needs, and no joint venture fishery is expected in 1985. Although the remaining 6,600 mt is available for foreign fishing, most shortbelly rockfish occur south of 39° N. latitude, in an area closed to the foreign trawl fishery, and no foreign interest has been expressed in this species for 1985.

Widow rockfish. The preliminary 1985 coastwide ABC for widow rockfish is 7,400 mt, 20 percent below the 9,300 mt

ABC in 1984. This decrease resulted in part from methodology incorporating landings data for 1983 and 1984 which estimates the range of MSY to be 3,988 to 7,772 mt. Because this methodology was applied on a coastwide basis, area ABCs were not determined for 1985.

The OY and ABC for widow rockfish are the same, at the upper end of the MSY range. Because this species is fully utilized by domestic shore-based processors, no widow rockfish is available for joint venture or foreign fishing in 1985, except for minimal allowances for unavoidable incidental catches.

Jack mackerel (north of 39°N. latitude). The estimates for jack mackerel set forth in the first amendment to the FMP (49 FR 27518, in July 5, 1984) are proposed to be maintained for 1985. ABC and OY are equal at 12,000 mt, DAP is 2,000 mt and JVP is 10,000 mt.

Species Without a Numerical OY (Table 2)

The other species managed under the FMP do not have numerical OYs. For the most part, they cannot be harvested selectively and, unless biological stress is documented, are not regulated by quotas. Full utilization by domestic processors of some species in the multispecies complex precludes joint venture or foreign targeting on underexploited species in the complex because large incidental catches of fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because JVP and TALFF are not available for any species in the multispecies complex. However, ABCs are specified for the major species or species groups in this complex. Changes to the 1984 ABC estimates for

these species which are proposed to be in effect for 1985 are described below.

Canary rockfish. Due to new methodology based on catch history and because consistent signs of biological stress are not evident, the preliminary 1985 ABC for canary rockfish in the Columbia area is increased by 800 mt to 2,100 mt, raising the 1985 coastwide ABC to 3,500 mt from 2,700 mt in 1984.

Yellowtail rockfish. The 1985 preliminary ABC for yellowtail rockfish is reduced to 600 mt (from 1,400 mt in 1984) in the Vancouver area and increased to 2,100 mt (from 1,500 mt) in the Columbia area, resulting in a net decrease of 200 mt and a 1985 coastwide ABC of 3,000 mt. These adjustments resulted from more refined methodology which assumes variable recruitment into the fishery and separates biomass growth from recruitment.

Remaining rockfish. The ABCs for this group (all rockfish in the management unit except Pacific ocean perch, shortbelly, widow, bocaccio, canary, chilipepper, and yellowtail rockfishes) are increased by 300 mt in the Vancouver area to correct an error in 1980 data used in computing the 1984 estimate. Accordingly, the coastwide ABC for remaining rockfish increases from 13,700 mt in 1984 to 14,000 mt in 1985.

Dover sole. The MSY and ABC estimates for Dover sole now appear to have been significantly underestimated in the FMP. Several methods were employed recently to update these estimates. The 1985 preliminary ABC for Dover sole in the Columbia area was increased to 11,500 mt from 7,200 mt in 1984, raising the coastwide ABC to 27,900 mt. There is evidence that this fishery is currently being fished down to levels that will produce MSY in two to five years.

English sole. Catch per unit of effort has declined by almost 70 percent in the Vancouver-Columbia area since 1977, indicating a corresponding drop in biomass. Landings have declined in the southern areas but there is no indication that effort has been directed away from this species in either the Eureka or Monterey area. (Low landings in the Pt. Conception area may reflect a drop in effort.) There are no new stock assessments for these three southern areas. Accordingly, the coastwide ABC for English sole is reduced from 4,500 mt in 1984 to the preliminary estimate of 1,500 mt in 1985, proportional to the decrease in biomass in the Vancouver-Columbia area.

Other species. No changes to the ABCs for lingcod, Pacific cod, bocaccio and chilipepper rockfishes, Petrale sole, other flatfish and other fish comprising the multispecies complex are proposed for 1985.

Classification

These preliminary specifications are made under the authority of and in accordance with 50 CFR 663.24. This action is in compliance with Executive Order 12291 and is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

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

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

Dated: November 21, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-31039 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 49, No. 230

Wednesday, November 28, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

November 23, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB

Desk Officer of your intent as early as possible.

New

- Agricultural Cooperative Service Local Cooperative Chemical and Fertilizer Study
Nonrecurring
Businesses or other for-profit; 1,000 responses; 400 hours; not applicable under 3504(h)
Eldon Eversull, (703) 382-1767
- Farmers Home Administration Borrower Acknowledgement of Notice of Intent to Take Adverse Action
On occasion
FmHA 1924-26
Individuals or households; Farms; 90,000 responses; 22,500 hours; not applicable under 3504(h)
Ed Yaxley (202) 475-4021

Extension

- Agricultural Stabilization and Conservation Service Request for Long-Term Agreement
On occasion
ACP-310
Farms; 10,000 responses; 5,000 hours; not applicable under 3504(h)
Charles W. Sims, (202) 447-7334

Jane A. Benoit,

Acting Departmental Clearance Officer.

(FR Doc. 84-31192 Filed 11-27-84; 8:45 am)

BILLING CODE 3410-01-M

Federal Grain Inspection Service

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Gibson City Grain Inspection Department (IL), Indianapolis Grain Inspection & Weighing Service, Inc. (IN), and Wyoming Department of Agriculture (WY)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Gibson City Grain Inspection Department, Indianapolis Grain Inspection & Weighing Service, Inc., and Wyoming Department of Agriculture.

DATE: Comments to be postmarked on or before January 14, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 832-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The October 1, 1984, issue of the *Federal Register* (49 FR 38683) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by October 31, 1984.

Donald Swanstrom, doing business as Gibson City Grain Inspection Department, Indianapolis Grain Inspection & Weighing Service, Inc., and Wyoming Department of Agriculture, the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than January 14, 1985.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the

Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: November 1, 1984.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 84-30825 Filed 11-27-84; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Perform Official Services in the Geographic Areas Currently Assigned to Alaska Department of Natural Resources, Division of Agriculture (AK) Little Rock Grain Exchange Trust (AR) and Memphis Grain and Hay Association (TN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Alaska Department of Natural Resources, Division of Agriculture, Little Rock Grain Exchange Trust, and Memphis Grain and Hay Association.

DATE: Applications to be postmarked on or before December 28, 1984.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and

Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area. Alaska Department of Natural Resources, Division of Agriculture (Alaska), Pouch A, Wasilla, AK 99687, Little Rock Grain Exchange Trust (Little Rock), 600 Olive Street, Bldg. B, North Little Rock, AR 72114, Memphis Grain and Hay Association (Memphis), 1390 Channel Avenue, P.O. Box 13302, Memphis, TN 38113, were each designated under the Act as an official agency to perform inspection functions on June 1, 1982.

Each agency's designation terminates on May 31, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Alaska, pursuant to section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation, is the entire State of Alaska, except those export port locations within the State.

The geographic area presently assigned to Little Rock, in the States of Arkansas and Texas, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Arkansas, the area shall be: Bounded on the North by the northern Arkansas State line from the western Marion County line east to the eastern Clay County line.

Bounded on the East by the eastern Clay, Greene, Lawrence, Jackson, Woodruff, Monroe, Arkansas, Desha, and Chicot County lines;

Bounded on the South by the southern Arkansas State line from the eastern Chicot County line west to the western Miller County line; and

Bounded on the West by the western Miller, Little River, Howard, Pike, Clark, Hot Spring, Garland, Perry, Conway, Pope, Searcy, and Marion County lines. In Texas, Bowie and Cass Counties.

An exception to the described geographic area is the following location situated inside Little Rock's area which has been and will continue to be serviced by Memphis Grain and Hay Association: Lochart-Thompson Grain

Elevator, Augusta, Woodruff County, Arkansas.

The geographic area presently assigned to Memphis, in the States of Arkansas and Tennessee, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Arkansas, Craighead, Crittenden, Cross, Lee, Mississippi, Phillips, Poinsett, and St. Francis Counties.

In Tennessee, Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Madison, McNairy, Shelby, and Tipton Counties.

The following locations, outside of the foregoing contiguous geographic area are presently assigned to Memphis and are part of this geographic area assignment:

1. Con-Agra, Inc., Augusta, Woodruff County, Arkansas.

2. Continental Grain Co., Tiptonville; West Tennessee Soya, Tiptonville; and Planters Gin, Ridgely; all in Lake County, Tennessee.

Interested parties, including Alaska, Little Rock, and Memphis, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning June 1, 1985, and ending May 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: November 1, 1984.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 84-30826 Filed 11-27-84; 8:45 am]

BILLING CODE 3410-EN-M

CIVIL RIGHTS COMMISSION

Wisconsin Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 6:00 p.m. and will end at

9:00 p.m., on December 7, 1984, at the Holiday Inn, Yellow Jacket Room, 110 E. Second Street, Superior, Wisconsin 54880. The purpose of the meeting is to discuss hate group activity in Northwest Wisconsin and recent developments in the Milwaukee school desegregation situation.

Persons desiring additional information or planning a presentation to the Committee, should contact the Midwestern Regional Office at (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 21, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-31088 Filed 11-27-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-402]

Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Korea of oil country tubular goods. The net subsidy is 0.53 percent *ad valorem*. We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of oil country tubular goods from Korea that are entered, or withdrawn from warehouse, for consumption, on or after September 12, 1984, and to require a cash deposit or bond on entries of these products in the amount equal to the net subsidy.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Rick Herring, or Tom Bombelles of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1785; 377-0187; or 377-3174.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Korea of oil country tubular goods. For purposes of this investigation, the following programs are found to confer subsidies:

- Short-term Export Financing under the Export Financing Regulations;
- Accelerated Depreciation under Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption"; and
- Tax Incentives for Exporters under Articles 22, 23 and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption."

We determine the net subsidy to be 0.53 percent *ad valorem*.

Case History

On June 12, 1984, we received a petition from the Lone Star Steel Company of Dallas, Texas, and the CF&I Steel Corporation of Pueblo, Colorado, on behalf of the U.S. industry producing oil country tubular goods. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Korea of oil country tubular goods receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring or threatening material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1984, we initiated such an investigation (49 FR 28291). We stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984, the petition was amended and the LTV Steel Company of Cleveland, Ohio became co-petitioner. On July 23, 1984, United States Steel Corporation (U.S. Steel) entered an appearance to become a party to this proceeding.

Since Korea is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On August 8, 1984, the ITC published in the **Federal Register** their preliminary determination that there is a reasonable indication that these imports are materially injuring, or threatening material injury to, a U.S. industry (49 FR 31782).

We presented questionnaires concerning the allegations to the

government of Korea in Washington, D.C., on July 13, July 23 and August 20, 1984. On August 17, August 20, August 21 and August 30, 1984, we received responses to these questionnaires. On July 18 and August 20, petitioners presented additional information concerning the alleged subsidies and also alleged new subsidies. On July 9, August 31, and September 5, U.S. Steel presented additional information concerning the alleged subsidies and also alleged new subsidies. On September 12, 1984, we published our preliminary determination that benefits constituting subsidies within the meaning of the countervailing duty law were being provided to manufacturers, producers, or exporters in Korea of oil country tubular goods (49 FR 35836).

At the request of both petitioners and respondents, we held a hearing on November 1, 1984, to allow the parties an opportunity to address the issues arising in the investigation. Both petitioners, respondents, and other interested parties filed briefs before and after the hearing on these issues. They also filed briefs commenting on our verification.

In its pre-hearing brief filed on October 23, 1984, U.S. Steel made additional allegations of benefits received by manufacturers and exporters of OCTG. These allegations were (1) Regional Tax Incentives, (2) Tax incentives for Exporters, and (3) Special Foreign Exchange Loan System. Since these allegations were made after our preliminary determination and after the Commerce verification team returned from Korea, the allegations were made too late to be considered in this investigation. These additional allegations will be given consideration in the section 751 administrative review of the order, if an order is issued.

Scope of the Investigation

The products covered by this investigation are oil country tubular goods (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. This investigation covers both finished and unfinished oil country tubular goods.

The provisions of the *Tariff Schedules of the United States, Annotated (TSUSA)* covering all steel pipe and tube, including oil country tubular goods, were changed as of April 1, 1984. We have reviewed the classification of

steel pipe and tube by the U.S. Customs Service and determined that our original listing of the products subject to this investigation should be amended. As a result of the changes mentioned above, oil country tubular goods now comprise TSUSA item numbers 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

There are five Korean producers of the subject merchandise which exported to the United States during the period for which we are measuring subsidization: Hyundai Pipe Company (Hyundai Pipe), Korea Steel Pipe Company (Korea Steel), Pusan Steel Pipe Company (Pusan), Dongjin Steel Company (Dongjin), and Union Steel Manufacturing Company (Union). In addition, there are five trading companies which exported the subject merchandise to the United States during the period for which we are measuring subsidization. The trading companies are the Hyundai Corporation, Kukje-ICC Corporation, Sunkyoung Limited, Samsung Co. Ltd., and Daewoo Corporation.

Analysis of Programs

* Throughout this notice, we refer to general principles applied to the facts of this investigation. These principles are described in the Subsidies Appendix attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the *Federal Register* (49 F.R. 18006).

For purposes of this determination, we are calculating a country-wide rate. The period for which we are measuring subsidization is the 1983 calendar year, which corresponds to the most recent fiscal year for each of the Korean producers and exporters.

Based upon our analysis of the petition, the responses to our questionnaires, comments filed by petitioners, respondents, and other interested parties to this proceeding, and our verification, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers,

or exporters in Korea of OCTG under the following programs:

A. Short-Term Export Financing Under the Export Financing Regulations

Petitioners alleged that the producers and exporters in Korea of OCTG receive preferential short-term export financing under the following programs:

- Export Loans under the 1972 Regulations for Export Financing;
 - Export Loans provided under the Foreign Trade Act;
 - Deferred Payment Export Loans; and
 - Preferential Exchange Rates for Export Loans Based on Letter of Credit
- Short-term export financing is authorized only through the 1972 Export Financing Regulations. Our determination with respect to the three other programs is discussed in the sections on "Programs Determined Not to Confer Subsidies" and "Programs Not in Existence."

Under the Export Financing Regulations, short-term export loans can be provided to the following:

- Exporters in receipt of letters of credit;
- Exporters concluding documents of acceptance or documents against payment contracts;
- Exporters purchasing local supplies;
- Exporters stockpiling raw materials;
- Exporters with certificates based on past export performance;
- Producers of raw materials for export; and
- Companies awarded domestic projects based on international public tender.

To determine whether a subsidy exists with respect to short-term export loans under the Export Financing Regulations, we must determine whether the export loan program is intended to, or operates to, stimulate export rather than domestic sales, or is contingent on export performance. If there is a preference in a program's operation for export over domestic sales, we then must find an appropriate way to measure that preference.

Prior to June 28, 1982, short-term export loans provided under the Export Financing Regulations were charged a lower interest rate than short-term domestic loans. On June 28, 1982, the Monetary Board established a uniform rate of 10 percent for both export and domestic short-term financing provided by commercial banks. The interest rate in effect during the period for which we are measuring subsidization was 10 percent for short-term export loans. We verified that domestic short-term financing through commercial banks is the predominant short-term debt

instrument in Korea (see, for example, the Federation of Korean Industries surveys obtained during verification and the Korean Chamber of Commerce Survey, submitted as Exhibit 13 of the Government of Korea's response, August 17, 1984, as well as Bank of Korea *Monthly Statistical Bulletins*).

If all other terms and conditions, as well as the administration, of the domestic and export loan programs were identical, we would not find that an export subsidy is being conferred because export loans are not at an interest rate is preferential compared to the interest rate on the most comparable, predominant short-term debt instrument. However, we have found that there is a difference in the administration of domestic and export short-term loans programs. The Bank of Korea (BOK) sets different rediscount ratios for export and domestic short-term loans. As specified in the BOK's 1983 *Annual Report*, the rediscount ratio for export loans is 70 percent of the face value of the loan. The rediscount ratio on domestic commercial bills is 30 percent of the face value of the loan for large firms and the heavy and chemical industries. The rediscount ratio for small- and medium-sized firms is 70 percent. Small- and medium-sized firms are defined as companies with fewer than 300 employees. None of the steel companies producing the products under investigation is classified as a small- or medium-sized firm. The rediscount rate for both domestic and export short-term loans is 5 percent.

The higher rediscount ratio for export loans provides an incentive for banks to provide an export loan over a domestic loan when lending to a large company. Indeed, the banks' fee structure, which specifies lower fees on the letters of credit on which the short-term export loans are based, indicates that the banks encourage these borrowers to use export financing. Thus, we consider that the higher rediscount ratio for short-term export loans provides, in effect, a preference for export loans over domestic loans.

Because the most comparable, predominant short-term debt instrument (i.e., the 10 percent rate on short-term domestic bank loans) cannot measure this preference, we must find an alternative method of quantifying it. We know from the surveys published by the Korean Chamber of Commerce and by the Federation of Korean Industries and from the Bank of Korea *Statistical Bulletins*, that companies do use sources of short-term financing in addition to bank loans. These sources include investment companies, commercial

paper and the curb market. Since the rediscount mechanism operates in such a way as to encourage banks to supply firms short-term export financing at the expense of the domestic financing, we must conclude that short-term domestic financing comes from these other sources of financing as well as bank loans.

Therefore, the most appropriate way to measure the preference for export over domestic loans is to compare the 10 percent rate with a weighted average of short-term domestic credit. We have chosen this measure because it is the best approximation of what firms would pay for export financing if there were not a preference within the banking system for providing loans for export transactions.

The factors used to weight each of the four sources of short-term domestic credit were based on data from a number of sources, including the monthly *Statistical Bulletin* of the Bank of Korea and the surveys published by the Federation of Korean Industries (FKI). The *Statistical Bulletin* provides the size of, and interest rates charged on, short-term financing by banks, investment finance companies and commercial paper. The FKI surveys provide data on the proportion that curb market loans represent of total corporate borrowing for working capital. For the curb market interest rate, we have determined that the most appropriate rate to use is the average monthly rate for 1983 as published in the Survey conducted by the Korean Chamber of Commerce, provided as Exhibit 13 to the response submitted by the Government of Korea. This rate is 2.6 percent, which, when compounded, yields an annualized rate of 36.1 percent. We are using the rate published by the Chamber of Commerce as the most appropriate measure of the average curb market rate in 1983, because it was the only independently conducted study or survey of curb market rates that has been entered in the record of this investigation. We looked extensively for data on these rates at verification. We consider the Chamber Survey to be the most accurate reflection of average curb market rates during the period for which we are measuring subsidization.

Using the data from all these sources, we calculated the weighted-average rate that we have determined is the most appropriate way to measure the preference for export over domestic loans. Comparing this weighted-average rate to the 10 percent rate on export loans, we calculate an export subsidy of 0.46 percent *ad valorem*.

B. Accelerated Depreciation

Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption" permits a firm earning more than 50 percent of its total proceeds in a business year from foreign exchange to increase its normal depreciation by 30 percent. If the corporation has received less than 50 percent of its total proceeds from foreign exchange, it can still claim some accelerated depreciation, determined by a formula based on the firm's foreign exchange earnings and total business earnings. Of the firms investigated, only Pusan used accelerated depreciation under this program. Because the use of accelerated depreciation is contingent upon export performance, we determine that this program confers benefits which constitute export subsidies.

To calculate the benefits from the accelerated depreciation program for the period in which we are measuring subsidization (calendar year 1983), we determined the tax savings received in 1983 based on the accelerated depreciation which had been deducted from the 1982 income taxes payable in 1983. The amount of tax savings received under this program was divided by the total value of exports in 1983 to calculate an export subsidy of 0.03 percent *ad valorem*.

C. Tax Incentives for Exporters

Articles 22, 23 and 24 of the "Act Concerning the Regulation of Tax Reduction and Exemption" provide for the deduction from taxable income of a number of different reserves relating to export activities. These reserves cover export losses, overseas market development and price fluctuation losses. Under Article 22, a corporation may establish a reserve amounting to one percent of the foreign exchange earnings, or 50 percent of net income in the applicable period, whichever is smaller. If certain export losses occur, they are offset from the reserve fund. If there are no offsets for export losses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

Under Article 23 governing overseas market development, a corporation may establish a reserve fund amounting to one percent of its foreign exchange earnings in the export business for the respective business year. Expenses incurred in developing overseas markets are offset from the reserve fund. Like the export loss reserve fund, if there are no offsets for expenses, the reserve is returned to the income account and taxed, after a one-year grace period, over a three-year period.

A price fluctuation reserve fund may be established under Article 24. Under this Article, a corporation may establish reserves equivalent to five percent of the book value of the products and works in progress which will be exported by the close of the business year. This reserve may be used to offset losses incurred from the fluctuation of prices for export goods. These losses may be offset by returning an amount equivalent to the losses to the income account. If not so utilized, the reserve is returned to the income account the following business year.

The balance in all three reserve funds is not subject to corporate tax, although all moneys in the reserve funds are eventually reported as income and subject to corporate tax either when they offset export losses or when the one-year grace period expires. Pusan Steel Pipe, Korea Steel Pipe, Hyundai Pipe, Kukje, Samsung, and Daewoo received benefits under these programs in 1983. We determine that these export reserve programs confer benefits which constitute export subsidies because they provide a deferral of direct taxes specifically related to export performance.

Because these export reserve funds constitute a deferral of tax liabilities, we treat the tax savings on these funds as interest-free loans to the corporation. Accordingly, we have quantified the benefits from the reserve funds by calculating the amount of tax savings and then applying a rate of interest which the firm would have had to pay for a short-term loan. Using this methodology, we calculate a subsidy of 0.04 percent *ad valorem*.

II. Programs Determined Not to Confer Subsidies

We determine that benefits which constitute subsidies are not being provided to manufacturers, producers, or exporters in Korea of OCTG, under the following programs:

A. Medium- and Long-Term Credit

Petitioners alleged that OCTG producers, as part of the Korean steel industry, have received medium- and long-term financing through government direction of credit and programs designed to finance major or key industries, and that these loans are made on terms which are inconsistent with commercial considerations.

In order to investigate the first allegation, that credit is directed within the Korean economy, we have examined whether the Korean government mandates, explicitly or implicitly, that certain industries or enterprises receive

credit at the expense of other borrowers. If there are explicit or implicit government mandates that certain industries or firms receive funds, then we would expect to find this reflected in the composition of the loan portfolios of all the lending institutions combined. Absent a finding that these key or major industries receive a disproportionate share of the medium- and long-term loans available in Korea, we cannot conclude that the Korean government is directing credit.

Medium- and long-term financing is provided through three types of financial organizations in Korea:

- (1) Commercial banks;
- (2) Specialized banks; and
- (3) Development institutions (Korea Development Bank and the Export-Import Bank of Korea).

In addition, there are two government funds through which long-term financing is provided:

- (1) The National Investment Fund; and
- (2) The Fund for Expanding Export Facilities.

We have examined the three types of financial organizations and the two government funds that are the sources of medium- and long-term borrowing in Korea.

Viewing these institutions and funds in the aggregate, we determine that there is no government direction of medium- and long-term credit to the OCTG producers or to the broader steel sector. We have found that the lending institutions in Korea, when viewed as a whole, provide medium- and long-term loans to all sectors and all major industry groups, indeed to virtually all industries. Notwithstanding that certain of the sources have been created to provide credit to designated groups of recipients, these groups do not receive a disproportionate share of the total medium- and long-term credit available from all sources combined. Moreover, we determine that the OCTG producers and the broader steel industry do not receive a disproportionate share of funds from all these sources. Indeed, over the last 15 years, the steel industry has accounted for approximately 6 to 13 percent of GNP. During the same period the basic metals sector, which includes steel, has received 5 to 8 percent of medium- and long-term loans.

Although we have found that credit is not directed by the Korean government to OCTG producers or to the broader steel industry, we must still examine whether particular medium- and long-term loans from any of the individual institutions or funds confer benefits which constitute subsidies within the meaning of the countervailing duty law.

In order to determine that medium- and long-term loans are providing benefits which constitute domestic subsidies, we must find that the program is limited to a specific enterprise or industry or group of enterprises or industries, and that the loans are provided on terms inconsistent with commercial considerations. If either of these conditions is not met, then we cannot find that a domestic subsidy exists.

In making the determination on whether a program is limited to a specific enterprise or industry or group of enterprises or industries, we have consistently examined whether there is a *de facto*, as well as a *de jure*, limitation. In making the determination of whether a loan is inconsistent with commercial considerations, we examine whether the potentially countervailing loan offers more favorable terms than the firm would otherwise receive.

Based on our verification and information provided by the petitioners, the responses and the briefs submitted by parties to the proceeding, we have found the following with respect to each of the three types of financial organizations and the government funds:

1. Commercial Banks

Commercial banks, which until the early 1980's were either government-owned or government-controlled, consist of seven nationwide or "city" banks, 10 regional or "local" banks, and the branches of 48 foreign banks. The domestic commercial banks are authorized by the General Banking Act (G.B.A.) and provide the normal financial services that are usually offered by banks in all countries. There is no explicit listing in the G.B.A. that designates certain industries or sectors for receipt of commercial bank credit.

Bank of Korea statistics show the distribution of loans from the deposit money banks (DMB's). DMB's include both commercial and specialized banks. (Specialized banks are discussed in the following section.) Examination of the Bank of Korea statistics demonstrates that during both the 1970's and 1980's all sectors of the economy received loans through the DMB's and that steel did not receive a disproportionate share.

During verification, we obtained loan statistics directly from Hanil and Cho-Heung, two of the five largest commercial banks in Korea. The loan statistics are broken down by sector, major industry group and industry. The sectors are:

- Agriculture and forestry;
- Mining;
- Manufacturing;
- Electricity, gas and water;

- Construction;
- Wholesalers;
- Transportation and warehousing;
- and
- Others (including social services).

Each of these sectors is then broken down by major industry group and by industry within each group. Steel production is included in the primary metals group within the manufacturing sector. This group includes, in addition to steel, categories for aluminum and others.

Our review of the loan statistics of these two banks for various years in the 1970's and 1980's shows that all sectors and major industry groups, indeed, virtually all industries, received loans.

Furthermore, the statistics show that the steel industry did not receive a disproportionate share of the loans.

2. Specialized Banks

There are seven specialized banks in Korea: Korea Exchange Bank, Medium Industry Bank, Citizens National Bank, Korea Housing Bank, National Agricultural Cooperatives Federation, National Federation of Fisheries Cooperatives and Members Cooperatives, and the National Livestock Cooperative Federation. Each of these banks is set up by its own Act, and, by their titles, these banks are explicitly chartered to service certain broad sectors of the Korean economy.

Like commercial banks, specialized banks are deposit money banks and, therefore, are included in Bank of Korea statistics on DMB loan distribution. As stated previously, the Bank of Korea statistics show that all sectors and industries have received loans through the DMB's and that steel has not received a disproportionate share of DMB loans. In addition, it is clear that the specialized banks have been set up to serve sectors of the economy besides steel. None has been set up specifically for the steel industry or even for the manufacturing sector or heavy industry sector. We verified that the steel companies producing the products under investigation have only a few outstanding long-term loans from specialized banks and that these loans do not represent a disproportionate share of the long-term loans funds from specialized banks.

3. Development Institutions

a. *Korea Development Bank (KDB).* The KDB was established in 1954 to aid in the reconstruction of the country following the Korean War. Once reconstruction was completed, the bank shifted its resources to support the development of industries deemed

important for long-term economic growth. The industries named in the KDB Enforcement Decree include electric power, coal mining, shipbuilding, iron and steel manufacturing, semiconductors and overseas marine and/or air transport. In addition to these industries, KDB also provides loans for agriculture, oil and gas, food and beverage, textiles, paper and paper products, chemicals, rubber and plastic products, non-metallic mineral products, fabricated metal products, machinery and equipment, construction, wholesale and retail trade, communications and financial services. Thus, while there is an explicit designation that the KDB will service certain industries, it also has provided loans to borrowers in numerous industries that were not designated.

During the 1970's and 1980's, the KDB accounted for approximately 45 percent of the medium- and long-term loans available. Prior to the June 1982 equalization of interest rates, these designated industries were charged a lower interest rate than KDB borrowers in other industries. The interest rates charged by KDB are set by the Ministry of Finance.

b. *Export-Import Bank of Korea.* Promulgated by Law No. 2122 in July 1969, the purpose of the Export-Import Bank of Korea (Eximbank) is "to promote the sound development of the national economy and economic cooperation with foreign countries by extending the financial aid required for export and import transactions, overseas investment and the development of natural resources abroad." The Enforcement Decree for the Act specifies the "major" raw materials that Eximbank should develop:

- Coal, iron ore, copper, petroleum, and other mined materials;
- Timber and other forest materials;
- Grains, cotton, sugar, rubber and other agricultural materials; and
- Other raw materials deemed necessary to secure stabilized long-term supply for the economy; however, this should be decided through a state meeting and announced through the Ministry of Finance.

Thus, if there is any explicit designation of recipients of loans from the Eximbank, the designated group is raw material users.

During verification, we examined all export and overseas investment loans awarded from 1976 through 1982. During those seven years, only five loans were awarded to the steel industry; one in 1979, two in 1980 and two in 1982. None of these five loans were for the financing of exports of the products under

investigation. Also, during each of these years there were other projects financed in other industries. For example, in 1979, the other overseas investment loans went to a textile plant project, a manufacturing plant project, fishery development, a cement plant project, and vessel chartering. Thus, the Korea Eximbank finances projects in a wide number of industries. Moreover, the steel industry has not received a disproportionate share of Eximbank loan monies.

4. The National Investment Fund

On December 14, 1973, the government of Korea established the National Investment Fund (NIF) through Law No. 2635. The stated "purpose of this Act is to prescribe necessary matters for the establishment and effective management of the National Investment Fund on the bases of extensive nationwide savings efforts and participation, to secure and supply the investment and loan funds needed to promote the construction of major industries, including the heavy and chemical industries, as well as to help "increase exports."

In the preliminary determination, we determined that NIF loans were countervailable export subsidies because one of the express purposes stated in the Act was to help increase exports and because they were provided at preferential rates.

During verification, we found that there are two types of NIF loans, one to finance development and one to finance exports on a deferred payment basis. The NIF loans to finance exports on a deferred payment basis are managed by Eximbank. We verified that exports of the products under investigation are not eligible to receive NIF loans for exports on a deferred payment basis and that none of the companies producing OCTG has financed exports of OCTG through this program.

With respect to the other pool of NIF monies, our examination of loan files, as well as application and approval documents at the companies, did not reveal any export-related conditions on these NIF loans. Thus, we now conclude the NIF loans are not export subsidies.

Despite the fact that NIF loans would not be considered export subsidies, the law establishing the fund and the enforcement decree explicitly designate certain industries for receipt of these loans. In addition to "major industries, including the heavy and chemical industries," the enforcement decree names steel, nonferrous metals, shipbuilding, machinery, chemicals, electronics, food production, power, mining, cement, rural manufactured

goods, projects to increase rural income, and fishing and fisheries projects. NIF loans accounted for 25 to 30 percent of the medium and long-term loans issued in the 1970's and 1980's.

5. Fund for Expanding Export Facilities

During verification at the companies we found several outstanding long-term loans received through the "Fund for Expanding Export Facilities." This fund was established in 1973 and abolished in 1982. Eligibility for these loans was limited to manufacturers building facilities for producing export goods or raw materials and purchasers of ocean-going vessels used for the fish export industry. Thus, this Act designates exporters as recipients.

Based on the findings reported above, we determine that because commercial banks and specialized banks provide medium- and long-term loans to all sectors and industries in the economy, and because the steel industry did not receive a disproportionate share, loans from these sources are not limited to a specific enterprise or industry or group of enterprises or industries and therefore do not provide benefits which constitute subsidies. Furthermore, based on our review of the Eximbank Act and the Enforcement Decree, and the distribution of the loans we find that there is no *de jure* or *de facto* limitation to an enterprise or industry or group of enterprises or industries. Accordingly, we determine that Eximbank loans do not provide benefits which constitute subsidies.

We also determine that loans provided to the OCTG producers through the KDB and the NIF do not provide benefits which constitute subsidies, because the interest rates paid on these loans have been equal to the interest rate for all medium- and long-term loans in Korea since June 1982. Thus, these loans are not on terms inconsistent with commercial considerations.

To determine whether a loan is inconsistent with commercial considerations, we rely on the methodology in the Subsidies Appendix for long-term loans to companies considered creditworthy. As stated in the Appendix, the benchmark for long-term loans in company-specific, unless the company lacks adequate comparable commercial experience. If the company lacks comparable commercial experience, we use a national average long-term loan interest rate.

After finding an appropriate benchmark loan, the next step in determining if a loan was given on terms

inconsistent with commercial considerations is to calculate the payment differential between the benchmark loan and the loans at issue. Consistent with our methodology, when the long-term loans are at variable interest rates, we calculate the benefit based on the differential between the interest rate for the loan at issue and the interest rate on the benchmark loans in the year for which we are measuring subsidization. As stated above, the rates on all medium—and long-term loans were equalized in 1982. Hence, for the year in which we are measuring subsidization, there is no interest differential between the loans at issue and the benchmark loans.

We note that using as the benchmark the 1983 interest rate on a variable rate long-term commercial loan is not a departure from prior practice. In our preliminary determination, we used a short-term interest rate as the benchmark for NIF loans. However, we stated that because we needed additional information in order to determine whether loans from commercial and specialized banks were subsidies, we could not use those variable rate long-term loans in establishing our benchmark. Thus, because we had no comparable commercial long-term loan experience with which to compare NIF loans, we use, as best information available, a short-term rate for purposes of measuring the benefit conferred by these loans.

Finally, we determined that loans received by the OCTG producers under the Fund for Expanding Export Facilities do not confer benefits that constitute export subsidies. Assuming, as we do, that eligibility for these loans is contingent upon export performance, to quantify any benefit arising from these long-term export-related loans, we must compare the terms of these loans to the cost of comparable commercial domestic long-term loans.

We know that all loans from the Fund for Export Facilities that were still outstanding during the period for which we are measuring subsidization were charged 10 percent interest after the June 1982 equalization of interest rates. Thus, since June 1982 the cost to the borrower on these loans is the same as the cost of comparable domestic long-term loans. As a result, we find that no benefit is conferred by these long-term export-related loans.

B. Import Duty Deferrals

Article 36 of the Customs Act of Korea permits the Ministry of Finance to designate an industry as eligible to pay customs duties on an installment basis,

rather than upon entry. In our preliminary determination, we determined this program to confer a subsidy because the government of Korea did not provide us with any information demonstrating that during the period for which we are measuring subsidization this program was not limited to a specific enterprises or industry or group of enterprise or industries. A program may be available, in principle, to a wide group of industries, but when there appears to be some discretion on the part of the government in the granting of benefits under the program, we must determine that discretion effectively limits the program to specific enterprises or industries.

During the verification, we found that twenty-four industries were eligible to receive duty deferrals including industries as disparate as mining, cement, fertilizers, chemicals, machine tools, steel works, and plywood. Once an industry is considered eligible, each company within the industry may request deferral status by submitting an application to the Tariff Administration Office of the Office of Customs Administration. We examined this program to determine if only certain companies within each of the twenty-four industries had their application for duty deferral status approved. We found that in practice there appears to be no limitation to the companies within the twenty-four industries which receive duty deferrals, and that any company which applies is granted that status. Therefore, we determine that this program is not limited to a specific enterprise or industry or group of enterprises or industries, and, therefore, does not constitute a subsidy.

C. Investment Tax Credit

Petitioners alleged that producers and exporters of OCTG may receive preferential tax benefits under Article 72 of the "Act of Concerning the Regulation of Tax Reduction and Exemption," which provides for a temporary investment tax credit when the government deems it necessary for adjustment of economic activities. During the period from January 1, 1982, through December 31, 1982, Article 57-2 was the enforcement decree for Article 72. Article 57-2 specifies that the investment tax credit was available for the acquisition of fixed assets used directly for the manufacturing or mining business. Consistent with past practice, programs available to all industries in the manufacturing and mining sectors are not limited to "a specific enterprise or industry, or group of enterprises or industries," and thus do not provide

domestic subsidies. Since the tax credit is not contingent on export performance, it does not provide an export subsidy. Thus, we determine that this program does not constitute a subsidy.

D. Subsidized Steel Inputs

Petitioners alleged that Dongjin may benefit from subsidies received by its parent company. Until 1984, Dongjin was a wholly-owned subsidiary of Pohang Iron & Steel Company (POSCO), a manufacturer of hot-rolled coil, blooms, and billets. Petitioners alleged that subsidies received by POSCO on those products may be passed on to Dongjin.

Dongjin's raw material for OCTG is J-55 grade of hot-rolled steel coil. During 1983, Dongjin purchased this product from POSCO and from an unrelated foreign supplier whom we have never found to be subsidized. We verified that the price paid by Dongjin to POSCO was comparable to the price Dongjin paid to its foreign supplier for hot-rolled coil. Furthermore, no rebates or discounts are received from POSCO on these purchases. Consequently, we determine that Dongjin receives no competitive benefit through its purchases of inputs from POSCO.

Section 613 of the Trade and Tariff Act of 1984, signed by the President on October 30, codifies the standards for determining upstream subsidies. This section generally codifies Department practice. Our investigation was consistent with both Department practice and the newly codified standards.

E. Equity Infusions into Dongjin

In their July 18 submission, petitioners alleged that POSCO, the parent company of Dongjin, received government equity infusions on terms inconsistent with commercial considerations and that this equity subsidy may have been passed through POSCO to Dongjin. Dongjin was established on October 27, 1982, by POSCO. At the time of Dongjin's formation, POSCO invested funds in order to provide cash for the purchase of the assets of Illsin Steel Company and working capital for Dongjin's future operations. POSCO also guaranteed the notes of Dongjin used for the purchase of Illsin's assets.

Illsin Steel Company was a bankrupt company, owned and operated by it two major creditors, Korea Exchange Bank (KEB) and Commercial Bank of Korea (CBK). In accordance with Korean law, at the time of bankruptcy the courts foreclosed upon Illsin's assets and offered the assets for sale at public

auction. Because there were no other bidders for the assets at the appraised value or above, the banks, which were the highest bidders, purchased the assets at auction. These assets were then sold to Dongjin for cash and notes.

According to the banks: (1) The price offered by Dongjin was the highest price which they could obtain, (2) the banks' operations of Illsin were resulting in a cash drain on them, and (3) it was in the bank's interest to sell the assets as a package, so as not to significantly decrease the value of the total package. Because there were no bidders, at auction, which would have paid the appraised value of the assets, and because it was in the banks' interest to minimize their losses, the sale of Illsin by the banks can be characterized as a distress sale.

Although the banks were eager to sell, the purchase of Illsin's assets by Dongjin presented certain advantages to POSCO. Illsin had been a major supplier to POSCO. POSCO had knowledge and management expertise to operate Illsin and under the circumstances might negotiate terms which could make the venture economically attractive. The terms negotiated required a minimal amount of cash and notes, some of which were at zero interest rate.

To determine whether POSCO's equity infusion into Dongjin was on terms inconsistent with commercial considerations, we analyzed the terms compared to ordinary commercial considerations. The Department did not find this transaction inconsistent with commercial considerations for the following reasons.

First, POSCO did not receive government funds during 1982 and, therefore, POSCO's investment in Dongjin could not have been a pass through from the government. Second, we found no evidence that the government directed the banks to sell the assets to Dongjin on favorable terms. Third, the cash investment into a newly created subsidiary by a parent company, and the guaranteeing of subsidiary's notes, when the subsidiary is still a "shell" organization, are normal business practices. Fourth, because of the commercial advantages to both the seller and the purchaser in this transaction, and the apparent lack of interest by any other party to purchase Illsin's assets, we determine that the transaction was not on terms inconsistent with commercial considerations. Moreover, we do not consider POSCO's guarantee of Dongjin's notes payable to be a subsidy, because no evidence has been submitted that a parent company's guarantee of a wholly-owned

subsidiary's loan is inconsistent with commercial considerations.

III. Programs Determined Not To Be Used

We have determined that OCTG manufacturers, producers, or exporters in Korea do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigation of OCTG from Korea":

A. Preferential Port Charges

Petitioners alleged that "designated companies" under the Iron and Steel Industry Rehabilitation Order are eligible on a case-by-case basis to receive discounts on port rates. We verified that the rates charged to, and paid by, OCTG producers and exporters for use of ports are the same as those charged to all other users.

B. Tariff Reductions on Imported Plant and Equipment

Petitioners alleged that the government of Korea allows reductions of import duties for certain industries on certain items designated by the Ministry of Finance. We verified that none of the OCTG producers or exporters received tariff reductions on imported plant and equipment.

C. Free Export Zone Program

Petitioners alleged that producers and exporters of OCTG receive tax benefits based upon location in a free export zone. We verified that none of the producers or exporters of OCTG is located in a Free Export Zone.

D. Foreign Capital Inducement Law

Petitioners alleged that OCTG producers and exporters may be receiving financial and tax benefits under the Foreign Capital Inducement Law. The producers and exporters of OCTG are not eligible for any benefits under this program because they have no foreign ownership.

E. Export Credit Insurance

Petitioners alleged that the government of Korea provides annual contributions to an export insurance program. We verified that export credit insurance was not used to insure exports of OCTG to the United States.

F. Port Facilities

Petitioners alleged that the government of Korea is constructing a port at Kwangyang Bay to facilitate the importation of coal and iron ore. It is further alleged that POSCO, and therefore its subsidiary, Dongjin, will benefit from this port. The port is

scheduled for completion in 1987 and will not be used by any producer that exported OCTG to the United States during the period for which we are measuring subsidization.

G. Training Aid

Petitioners alleged that the steel industry has received training aid from the government of Korea. We verified that the steel companies producing the products under investigation have not received training grants or other training funds from the government of Korea.

H. Financial and Technical Assistance for Raw Material Purchases

Under the Iron and Steel Promotion Act financial and technical assistance to purchase raw materials is authorized. However, we found no evidence that steel companies producing the products under investigation receive assistance from the government in purchasing raw materials.

I. Preferential Utility Rates

Petitioners alleged that "designated companies" under the Iron and Steel Industry Rehabilitation Order are eligible on a case-by-case basis to receive discounts from regular utility charges. Under Article 7 of the Iron and Steel Industry Promotion Act reductions on utility charges are authorized. The steel industry made a request to the Korean Electric Company seeking reduced rates but the Electric Company turned down the request and the reductions were never granted. We also found no evidence that the steel companies producing the products under investigation received reductions or other assistance on any other utility rates.

Programs Not In Existence

We determine that the following programs are not in existence or have been abolished:

A. Preferential Exchange Rates for Export Loans

Petitioners alleged that producers and exporters of OCTG receive preferential exchange rates for export loans based on letters of credit. Petitioners alleged that the exchange rate used for loans based on letters of credit was 10 percent more favorable to Korean exporters than the actual exchange rate. There is no preferential exchange rate used to convert export financing. For export loans granted under the Export Financing Regulations, a Won/U.S. dollar conversion factor which is lower than the official exchange rate is utilized when a loan is received against a letter

of credit. Therefore, we determine that there is no program of preferential exchange rates for export loans that provides countervailable benefits to OCTG producers and exporters.

B. Export Financing under the Foreign Trade Transaction Act

Petitioners alleged that the government of Korea provides the steel industry with preferential short-term export financing under the Foreign Trade Transaction Act. The foreign Trade Transactions Act has been repealed and was not in effect during the period for which we are measuring subsidization.

C. Steel Industry Development Scheme

Petitioners alleged that the Korean Ministry of Trade and Industry is sponsoring a steel industry development scheme in which the government will spend 210 billion won on POSCO's (Dongjin's parent company) plant expansion project. At verification we established that the Ministry of Trade and Industry is not sponsoring such a scheme.

D. Wage Controls

Petitioners alleged that the government of Korea controls wages for government-run firms such as POSCO, resulting in lower production costs for this segment of Korean industry. It is further alleged that Dongjin may benefit from government wage controls by virtue of its status as a wholly-owned subsidiary of POSCO. The rates paid by Dongjin to its workers are comparable to the rates paid by other steel manufacturers. We also found no evidence that the government of Korea has a wage control system under which Dongjin must operate.

E. Joint Facilities for Industrial Complexes Scheme

Petitioners alleged in their August 20 submission that the government of Korea was providing funding for joint facilities in industrial complexes, and that the steel industry was one of the industries targeted for such funding. In 1981 such a program was discussed between the Federation of Small and Medium Industry Cooperatives and the government of Korea. The project was to be located near Kimpo Airport in Seoul. However, in January 1982 the proposed project was cancelled due to lack of funding.

F. Equipment Funds for Export Strategy Industries and Funding for Industrialization of New Technology

The Ministry of Trade and Industry (MTI) is presently studying proposals

concerning these two projects but there has been no final decision on whether to set them up. The Korea Development Bank has received a loan from the Asian Development Bank to fund one of the programs. However, we verified that the only industries eligible to receive loans from this fund are companies producing machines and machine parts.

G. Assistance for Trading Companies

In their August 20 submission petitioners alleged that the government of Korea provided benefits to trading companies by allowing them to increase their foreign exchange holding and by allowing them to increase their reserve funds to cover export losses in foreign markets. With regard to the first allegation, trading companies are authorized to maintain foreign currency accounts of over \$300,000 dollars. However, we found no evidence that other companies are limited in their foreign exchange holdings or any other evidence to suggest that this allowance for foreign exchange holding provides a countervailable benefit to trading companies. Regarding the allegation on export reserves, we verified at the trading companies that there are no special provisions allowing them to claim additional export loss reserves. Even if there were such provisions, we have verified all the outstanding export reserves held by the trading companies.

Petitioners Comments

Comment 1: Petitioners argue that the commercial bank interest rate, which was averaged with other rates to compute the benchmark, is not a free market rate and, therefore should not have been used in determining a benchmark. In support of their contention they cite Department practice as reflected in prior proceedings and in the Subsidies Appendix where "commercial" interest rates were used as benchmarks or where market-determined prices were sought.

DOC Position: We disagree. Petitioners are reading our prior determinations and the Subsidies Appendix too narrowly. For example, in seeking a "commercial" benchmark interest rate, we are seeking the alternative financing that is available to the firm in the lending marketplace of that country. We are asking if the interest rate paid on the allegedly preferential loan is less than what the average firm in that country would otherwise be paying. Similarly, in looking to market prices, we are seeking the prices that exist in that country's marketplace.

Typically, the marketplace is not the perfectly competitive market envisaged by economists. Instead, it is the commercial environment facing the firm. The commercial environment includes any distortions to relative prices that arise from government actions such as government regulation of the banking system, tax systems, customs duties or minimum wage laws. So long as profit-maximizing firms compete within that system, a marketplace exists and our benchmarks for identifying and valuing subsidies are prices in that marketplace.

Comment 2: Petitioners argue that the benchmark interest rate used in the Department's preliminary determination, a weighted average of the interest rates charged by all sources of short-term commercial financing in Korea, does not reflect what a company would pay a normal commercial lender and is thus inconsistent with the principles enunciated by the Department for quantifying subsidies. Petitioners further argue that it is the curb market's unregulated interest rate which reflects the real cost of credit in Korea, and thus, pursuant to the principles enunciated in the Department's Subsidies Appendix, the curb market interest rate should be used as the benchmark interest rate in this case.

DOC Position: The Department believes that the correct benchmark for short-term lending normally is the most comparable, predominant form of short-term financing in the country under investigation. However, as explained in the section of the notice on "Short-Term Export Financing Under the Export Financing Regulations", the Department has found an incentive for banks to lend for export transactions at the expense of domestic financing. Using best information available, the Department has measured this preference for export lending by comparing the cost of export loans with the weighted-average cost of all forms of short-term domestic financing.

In the case of long-term loans, the Department has followed its standard practice of comparing the terms of loans under examination with the terms of comparable commercial long-term loans (see the section of the notice on "Medium- and Long-Term Credit"). In reaching these determinations, we believe we have been faithful to the principles enunciated in our Subsidies Appendix.

Comment 3: Petitioners contend that, assuming *arguendo*, the weighted-average benchmark is the correct benchmark, the Department's weighted-average benchmark understates the proportional size of the curb market and

overstates the proportional size of bank credit as sources of domestic credit.

DOC Position: As explained in the section of the notice on "Short-term Export Financing Under the Export Financing Regulations," we are using a weighted-average of short-term domestic financing costs in order to quantify the banking system's preference for export loans. This weighted-average credit pool comprises short-term domestic bank credit, investment and finance company credit, commercial paper, and the curb market. Our weights are based on the most reliable data entered in the record of this investigation, including the Bank of Korea's *Monthly Statistical Bulletin*, the Federation of Korean Industries' biannual surveys of corporate financing, and the Korea Chamber of Commerce's annual survey of the curb market.

Comment 4: Petitioners contend that Korean medium- and long-term financing is a countervailable benefit because it is made available only to specially-designated priority sectors, to specific subgroups within those sectors, and, in particular, to the steel industry.

DOC Position: As explained in the section of the notice on "Medium- and Long-term Credit," we found no evidence that the Government of Korea directs medium- and long-term credit.

Respondents' Comments

Comment 1: Respondents argue that the Department was incorrect in not using the interest rate for short-term borrowings from commercial banks as the most appropriate national average commercial method of short-term financing. Bill discounts, overdrafts, and general term loans are the domestic equivalents of short-term export financing, and are the alternative financing to export loans. Department precedent has always been to select the most comparable and commonly used alternative source of financing in a given country.

DOC Position: We agree that the correct benchmark for short-term lending normally is the most comparable, predominant form of short-term financing in the country under investigation. However, as explained in the section of the notice on "Short-Term Export Financing Under the Export Financing Regulations," the Department has found an incentive for banks to lend for export transactions at the expense of domestic financing. Using best information available, the Department has measured this preference for export lending by comparing the cost of export loans with the weighted-average cost of all forms of short-term domestic financing.

Comment 2: Respondents contend that the Department was incorrect in determining that long-term loans provided by the National Investment Fund (NIF) constitute export subsidies. NIF loans are in no way contingent on export performance. Respondents further contend that NIF loans are also not domestic subsidies because they are generally available. In any case, given the Department's methodology for evaluating long-term variable rate loans, no new NIF loans or NIF loans outstanding have been at preferential interest rates since NIF rates were equalized with the commercial bill discount rate in late 1981.

DOC Position: We agree that NIF loans do not constitute an export subsidy. We have also found that they do not constitute a domestic subsidy because interest rates on NIF loans during the period under investigation were not on terms inconsistent with commercial considerations. The correct long-term benchmark rate, however, is not that which exists on short-term commercial bills; rather, it is the rate on comparable commercial long-term borrowing. This is the benchmark we used in determining that NIF loans did not constitute subsidies.

Comment 3: Respondents note in their comments on the Government Verification Report that, in the Ministry of Trade and Industry's requirements submission for NIF loans, a number of different companies from industries other than steel are listed and that not only steel companies were specifically listed.

DOC Position: We agree that companies from other industries were listed in the submissions.

Comment 4: Respondents argue in their comments on the Dongjin Verification Report that the sale of assets by the banks to POSCO was incorrectly characterized as a loan. They argue that the transaction between POSCO and the banks is a purchase contract between the owners of the assets (the banks) and the purchaser (POSCO).

DOC Position: Our determination with respect to this transaction is set forth in the section of the notice on "Equity Infusions in Dongjin."

Comment 5: Respondents note in their comments on the Dongjin Verification Report, that the charges paid for opening letters of credit are unrelated to the short-term loans themselves.

DOC Position: As discussed in the section of the notice on "Short-term Export Financing Under the Export Financing Regulations," we consider that the fee structure, which specifies lower charges for opening those letters

of credit used to purchase imports of raw materials which are then used in export production, to be a manifestation of the preference built into the government's rediscount mechanism on short-term export loans. We consider that we have captured any benefit from this fee structure in our comparison of the weighted-average interest rate on domestic loans with the 10 percent interest rate on export loans.

Comment 6: Respondents argue in their comments on the Government Verification Report that the central bank rediscount mechanism was established to ensure that financing reached the productive sector of the economy by tying the financing to commodities and transactions, and that the volume of domestic financing under this mechanism far exceeds export financing if overdrafts and general term loans are included. They also argue that because domestic commercial bills finance 100 percent of the bills value, while export loans are eligible for only 80 percent, the rediscount mechanism does not alter the value of financing reaching the borrower.

DOC Position: We disagree. In 1983, the volume of short-term domestic financing eligible for rediscount at the Bank of Korea was less than the volume of short-term export financing eligible for rediscount at the Bank of Korea. We believe this is a manifestation of the preference for export financing over domestic financing. Although a large company's domestic transactions are eligible for financing equal to 100 percent of transaction value, the bank which provides this financing may only rediscount 30 percent of that 100 percent at the Bank of Korea. At the same time, although all firms' export transactions are only eligible for financing equal to 80 percent of transactions value, the bank which provides this financing can rediscount 70 percent of the 80 percent at the Bank of Korea. Thus, the Bank of Korea supplies credit which covers only 30 percent of the value of a domestic transaction as compared to 56 percent of the value of an export transaction.

This preference for export credit is a subsidy, and we have countervailed it (see the section of this notice entitled, "Short-term Export Financing Under the Export Financing Regulations.")

Comments by U.S. Steel, a Party to the Proceeding

Comment 1: U.S. Steel argues that the weighted-average benchmark interest rate used by the Department in its preliminary determination greatly understated the subsidy from government provided/directed loans

because it included the commercial bank interest rate, which is a heavily subsidized rate, available only to a select few government-preferred industries. U.S. Steel contends that the commercial bank rate should not be included in the weighted-average benchmark because it is not a market rate. Thus, its use contravenes the Department's standard requirement that the benchmark be a market interest rate. U.S. Steel further contends that because Korean commercial banks lend (1) at well below market interest rates, (2) only to a selected few government-preferred, priority sectors, and (3) without considering borrower creditworthiness, commercial banks cannot be considered "normal commercial lenders." This too contravenes standards Department policy which states that loan benchmarks represent what a company would pay a normal commercial lender.

DOC Position: See our responses to petitioners' Comment 1 and Comment 2.

Comment 2: U.S. Steel contends that, even if it were proper to include the commercial bank interest rate in the Department's weighted-average benchmark, the benchmark still understated the subsidy from government provided/directed loans because the size of the commercial bank sector has been greatly overstated relative to the private (curb) loan market.

DOC Position: See our response to petitioners' Comment 3.

Comment 3: Petitioner contends that exporters and/or steel producers benefit from a lower effective interest rate on domestic bank loans because they, unlike other borrowers, are not subject to compensating balance requirements.

DOC Position: Bank of Korea regulations specifically prohibit domestic banks from requiring compensating balances. During verification, we found no evidence that domestic bank loans require compensating balances of other borrowers, while not requiring them of exporters and/or steel producers.

Comment 4: U.S. Steel argues that the Korean government allocates the heavily subsidized credit of the "tightly government controlled-banking system" to select priority, export industries. All others must rely on the curb market for funds. Commercial bank loans have especially focused on the Korean steel industry, and loan decisions are based on political, not creditworthiness considerations. U.S. Steel contends that commercial bank loans were not generally available either prior to or during 1983-1984.

DOC Position: For an explanation of our treatment of medium- and long-term loans, see the section of this notice entitled "Medium- and Long-term Credit".

Comment 5: U.S. Steel contends that the National Investment Fund (NIF) provides preferential loans to steel producers.

DOC Position: The Department has found that NIF loans do not constitute subsidies during the period for which we are measuring subsidization (see the section of this notice entitled "Medium- and Long-Term Credit").

Comment 6: U.S. Steel contends that the NIF provided loans to steel producers at interest rates below those paid on NIF deposits. This differential in the cost of their funds and the return on their funds was assumed by the government, and constitutes an additional subsidy to steel producers.

DOC Position: During the period for which we are measuring subsidization, interest rates on long-term variable-rate NIF loans outstanding were not below interest rates on long-term variable-rate NIF deposits outstanding. Therefore, no government assumption of interest charges is indicated during the period for which we are measuring subsidization.

Comment 7: U.S. Steel argues that the respondent's non-responsiveness to questions in the Department's questionnaire concerning both commercial banks and NIF dictates that the Department make all inferences against respondents.

DOC Position: The Department has found respondents responsive to our requests for information throughout this investigation considering the time constraints under which all parties were operating. Furthermore, we obtained information on the commercial banks and NIF during our verification and U.S. Steel was given an opportunity to comment on the reports of our verification which discuss commercial banks and the NIF in detail.

Comment 8: U.S. Steel argues that Korean Development Bank (KDB) loans are not generally available and should therefore be countervailed.

DOC Position: The Department has found that KDB loans do not constitute subsidies during the period for which we are measuring subsidization (see the section of this notice entitled "Medium- and Long-Term Credit").

Comment 9: U.S. Steel contends that Korean steel producers benefit from government loan guarantees.

DOC Position: In the course of our investigation we determined that loan guarantees from both government-owned and privately-owned financial

institutions are a standard commercial practice in Korea. The Bankers' Association sets the guarantee fees, and all Korean banking institutions charge those fees. The fee structure for loan guarantees does not differentiate by industry or class of transaction (*i.e.*: export or domestic). It does distinguish between won and foreign currency loans. As explained at verification by both foreign and Korean bankers, foreign banks, unlike Korean banks, cannot require collateral on their loans. Thus, foreign bankers generally require a loan guarantee. Korean banks usually require guarantees when a company has no unpledged collateral. We found that the steel companies producing the products under investigations paid the fees specified by the Bankers' Association for those guarantees that they had on their domestic and foreign currency loans. Thus, we do not consider that these guarantees are on terms inconsistent with commercial considerations.

Comment 10: U.S. Steel contends that the Department's verification reports indicate that preferential port charges for exports exist in Korea, based on the per ton differential in port charges for exporting, importing and domestic shipping.

DOC Position: The Korea Maritime and Port Administration (KMPA) establishes the rates for port charges. Rates vary according to port also to the type of port activity. Port charges are higher for importers than for exporters; however, the charges for domestic shipping are the lowest. For the port at Pusan the rate is 22 cents a ton for exporting, 37 cents a ton for importing, and 68 won a ton for shipping to another Korean port. The rate of 68 won for domestic shipping is much lower than the 22 cents a ton rate charged to exporters. Since an exporting activity is not favored over a domestic activity, we find no countervailable benefit being provided to producers or exporters of OCTG.

Comment 11: U.S. Steel notes that the Department's verification report on Dongjin indicates that opening charges on letters of credit for loans for purchasing foreign raw materials for domestic use are higher than for loans purchasing foreign raw materials for export use. They consider this to be an export subsidy.

DOC Position: We believe that we have captured any benefit to short-term export loans provided by this fee structure in our calculation of the subsidy on the short-term export loans. For further discussion of this issue, see

our response to respondents' Comment 5.

Comment 12: U.S. Steel contends that Pohang Iron and Steel Company's (POSCO) equity infusions into Dongjin are a countervailable subsidy because no private investor would have been willing to invest in Dongjin.

DOC Position: Our determination with respect to the formation of, and equity investment in, Dongjin is set forth in the section entitled "Equity infusions into Dongjin."

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. Commerce officials spent from September 18 to October 17 verifying the information submitted by the government of Korea and by the companies under investigation, and gathering additional information to be used in our final determination. During this verification we followed normal verification procedures including inspection of documents and ledgers, and tracing the information in the responses to source documents, accounting ledgers, and to financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, on September 12, 1984 we instructed the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Korea (49 FR 35836). As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended and the Customs Service shall require a cash deposit or bond for each such entry of this merchandise in the amount of 0.53 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports materially injure,

or threaten material injury to, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs Service to assess countervailing duties on all entries of OCTG from Korea entered, or withdrawn from warehouse, for consumption on or after the suspension of liquidation date, equal to the net subsidy amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1771(d)).

William T. Archey

Acting Assistant Secretary for Trade Administration.

November 20, 1984.

[FR Doc. 84-31195 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-05-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Soliciting Public Comment on Bilateral Negotiations During 1985

November 23, 1984.

The U.S. Government anticipates holding negotiations during 1985 concerning expiring bilateral agreements covering certain cotton, wool and man-made fiber textiles and apparel from Brazil (March 31), Indonesia (June 30), Japan (December 31), Mauritius (September 30), Mexico (December 31), Singapore (December 31), and Yugoslavia (December 31). (The dates noted in parenthesis are the expiration dates of the agreements).

The purpose of this notice is to invite any party wishing to comment or provide data or information regarding these agreements, or to comment on domestic production or availability of textiles and apparel affected by these agreements, to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the negotiations is not yet established, comments should be submitted promptly, particularly those expiring early in the year. Comments or

information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration. The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31200 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting the Import Limit for Certain Man-Made Fiber Apparel Products From the Republic of the Philippines

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1984. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

A CITA directive dated December 16, 1983 (48 FR 56425) established limits for certain specified categories of cotton, wool, and man-made fiber textile products, including Category 645/646NT (sweaters), produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1984. At the request of the Government of the Republic of the Philippines, special carryforward in the amount of 5,201 dozen is being applied to the restraint limit for Category 645/646, increasing it from 101,641 dozen to 106,842 dozen for 1984, pending completion of a data reconciliation involving this Category. The 1985 limit for Category 645/646 will be adjusted to account for carryforward applied in the current year, depending on the outcome of the data reconciliation.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as

amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington,
D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 16, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1984.¹

Effective on November 29, 1984, paragraph 1 of the directive of December 16, 1983 is hereby further amended to include an adjusted restraint limit for Category 645/646NT of 106,842 dozen.²

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31198 filed 11-27-84; 8:45 am]

BILLING CODE 3510-DR-M

New Import Control Limits for Certain Cotton Textiles and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

November 23, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1984. For further information contact

¹ The agreement, provides, in part, that: (1) specific limits may be exceeded by during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

² The restraint limit has not been adjusted to reflect any imports exported after December 31, 1983.

Jane Corwin, International Trade
Specialist (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1981 between the Governments of the United States and the Republic of Singapore, the Government of the United States has decided to control imports of combed cotton yarn in Category 301 and man-made fiber dresses in Category 636, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1984, at respective levels of 300,000 pounds and 15,453 dozen. These controls are in addition of those previously announced for 1984 (See 48 FR 58628 and 49 FR 19569). The levels in the letter to the Commissioner of Customs, which follows this notice, will be adjusted to account for imports exported during the January-September 1984 period. Charges for imports in Category 301 have amounted to 217,700 pounds; in Category 636, to 10,809 dozen.

As the data become available, further charges will be made to account for the period which began on October 1, 1984.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the *Federal Register* on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington,
D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 19, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of cotton and man-made fiber textile products, produced or manufactured in Singapore and exported during 1984.

Effective on November 29, 1984, the directive of December 19, 1983 is hereby amended to include the following levels of restraint for cotton textiles and man-made fiber textile products in Categories 301 and 636:

Category	12-mo level of restraint ¹
301	300,000 pounds.
636	15,453 dozen.

¹ The levels of restraint have not been adjusted to reflect any imports exported after December 31, 1983. During the January-September 1984 period imports in Category 301 have amounted to 217,700 pounds. Imports during that period in Category 636 have amounted to 10,809 dozen.

Textile products in Categories 301 and 636 which have been exported to the United States before January 1, 1984 shall not be subject to this directive.

Textile products in Categories 301 and 636 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The actions taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton textiles and man-made fiber textile products from Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the *Federal Register*.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31197 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-DR-M

New Import Control Limits for Certain Cotton Textile Products Produced or Manufactured in Thailand

November 23, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1984. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand, the United States Government has decided to control imports of cotton twill and sateen in Category 317, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1984, at a limit of 6,824,280 square yards equivalent which

includes available carryover from 1983. The limit has not been adjusted to account for merchandise exported on and after January 1, 1984. During the January-September 1984 period such goods have amounted to 6,101,980 square yards equivalent and will be charged. Further charges will be made to account for the period which began on October 1, 1984 and extends to the effective date of this action, as well as thereafter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 7, 1983 by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on November 29, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 317 produced or manufactured in Thailand, in excess of 6,824,280 square yards equivalent.¹

Textile products in Category 317 which have been exported before January 1, 1984, shall not be subject to this directive.

Textile products in Category 317 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the

effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31201 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-DR-M

Establishing New Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Republic of Uruguay

November 23, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 29, 1984. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

The Governments of the United States and the Republic of Uruguay have exchanged notes amending their Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984 to establish, among other things, new specific limits of 1,700,000 square yards and 40,100 dozen, respectively for wool textile products in Categories 410 (woolen and worsted fabric) and 435 (wool coats), produced or manufactured in Uruguay and exported, in the case of Category 410, during the period which began on February 1, 1984 and extends through January 31, 1985; and, in the case of Category 435 (wool coats), during the period which began on July 1, 1984 and extends through June 30, 1985. The letter to the Commissioner of Customs which follows this notice amends the directive of June 18, 1984 to establish the foregoing specific limits for the indicated periods. Under the terms of the agreement, as amended, the new

specific limit for Category 410 is being increased by the application of carryforward in the amount of 119,000 square yards to 1,819,000 square yards.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 23, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 18, 1984, concerning wool textile products, produced or manufactured in Uruguay and exported during specified restraint periods.

Effective on November 29, 1984, the directive of June 18, 1984 is hereby amended to establish a restraint limit of 40,100 dozen¹ for wool textile products in Category 435, produced or manufactured in Uruguay and exported during the twelve-month period which began on July 1, 1984 and extends through June 30, 1985.

Also effective on November 29, 1984, the directive of June 18, 1984 is hereby further amended to establish a restraint limit of 1,819,000 square yards² for wool textile products in Category 410, produced or manufactured in Uruguay and exported during the twelve-month period which began on February 1, 1984 and extends through January 31, 1985.³

Wool textile products in Categories 410 and 435 which have been exported to the United States in the case of Category 410, before February 1, 1984, and, in the case of Category 435, before July 1, 1984, shall not be subject to this directive.

Wool textile products in Categories 410 and 435 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

¹ The restraint limit has not been adjusted to account for any imports exported after June 30, 1984.

² The restraint limit has not been adjusted to account for any imports exported after January 31, 1984.

³ The Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984 between the Governments of the United States and Uruguay provides, in part, that: (1) The specific limits may be adjusted for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

¹ The level of restraint has not been adjusted to reflect any imports exported after December 31, 1983. Imports in Category 317 during the January-September 1984 period have amounted to 6,101,980 square yards equivalent.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter E. Lenahan

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-31199 Filed 11-27-84; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement to the Final Environmental Impact Statement (DSEIS); Sacramento River Deep Water Ship Channel, CA.

AGENCY: Army Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of Intent to prepare a draft Supplement to the Final Environmental Impact Statement (DSEIS).

SUMMARY: 1. *Proposed Action:* The proposed project consists of deepening the existing deep water ship navigation channel from 30 feet to 35 feet (mean lower low water) and widening the navigation channel to between 250 and 400 feet in width. The proposed project is in the Continuing Engineering and Planning phase and design details for construction are being prepared. The DSEIS is being prepared to evaluate and update water quality issues, fish and wildlife impacts and mitigation, and recreation features. Project impact on salinity influencing water quality of water supply flows in the Delta is being evaluated. Previously evaluated project impact on fish and wildlife habitat at dredged material disposal sites is being reexamined. Potential additional recreation areas could be established at selected dredged material disposal sites and this is being coordinated with Solano, Sacramento and Yolo Counties. Comments received on the previous EIS suggested further information is needed about possible heavy metal (mercury) contamination in materials to be dredged and about secondary and cumulative impacts of the project and these subjects will also be addressed in the DSEIS. The project was previously evaluated in a Final Environmental Impact Statement published in the May 8, 1981 *Federal Register*.

2. *Alternatives:* Alternative methods of moving goods through the Port of Sacramento were studied thoroughly in the original EIS process and found either less economically and/or

environmentally beneficial. These alternatives included: No action; increased use of LASH barges; and increased use of intermodel transportation. There are no alternatives to the proposed project being evaluated at this time. Alternate methods of disposing of the dredged material will be evaluated, as will possible uses of the disposal sites for recreation or fish and wildlife mitigation areas.

3. *Scoping of the DSEIS:* The original EIS was extensively coordinated with concerned agencies, environmental groups, and the general public through a series of public meetings and workshops. The supplement is being coordinated with concerned Federal, State and local agencies. Issues which are being reevaluated include water quality, salinity, fish and wildlife, and recreational use of the disposal sites. Public input is desired on these and any other issues of concern to assist in scoping the DSEIS.

4. *Estimated date of DSEIS:* A draft Supplement to the Final Environmental Impact Statement is expected to be circulated for public review in January 1985.

ADDRESS: Questions concerning the proposed project and the DSEIS can be answered by Michael Welsh, Environmental Planning Section, Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814-4794, telephone (916) 440-2456, (FTS 448-2456).

Dated: November 15, 1984.

Arthur E. Williams,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 84-31100 Filed 11-27-84; 8:45 am]

BILLING CODE 3710-GH-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 28, 1984.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and

Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that the public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: November 23, 1984.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of Review Requested: Extension
Title: Application form for Follow Through Program

Agency Form Number: 4473

Frequency: Annually

Affected Public: Local Educational Agencies; Other Public and Private, Non-Profit Agencies, Organizations, and Institutions

Reporting Burden: Responses: 92; Burden Hours: 2,760

Recordkeeping Burden: Recordkeepers: 92; Burden Hours: 184

Abstract: State Education Agencies, Local Education Agencies and Institutions of Higher Education must

have this application form in order to meet all the requirements for securing the financial assistance available under the Follow Through authority.

Type of Review Requested: Extension
Title: Nominations for the National Advisory Council on Indian Education

Agency Form Number: 543

Frequency: On Occasion

Affected Public: State and Local

Educational Agencies; Indian Tribes; Indian Organizations; Indian Institutions; Elementary or Secondary Schools for Indian Children supported by the Department of the Interior; Institutions of Higher Education

Reporting Burden: Responses: 80; Burden Hours: 80

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This form shall be used by individuals, tribes, and organizations to apply for or nominate persons to serve on the National Advisory Council on Indian Education. This Council advises the Secretary with respect to the administration of programs in which Indian children and adults participate or receive benefit.

Type of Review Requested: New

Title: State Performance Report (ECIA, Chapter 1, Migrant Program)

Agency Form Number: A10-6P

Frequency: Annually

Affected Public: State or Local

Governments

Reporting Burden: Responses: 51; Burden Hours: 1,785

Recordkeeping Burden: Recordkeepers: 51; Burden Hours: 204

Abstract: This report is used to obtain necessary participation and performance data on the ECIA Chapter 1 migrant education program throughout the Nation. It is also needed to manage the program effectively and to provide information needed to comply with Sections 417(a) and 418(a) of the General Education Provisions Act and Section 555(e) of Chapter 1, ECIA.

Type of Review Requested: Extension

Title: Title IV, Section 418A of the Higher Education Act of 1965, as amended. High School Equivalency (HEP) College Assistance Migrant Program (CAMP) Financial Status and Performance Report.

Agency Form Number: 819-2

Frequency: Annually

Affected Public:

Reporting Burden: Responses: 30; Burden Hours: 180

Recordkeeping Burden: Recordkeepers: 30; Burden Hours: 30

Abstract: An institution of higher education or another public or non-profit private agency is required to file

a financial status and performance report under the provisions of the Education Department General Administrative Regulations (EDGAR). The information will be used for future program decisions regarding program planning or management.

Office of Special Education and Rehabilitative Services

Type of Review Requested: New

Title: Client Assistance Program

Request for Assistance

Agency Form Number: B20-1P

Frequency: Annually

Affected Public: State or Local

Governments

Reporting Burden: Responses: 57; Burden Hours: 14.25

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The information is needed to (1) determine the amount of each State's grant and (2) determine what agency will be conducting each State's program. The name of the designated agency is cited in Section 370.20(a)(1); the amount of funds requested is cited in Section 370.20(d).

Type of Review Requested: New

Title: Financial Status Report for the Client Assistance Program

Agency Form Number: B20-2P

Frequency: Annually

Affected Public: State or Local

Governments

Reporting Burden: Responses: 57; Burden Hours: 57

Recordkeeping Burden: Recordkeepers: 57; Burden Hours: 57

Abstract: This annual report, prepared and submitted by the State agency designated by the Governor to administer the Client Assistance Program (CAP), is the only source of financial information available to RSA. Used in conjunction with client data it affords the capability of measuring the accomplishments of the program.

Type of Review Requested: Extension

Title: Annual Report on State VR

Agency Post-Employment Services and Annual Reviews

Agency Form Number: RSA 62

Frequency: Annually

Affected Public: State or Local

Governments

Reporting Burden: Responses: 82; Burden Hours: 71

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The ED-RSA 62, a reporting form instrument, is used to monitor State agency activities of service delivery to handicapped individuals after rehabilitation closure to ensure maintenance of employment. The form is also used to review earlier

termination to see if the client can now benefit from rehabilitation and to review placement in a sheltered workshop to determine if the client can now work in the competitive labor market.

Type of Review Requested: Revision

Title: Program Impact Reporting System

Agency Form Number: RSA 911

Frequency: Annually

Affected Public: State or Local

Governments

Reporting Burden: Responses: 83; Burden Hours: 3,464

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The specified data must be collected by the Commissioner, RSA and must be included in the Annual Report to the Congress in accordance with Section 13 of the Rehabilitation Act, as amended. The respondents are State VR agencies. The specified data are demographic and program data on each individual case closed out from the VR system each fiscal year.

Type of Review Requested: New

Title: Annual Client Assistance Program Report

Agency Form Number: RSA 227

Frequency: Annually

Affected Public: State or Local

Governments; Non-profit Institutions

Reporting Burden: Responses: 57; Burden Hours: 228

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The ED-RSA 227 will be used to monitor CAP agency activities of service provided to client and client applicants of programs, projects and facilities authorized by the Rehab Act of 1973, as amended.

[FR Doc. 84-31118 Filed 11-27-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF85-69-000]

Acme Fence and Iron; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 1, 1984, Acme Fence and Iron, (Applicant) of P.O. Box 876, Norman, Oklahoma 73070, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a wind turbine generator located in northwest Norman, Oklahoma. The electric power production capacity of the facility is 180 kilowatts. The wind turbine is a 17 meter Derrieux design.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31228 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP83-44-007]

**Algonquin Gas Transmission Co.;
Tariff Filing Under Rate Schedule
SNG-1**

November 23, 1984.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on November 16, 1984, submitted a Cost of Service Report related to service under its Rate Schedule SNG-1 for the 1983-1984 Winter Delivery Season, as required by the provisions of its FERC Gas Tariff, Second Revised Volume No. 1. Together with such report, and reflecting the results of the report, Algonquin Gas has filed Sixth Revised Sheet No. 202 to reflect a negative amortization adjustment of \$0.0371 to the base tariff SNG-1 Demand Charge approved in Docket No. RP83-44. Such tariff sheet is proposed to be effective November 1, 1984.

Algonquin Gas notes that a copy of this filing is being served upon all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 285.211, 385.214). All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31177 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-18-000]

**Bio-Energy Corp.; Application for
Commission Certification of Qualifying
Status of a Cogeneration Facility**

November 23, 1984.

On October 11, 1984, Bio-Energy Corporation (Applicant), located at Route 127, P.O. Box 498, West Hopkinton, New Hampshire 03229, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at Route 127 in the Town of West Hopkinton, New Hampshire. It consists of a steam boiler designed for wood chip burning, and an extraction turbine-generating set rated 11.5 MW. Electric power output generated by the facility will be sold to a local public utility whereas steam output will be sold to an adjacent paper mill for process use. The primary energy source used by the facility is wood chips or "waste wood". The construction of the facility began in August, 1983.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31229 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES85-12-000]

**Boston Edison Co.; Notice of
Application**

November 23, 1984.

Take notice that on November 14, 1984, Boston Edison Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking an order authorizing the issuance of short-term debt securities ("Short-term Debt") not exceeding in the aggregate \$150,000,000 outstanding at any one time. The Short-term Debt will be issued by the Applicant on various dates through December 31, 1986. Short-term Debt consisting of promissory notes issued as short-term notes to commercial banks or institutional investors, promissory notes issued as short-term notes to commercial banks or institutional investors, promissory notes to commercial paper dealers and commercial paper placed directly with purchasers and all Short-term Debt will mature in no more than one year from the date of issue.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 14, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31230 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-71-000]

Bridgewater Hydroelectric Partnership; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 2, 1984, Bridgewater Hydroelectric Partnership (Applicant), of c/o Mitex, Inc., 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 125 kilowatt hydroelectric facility (P. 7513) will be located at the Old Mill Dam on the North River in the Town of Bridgewater, Virginia.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31231 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-75-000, et al. and Docket No. RP82-120-000]

Columbia Gas Transmission Corp. et al. and Columbia Gas Transmission Corp.; Informal Settlement Conference

November 23, 1984.

Take notice that on December 4, 1984, at 10:00 a.m. there will be an informal conference held in the offices of the Commission which will be convened to discuss the possible resolution by settlement of all or part of the issues in the above-captioned causes.

Any interested persons may at their option attend, but mere attendance will not serve to make one a party to the proceeding.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31178 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-72-000]

Columbus Mills Dam Hydroelectric Project; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 2, 1984, Columbia Mills Dam Hydroelectric Project (Applicant), of Mitex, Inc., 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 450 kilowatt hydroelectric facility (P. 8005) will be located near the Maury River in Buena Vista, Virginia.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for

a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31232 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-115-004]

Consolidated Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

November 23, 1984.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on November 19, 1984, filed revised tariff sheets pursuant to a Stipulation and Agreement in Docket No. RP-82-115-000, approved by Commission letter order issued November 9, 1984. The revised tariff sheets reflect the resolution of the rate of return, capital structure and associated tax issued as provided in the Stipulation and Agreement.

Consolidated requests waiver of any of the Commission's Rules and Regulations as may be deemed necessary to permit the revised tariff sheets to become effective as proposed.

Copies of the filing were served upon Consolidated's jurisdictional customers, other persons intervening in Docket No. RP82-115-000, as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All petitions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31179 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI85-50-000]

**Diamond Shamrock Exploration Co.;
Application for Limited-Term Partial
Abandonment Authorization and for
Blanket Limited-Term Certificates of
Public Convenience and Necessity**

November 23, 1984.

Take Notice that on November 20, 1984, Diamond Shamrock Exploration Company filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificates of Public Convenience and Necessity to authorize a special marketing program called Diamond Shamrock Special Marketing Program ("DSSMP"). Applicant proposes to conduct this program in a manner similar to those SMP extensions authorized by the Commission on September 26, 1984 in Docket Nos. CI83-269, *et al.* Under DSSMP, Applicants would market released gas. The authority sought herein would authorize the limited-term abandonment of the sale of the released gas to existing purchasers, and the resale of that gas to the DSSMP purchasers, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would authorize interstate pipeline, distributors and Hinshaw pipelines to transport DSSMP volumes pursuant to section 7(c) of the Natural Gas Act and would authorize intrastate pipelines to transport DSSMP volumes pursuant to section 311(a)(2) of the Natural Gas Policy Act.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before December 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party

in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31180 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-68-000]

**Drapery Manufacturing, Inc.;
Application for Commission
Certification of Qualifying Status of a
Small Power Production Facility**

November 23, 1984.

On November 1, 1984, Drapery Manufacturing, Inc., (Applicant), of 8205 S.W. 29th Street, Oklahoma City, Oklahoma 73179, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a wind turbine generator located at the Applicant's address. The electric power production capacity of the facility is 180 kilowatts. The wind turbine is a 17 meter Derrius design.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31233 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 7809-001]

**Emerson Falls Hydro Associates;
Notice Suspending 120-Day Period for
Action on Small Hydro Exemption**

Issued November 21, 1984.

Emerson Falls Hydro Association filed an application for exemption for the proposed Emerson Falls Water Power Project No. 7809, to be located on the Sleepers River, in Caledonia County, Vermont. The application was filed pursuant to section 408 of the Energy Security Act of 1980 and § 4.101 *et seq.* of the Commission's regulations.

Additional time is necessary for action on the application in order to ensure full consideration of all information and comments that have been received. The 120-day period for Commission action is suspended pursuant to 18 CFR 4.105(b)(5)(iv).

By direction of the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31181 Filed 11-27-84 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-4-000]

**Fayette Manufacturing Corp.;
Application for Commission
Certification of Qualifying Status of a
Cogeneration Facility**

November 23, 1984.

On October 3, 1984, Fayette Manufacturing Corporation (Applicant), P.O. Box 1149, Tracy, California 95376, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 6.49 MW combined-cycle (with Kalina cycle technology) cogeneration facility will be located at the intersection of Kelso and Bruns Roads, 15 miles east of Livermore in Alameda County, California. The facility will consist of a combustion turbine generating set rated 3.77 MW; and a steam turbine generating set rated 2.72 MW. Heat produced from the combustion turbine exhaust as well as from the Kalina cycle will be used for heating a 100,000 square foot greenhouse. The construction of the facility will begin in the first quarter of 1985. The primary energy source to be used by the facility is natural gas.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy

Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31234 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-456-000]

Harris Energy, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 23, 1984.

On August 22, 1984, Harris Energy, Inc. (Applicant), located at 911 Moraga Road, Lafayette, California 94549, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. A revised application with supplemental information was filed by the Applicant on October 17, 1984. No determination has been made that the submittal constitutes a complete filing.

The 16.3 MW combined-cycle cogeneration facility will be located at the H.G. Fenton Materials Company quarry located near the north end of Camino Santa Fe Road in the Carroll Canyon area of San Diego, California. Exhaust heat from a combustion turbine will go directly both to an asphalt plant aggregate dryer and to a heat recovery steam generator from which, steam produced will go to an extraction/condensing steam turbine generator. Extracted steam will be used to heat asphalt storage tanks continuously. Net electric power generation by the facility will be between 12 MW and 15 MW depending on whether the aggregate dryer is on or off. The primary energy source will be natural gas or oil. The construction of the facility will begin in June 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North

Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31235 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-70-000]

Hitch Enterprises; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 1, 1984, Hitch Enterprises (Applicant), of P.O. Box 1308, Guyton, Oklahoma 73942, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a wind turbine generator located 20 miles south and 8 miles west of Garden City, Kansas. The electric power production capacity of the facility is 180 kilowatts. The wind turbine is a 17 meter Derrius design.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31236 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6442-006]

Kelley, Ravenscroft and Chenoweth; Surrender of Preliminary Permit

November 23, 1984.

Take notice that Kelley, Ravenscroft and Chenoweth, Permittees for the Whitehorse Rapids Project No. 6442, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 6442 was issued on October 7, 1983, and would have expired on March 31, 1985. The project would have been located on Johnson Creek in Valley County, Idaho.

The Permittees filed the request on October 1, 1984, and the preliminary permit for Project No. 6442 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31237 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6267-011]

Lester Kelley, Vernon Ravenscroft and Helen Chenoweth; Surrender of Exemption From Licensing of a Small Hydroelectric Project of Five Megawatts or Less

November 23, 1984.

Take notice that Lester Kelley, Vernon Ravenscroft and Helen Chenoweth, Exemtees for the Reagan Creek Project No. 6267, have requested that their exemption be terminated. The exemption from licensing was issued on April 6, 1984, and the project would have been located on Reagan Creek in Valley County, Idaho. The Exemtees have stated that project construction has not commenced.

The Exemtees filed the request on October 1, 1984, and the exemption from licensing of Project No. 6267 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as

described in 18 CFR § 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31240 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6245-012]

Lester Kelley, Vernon Ravenscroft and Helen Chenoweth; Surrender of Exemption From Licensing of a Small Hydroelectric Project of Five Megawatts or Less

November 23, 1984.

Take notice that Lester Kelley, Vernon Ravenscroft and Helen Chenoweth, Exemtees for the Bear Creek Project No. 6245, have requested that their exemption be terminated. The exemption from licensing was issued on April 6, 1984, and the project would have been located on Bear Creek in Valley County, Idaho. The Exemtees have stated that project construction has not commenced.

The Exemtees filed the request on October 1, 1984, and the exemption from licensing of Project No. 6245 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31239 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6230-005]

Lester Kelley, Vernon Ravenscroft and Helen Chenoweth; Surrender of Preliminary Permit

November 23, 1984.

Take notice that Lester Kelley, Vernon Ravenscroft and Helen Chenoweth, Permittees for the Caton Creek Project No. 6230, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 6230 was issued on October 18, 1983, and would have expired on March 31, 1985. The project would have been located on Caton Creek in Valley County, Idaho.

The Permittee filed the request on October 1, 1984, and the preliminary permit for Project No. 6230 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31238 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-61-000]

MARMAC Power Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On October 29, 1984, MARMAC Power Corporation (Applicant), of 6415 Katella Avenue, Cypress, California 90630-5207 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in San Bernardino County near Barstow, California. The electric power production capacity is 49.9 megawatts. The primary energy source will be biomass in the form of orchard and vineyard prunings, almond shells and wood waste from forest operations. Natural gas or low sulfur coal will be used for combustion chamber start-up and occasional flame stabilization, and will amount to no more than 15 percent of the total annual fuel consumption.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31241 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-46-000]

Marshfield Brook Hydroelectric Co.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On October 22, 1984, Marshfield Brook Hydroelectric Company (Applicant), 26 State Street, Montpelier, Vermont 05602, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 350 kW small power production facility is located in the Town of Marshfield, Washington County, Vermont. It is a hydroelectric generation facility and the primary energy source is water.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding

siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31242 Filed 11-21-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-50-000]

**Methanol Production Corp.;
Application for Commission
Certification of Qualifying Status of a
Cogeneration Facility**

November 23, 1984.

On October 22, 1984, Methanol Production Corporation (Applicant), located at 165 South Union, Suite 500, Lakewood, Colorado 80228, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Methanol Production Corporation will construct a modular methanol plant designed to convert medium BTU natural gas into industrial grade methanol at a plant to be located in Township 29½ South, Range 23 East, SLM, San Juan County, Utah.

Natural gas to fuel the facility and provide methanol feedstocks will originate from natural gas wells that have been shut in because of high concentrations of nitrogen, CO₂, and hydrogen sulfide.

Electric power will be produced in a bottoming-cycle from waste heat generated in the steam/methane reforming section of the modular methanol plant. Steam will be generated from the recovery of heat in the reformer flue gas. Electricity will be recovered from the steam via the use of a non-condensing steam turbo-generator. Total electric production capability of the plant is 846 kilowatts. Construction is scheduled to commence in January, 1985 with completion and start-up projected for December, 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31208 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER84-694-000, et al.]

**Michigan Power Co.; Order Accepting
for Filing and Suspending Rates,
Noting Interventions, Granting Waiver
of Notice Requirements, Establishing
Hearing Procedures, and
Consolidating Dockets**

Issued November 20, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III, and Charles G. Stalon.

On September 21, 1984, Michigan Power Company (MPC) tendered for filing a proposed two-step rate increase for firm power service to two municipal wholesale customers, the City of Dowagiac and the Village of Paw Paw, Michigan.¹ The proposed Step 1 rates would increase revenues by approximately \$152,000 (5.6%) for the calendar year 1983 test period. The proposed Step 2 rates would further increase revenues by approximately \$404,000 (15%). MPC's submittal primarily reflects the pass-through of MPC's increased purchased power costs incurred as a result of its increased rates for service from Indiana and Michigan Electric Company (I&M) proposed in Docket Nos. ER84-587-000, et al.² MPC's filing also proposes a decrease in the loss factors incorporated in the company's fuel adjustment clause. MPC requests waiver of the notice requirements to allow its proposed Step 1 and 2 rates to become effective coincident with the effectiveness dates designated for I&M's corresponding rates.

Notice of MPC's filing was published in the *Federal Register*, with comments due on or before October 17, 1984. Paw Paw and Dowagiac filed timely motions to intervene. Paw Paw states that it is a customer of MPC and will be affected by

the proposed increase. It does not, however, raise any substantive issues. Dowagiac contends that MPC's rates should be suspended on the same basis as were I&M's, inasmuch as MPC's filing is predicated largely on purchased power costs.³ In addition, Dowagiac raises issues regarding MPC's proposed capital structure and rate of return. It also alleges that there are discrepancies between the data in MPC's filing and the data in I&M's filing in Docket Nos. ER84-587-000, et al. Dowagiac states that it does not object to MPC's request for waiver of the notice requirements, so long as both the Step 1 and Step 2 rates are suspended and become effective, subject to refund, no earlier than the proposed I&M rates.

On October 29, 1984, MPC filed a response to Dowagiac's motion to intervene. MPC does not object to Dowagiac's motion to intervene or request for an order making the rates subject to refund. However, MPC contests Dowagiac's allegations regarding capital structure, rate of return, and discrepancies with I&M's filing. It further states that there is no need for a hearing in this proceeding on the ground that Dowagiac may pursue its allegations in I&M's proceeding in Docket Nos. ER84-587-000, et al.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely and unopposed interventions of Paw Paw and Dowagiac serve to make them parties to this proceeding.

Our preliminary examination of MPC's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that MPC's proposed rates may not produce substantially excessive revenues. As noted MPC's submittal, in large part, represents a pass-through of increased

¹ See Attachment for rate schedule designations.

² By order dated October 4, 1984, in those dockets, the Commission, *inter alia*, accepted for filing I&M's two-step rate increase applicable for service to MPC and suspended I&M's Step 1 and Step 2 rates for one day from the proposed effective dates, to become effective, subject to refund, on October 10, 1984 and one day after the date of commercial operation of I&B's new generating unit (Rockport 1), respectively. 29 FERC ¶ 61,023 (1984). MPC purchases approximately 98% of its power and energy requirements from I&M.

³ Dowagiac raised numerous cost of service issues in its motion to intervene in Docket Nos. ER84-587-000, et al. Dowagiac's intervention in those dockets was noted by the Commission.

purchased power costs attributable to I&M's earlier filings. In addition, we note that neither intervenor in this proceeding objects to MPC's request for waiver of the notice requirements. Thus, we find that good cause exists to waive the notice requirements and to suspend MPC's proposed Step 1 and Step 2 rates, to become effective concurrently with I&M's proposed increase to MPC, on October 10, 1984 and one day after the date of commercial operation of Rockport 1, respectively, subject to refund.

Because we find that common questions of law and fact may be presented in this docket and in Docket Nos. ER84-587-000, *et al.*, we shall consolidate these proceedings for purposes of hearing and decision.

The Commission orders:

(A) MPC's request for waiver of the notice requirements is hereby granted for good cause shown; MPC's proposed rates are hereby accepted for filing and suspended, with the Step 1 and Step 2 rates to become effective, subject to refund, on October 10, 1984 and one day after the date of commercial operation of Rockport 1, respectively.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of MPC's rates.

(C) Docket No. ER-84-694-000 is hereby consolidated with the pending proceeding in Docket Nos. ER-84-587-000, ER84-588-000, ER84-589-000, ER84-590-000, ER84-591-000, and ER84-592-000 for purposes of hearing and decision.

(D) The Commission staff shall serve top sheets in this proceeding within 10 days from the date of this order.

(E) The administrative law judge designated to preside in Docket Nos. ER84-587-000, *et al.*, shall determine additional procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(F) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.
Kenneth F. Plumb,
Secretary.

Attachment—Rate Schedule Designations

Other Parties: Village of Paw Paw,
City of Dowagiac

Designation	Description
(1) 12th revised sheet No. 6 under FPC electric tariff, original volume No. 1 (super-sedes 11th revised sheet No. 6).	Step one rates.
(2) Sixth revised sheet No. 7 under FPC electric tariff, original volume No. 1 (super-sedes 5th revised sheet No. 7).	Fuel adjustment clause.
(3) 13th revised sheet No. 6 under FPC electric tariff, original volume No. 1 (super-sedes 12th revised sheet No. 6).	Step two rates.

[FR Doc. 84-31182 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-141-000]

Midwestern Gas Transmission Co.; Informal Technical Conference

November 23, 1984.

Take notice that at 10:00 a.m. on Tuesday, December 4, 1984, an informal Staff Technical Conference will be held with Midwestern Gas Transmission Company in the captioned matter at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. All parties are invited to attend. The exact room location will be posted on the day of the conference.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31183 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-73-000]

Mitex, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On November 2, 1984, Mitex, Inc. (Applicant), of 91 Newbury Street, Boston, Massachusetts 02116 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,500 kilowatt hydroelectric facility (P.3671-001) will be located near the Allegheny River in Armstrong County, Pennsylvania.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy

Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31209 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6708-001]

North Fork Power Co.; Surrender of Preliminary Permit

November 23, 1984.

Take notice that North Fork Power Company, Permittee for the North Fork Project No. 6708, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6708 was issued on May 17, 1983, and would have expired on April 30, 1986. The project would have been located on the North Fork Payette River in Valley County, Idaho.

The Permittee filed the request on October 9, 1984, and the preliminary permit for Project No. 6708 shall remain in effect through the thirteenth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided

for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31210 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-27-000]

Northern Border Pipeline Co.; Filing of Proposed Initial Rate Schedule, Proposed Changes of FERC Gas Tariff, and Proposed Service Agreement

November 23, 1984.

Take notice that Northern Border Pipeline Company (Northern Border) on November 19, 1984 tendered for filing a Proposed Initial Rate Schedule, Proposed Changes to FERC Gas Tariff, and Proposed Service Agreement.

Northern Border states that the purpose of this filing is to effectuate the terms and conditions of an initial rate schedule known as Rate Schedule IT-1 in order to provide interruptible transportation service under Applicant's certificate issued by Commission order dated August 9, 1984, in Docket No. CP84-420 or under section 7 of the Natural Gas Act. Such rate schedule is proposed to be included in Northern Border's FERC Gas Tariff, Original Volume No. 1. Northern Border states that the interruptible transportation service rendered under proposed Rate Schedule IT-1 would be subject to the terms and conditions of a new service agreement known as the Interruptible Transportation Agreement. Northern Border further states that the proposed changes in its FERC Gas Tariff, Original Volume No. 1 concern conforming changes made in Rate Schedule T-1 and the General Terms and Conditions in order to integrate Rate Schedule IT-1 with Northern Border's existing Tariff.

Northern Border proposes to charge its IT-1 Shippers a rate for each dekatherm mile of gas stated as a rate per 100 Dekatherm-Miles equal to its debt service. Northern Border proposes to base the Dekatherm-Mile rate using its actual cost of service for a prior six month period and the billing determinants therein. Using this methodology, Northern Border proposes an initial rate of 8.015 cents per 100 Dekatherm-Miles. It is further proposed that the rate would be recomputed and revised tariff sheets filed to become effective each November 1 and May 1. Interruptible Transportation Agreements entered into would use the rate in effect at that time of execution for the entire term of service. Revenues received from

the service would be credited to Northern Border's cost of service it is stated.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital St., N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31184 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-26-000]

Northern Natural Gas Co. Division of InterNorth, Inc.; Proposed Changes in FERC Gas Tariff

November 23, 1984.

Take Notice that on November 19, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1:

First Revised Sheet Nos. 49, 49a and 49b.

These sheets contain revisions to the Applicability and Character of Service and Facility Surcharge sections of Northern's EUT-1 Rate Schedule.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 30, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with

the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31185 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-690-000]

Northern States Power Co. et al. (Minnesota); Order Accepting for Filing and Suspending Rates, Granting Intervention, and Establishing Hearing Procedures

Issued November 21, 1984

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III, and Charles G. Stalon.

On September 20, 1984, Northern States Power Company (Minnesota) (NSPM), Northern States Power Company (Wisconsin) (NSPW), and Lake Superior District Power Company (Lake Superior) (together referred to as the NSP Companies) jointly tendered for filing a revised coordinating agreement dated September 17, 1984.¹ The NSP Companies operate on a one-system basis;² the coordinating agreement, encompassing a cost of service formula rate, is intended to ensure that each operating company incurs uniform power supply costs. Aside from developing the formula with greater specificity, the revised agreement modifies the present formula rate in three ways: (1) All transmission investment is allocated without regard to voltage level; (2) a 12-CP demand allocator based on projected monthly demands is used, rather than a five year combined historical and forecasted average of the winter and summer coincident peaks for each company; and (3) the energy charges reflect hourly costs as dispatched, rather than average monthly costs. The NSP Companies request that the revised coordinating agreement become effective December 31, 1984.

Notice of the filing was published in the *Federal Register*, with comments due on or before October 17, 1984. On September 28, 1984, as supplemented on October 22, 1984, the Minnesota Public Utilities Commission and the Energy Issues Intervention Office of the Minnesota Department of Public Service (Minnesota Agencies) jointly filed a notice and motion to intervene and a

¹ See Attachment for rate schedule designations.

² NSPW and Lake Superior are wholly owned subsidiaries of NSPM.

request for hearing. The Minnesota Agencies object to: (1) The automatic adjusting features of the cost of service formula; (2) the use of only projected, rather than combined historical and projected, demand data; and (3) the limited time available to interested parties to review annual updates to the formula. Timely notices of intervention were also filed by the North Dakota Public Service Commission and the Wisconsin Public Service Commission, which raised no substantive issues.

On October 16, 1984, the River Electric Association³ and the City of Marshall, Minnesota (Minnesota Intervenor) filed a motion to intervene. In addition, the Minnesota Intervenor raises several issues, including: (1) The rolling-in of transmission investment; (2) the accounting treatment of Lake Superior; (3) the calculation of transmission losses; (4) the development of demand allocation factors; (5) the actual level of integration and coordination of operations among the NSP Companies; and (6) the equalization of generation and transmission rates among the NSP Companies.

On October 17, 1984, five wholesale customers of NSPW and Lake Superior (Wisconsin Intervenor)⁴ filed a motion to intervene and a request for a one day suspension and an investigation and hearing. In support of their request for suspension and a hearing, the Wisconsin Intervenor cites various cost of service issues, including: (1) The rate of return on equity; (2) the demand allocation methodology; and (3) costs included in the formula. The Wisconsin Intervenor also request assurances that costs passed through the formula will be subject to discovery and modification during subsequent requirements rate cases for each company.⁵

On October 19, 1984, the Public Utilities Commission of South Dakota filed an untimely notice of intervention, which stated no position as to the filing.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely notices and motions to intervene serve to make the

Minnesota Agencies, the North Dakota Commission, the Wisconsin Commission, the Minnesota Intervenor, and the Wisconsin Intervenor parties to this proceeding. In addition, we find that good cause exists to grant the late intervention of the South Dakota Commission, given the interests of the constituency which it represents, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

Our preliminary review of the NSP Companies' filing and the pleadings indicates that the submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the revised coordinating agreement for filing, and we shall suspend it as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed formula rate may not yield substantially excessive revenues. Therefore, we shall suspend that rate for one day, to become effective, subject to refund, on January 1, 1985.

The Commission orders:

(A) The South Dakota Commission's untimely notice of intervention is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The NSP Companies' submittal is hereby accepted for filing and suspended for one day, to become effective on January 1, 1985, subject to refund.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of the revised coordinating agreement.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,
Secretary.

Attachment—Rate Schedule Designations

Designation	Description
Northern States Power Company (Minnesota)	
(1) Rate schedule FERC No. 437 (supersedes rate schedule FERC No. 416, as supplemented).	Coordinating agreement. Exhibits.
(2) Supplement No. 1 to rate schedule FERC No. 437.	
Northern States Power Company (Wisconsin)	
(3) Rate schedule FERC No. 73 (supersedes rate schedule FERC No. 67, as supplemented).	Coordinating agreement. Exhibits.
(4) Supplement No. 1 to rate schedule FERC No. 73.	
Lake Superior District Power Company	
(5) Rate schedule FERC No. 32 (supersedes rate schedule FERC No. 30, as supplemented).	Coordinating agreement. Exhibits.
(6) Supplement No. 1 to rate schedule FERC No. 32.	

[FR Doc. 84-31186 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-63-000]

Richard J. Olson; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On October 29, 1984, Richard J. Olson (Applicant), of S.R.A. Box 549, Homer, Alaska 99603 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4 kilowatt wind facility is located in Homer, Alaska.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such

³ The River Electric Association consists of the six Minnesota Cities of Anoka, Brownston, North St. Paul, Olivia, Sauk Center, and Shakopee.

⁴ The Wisconsin Intervenor represents the Cities and Villages of Bangor, Barron, Bloomer, and Medford, Wisconsin, and the Wisconsin Public Power Incorporated System.

⁵ In this regard, we note that the proposed formula rate comprises an automatic adjustment clause which can be subject to subsequent review or investigation as to the propriety or prudence of the costs flowed through the clause. See *Public Service Company of New Hampshire*, Opinion No. 37, 6 FERC ¶ 61,299 (1979).

petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31212 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-1-41-002]

Southwest Gas Corp.; Compliance Filing

November 23, 1984.

Take notice that on November 16, 1984, Southwest Gas Corporation (Southwest) tendered for filing the following tariff sheet to be a part of its FERC Gas Tariff, Original Volume No. 1:

Substitute Twenty-fourth Revised Sheet No. 10.

Superseding Twenty-third Revised Sheet No. 10.

Southwest states that this revised tariff sheet reflects the rates authorized for Northwest Pipeline Corporation (Northwest) by Commission order issued October 31, 1984. Southwest requests an effective date concurrent with Northwest's rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before November 29, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31187 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-604-001]

Southwestern Public Service Co.; Compliance Filing

November 23, 1984.

Take notice that on November 13, 1984, Southwestern Public Service Company submitted for filing a compliance report pursuant to the Commission's Order issued October 15, 1984.

The Compliance Filing contained revised tariffs, revised cost of service analyses for Period I, fiscal 1983, and Period II, fiscal 1985, rebillings under these revised tariffs for both periods, and the necessary exhibits, rate design, and workpapers relating thereto.

The Compliance Filing also contains Southwestern's Bulk Power Market Experiment Adjustment Clause as requested by Staff during Prehearing Conference on November 7, 1984.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before December 6, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31188 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-44-000]

Swift Creek Power Co., Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 23, 1984.

On October 16, 1984, Swift Creek Power Company, Inc. (Applicant), 165 Wright Brothers Drive, Salt Lake City, Utah 84116, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.55 MW small power production facility is located on the Swift Creek Afton in Lincoln County, Wyoming. It is a hydroelectric generation facility (P-1651) and the primary energy source is water.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31213 Filed 11-27-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-51-000]

Texasgulf Chemicals Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

November 23, 1984.

On October 22, 1984, Texasgulf Chemicals Company, a division of Texasgulf Inc., (Applicant) of P.O. Box 30321, Raleigh, North Carolina 27622 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Texasgulf Chemicals Company's Newgulf sulphur mine near Newgulf in Wharton County, Texas. The facility installed in June 1984, will consist of a natural gas-fired combustion turbine generator, and a waste heat recovery boiler (WHRB). Superheated steam from the WHRB will be utilized to produce sulphur using the Frasch process. The net electric power production capacity of the plant will be 74,560 kW, which is expected to be sold

to the Houston Lighting and Power Company. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31214 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7683-002]

Tooele County; Surrender of Preliminary Permit

November 23, 1984.

Take notice that Tooele County, Permittee for the proposed Soldier Canyon Project, FERC No. 7683 has requested that its preliminary permit be terminated. The permit was issued on September 13, 1984, and would have expired on February 28, 1986. The project would have been located in Soldier Canyon, Tooele County, Utah.

The Permittee filed the request on October 11, 1984, and the preliminary permit for Project No. 7683 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provide for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-31211 Filed 11-27-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of \$292,500 obtained as the result of a Consent Order which the DOE entered into with Thornton Oil Corporation a reseller-retailer of motor gasoline with headquarters in Louisville, Kentucky and retail operations in 18 states.

DATE AND ADDRESS: Applications for refund of a portion of the Thornton consent order funds must be received within 90 days of publication of this notice in the *Federal Register*. All applications should refer to Case Number HEF-0497 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Consent Order entered into by Thornton Oil Corporation which settled possible pricing violations in the firm's sales of motor gasoline to retail customers during the period April 1, 1979 through January 27, 1981.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Thornton consent order funds was issued on June 15, 1984, 49 FR 28095 (July 10, 1984). As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by retail customers who purchased motor gasoline from Thornton during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the *Federal Register*. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: November 14, 1984.

George B. Breznay,
Director, Office of Hearings and Appeals.
November 14, 1984.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Thornton Oil Corporation.

Date of Filing: March 20, 1984.

Case Number: HEF-0497.

Pursuant to the provisions of 10 CFR Part 205, Subpart V, on March 20, 1984, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with a consent order entered into with Thornton Oil Corporation (Thornton) on April 6, 1983. The Petition requests that the OHA formulate and implement procedures for the distribution of the funds received pursuant to the Thornton consent order.

I. Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain readily the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as a part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

II. Background

Thornton is an independent reseller-retailer of motor gasoline which operates approximately 50 retail outlets in 18 states.⁽¹⁾ Thornton sold strictly Thornton-branded motor gasoline from its retail outlets. In an audit of Thornton's operations during the period April 1, 1979 through July 31, 1980 (the audit period), the ERA tentatively found that the firm had violated the DOE price regulations set forth in 10 CFR Part 212, Subpart F. Subsequently, the ERA prepared a Notice of Probable Violation (NOPV) in which it alleged that Thornton had overcharged its customers by \$193,627.76 in sales of motor gasoline

from its retail outlets during the audit period.⁽²⁾ It appears, however, that this NOPV was never officially issued to Thornton. In order to settle all claims and disputes between Thornton and the DOE, as well as to resolve any potential liability regarding the firm's retail sales of motor gasoline anywhere in the United States during the period April 1, 1979 through January 27, 1981 (the consent order period), the firm entered into a consent order with the DOE, in which Thornton agreed to pay \$292,500 to the DOE.⁽³⁾ The consent order refers to the ERA's allegations of overcharges, but notes that no findings of violations were made.

On June 15, 1984, the OHA issued a Proposed Decision and Order (Proposed Decision) tentatively setting forth procedures to distribute refunds to parties who were injured by Thornton's alleged violations in sales of motor gasoline during the consent order period. *Thornton Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,058, 49 FR 28095 (July 10, 1984) (Proposed Decision). In the Proposed Decision, we described a two-stage process for distribution of the funds made available pursuant to the Thornton consent order. Specifically, we proposed to disburse funds in the first stage to eligible claimants who were injured by Thornton's alleged overcharges. We stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after completion of the first stage.

The purpose of this Decision is to establish procedures to be used for filing and processing claims in the first stage of the Thornton refund process. This Decision sets forth the information that a purchaser of Thornton motor gasoline should submit in order to establish eligibility for a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the Proposed Decision. We will not, however, determine procedures for the second stage of the refund process in this Decision. Our determination concerning the final disposition of remaining funds will necessarily depend on the size of the fund. *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (Marion). It would therefore be premature for us to address the issues raised by commenters concerning the disposition of funds remaining after all the meritorious first stage claims have been paid.⁽⁴⁾

III. Analysis of Comments Filed by Thornton

Thornton filed comments in opposition to the proposed refund procedures. In these comments, it requests that the DOE return to the firm the funds it has remitted pursuant to the consent order and waive the requirement that Thornton continue to pay the balance of its refund obligation. Thornton maintains that it has "already refunded" the alleged overcharges to its customers because it has been forced by market conditions to lower its prices. Thornton states that it had difficulty competing in the marketplace in 1983 because of what it alleges were DOE mandated price rollbacks to retail customers of other firms charged with DOE regulatory violations. Thornton states that in 1983 it realized a gross margin of only \$0.058 per gallon in sales of motor gasoline and that this amount was insufficient to earn a profit.

As a preliminary matter, Thornton's submission can only be construed as a motion to modify the consent order and, as such, must be rejected. Thornton appears to misunderstand the nature of consent orders. A consent order is an agreement voluntarily executed by a firm and the agency to settle outstanding disputes without an admission of regulatory noncompliance by the firm. See *McAlester Fuel Co.*, 8 DOE ¶ 82,533 at 85,116 (1981) (*McAlester*). Because of their usefulness in the resolving litigation, consent orders are unique remedial instruments that, absent highly unusual circumstances, should not be disturbed.

See *Westland Oil Development Corp.*, 8 DOE ¶ 82,582 at 85,316 (1981). There are stringent proscriptions against modifying consent orders or degrees. See *Richards Oil Co.*, 7 DOE ¶ 82,015 (1981). Thornton has not demonstrated that extraordinary circumstances exist in this case which should release the firm from the agreement contained in the consent order. See *Midler Oil Co.*, 9 DOE ¶ 81,033 (1982) (consent orders accorded a great measure of finality).⁽⁵⁾ Moreover, it should be emphasized that Thornton voluntarily elected to enter into the consent order, and did so to obtain tangible benefits, namely, to reduce its potential refund liability and cost of litigation to a sum certain. If Thornton had objected to the terms of the consent order, it need not have signed it. However, since the firm, at its own discretion, entered into a consent order with a refund provision, it can not now utilize a different device (i.e., claiming that its low prices were in essence a price rollback to its

customers) to resolve the DOE's allegations of regulatory violations.

Moreover, even if we were to consider Thornton's claim that the refund provisions of the consent order should be reconsidered, we are not persuaded by the firm's arguments that the consent order funds should be refunded to it or that it should be relieved from future payments. Thornton is completely incorrect in its claim that price rollbacks ordered by the DOE are the cause of whatever financial difficulties it may have experienced during 1983. As a result of the issuance of Executive Order 12287, 46 Fed. Reg. 9909 (January 30, 1981), which removed the price and allocation controls from crude oil and refined petroleum products, the DOE has not regulated the ceiling prices charged by motor gasoline marketers since January 27, 1981. In view of decontrol, the DOE has determined that price rollbacks are not an effective mechanism for implementing restitution to customers injured by their suppliers' pricing practices. See, e.g., *Chana's Auto Service Center*, 8 DOE ¶ 83,002 (1981); *New York Petroleum, Inc.*, 12 DOE ¶ 85,047 (1984). Therefore the agency has not ordered any price rollbacks since decontrol. Accordingly, Thornton is incorrect in its allegation that the DOE was responsible for any difficulties the firm may have incurred in 1983, and the firm's financial situation in 1983 is not a ground for altering the consent order. We therefore do not accept Thornton's comments in opposition to the establishment of a special refund proceeding with respect to its consent fund.

IV. First-Stage Refund Procedures

A. Injury Requirement

In the Proposed Decision issued in this proceeding, we proposed that customers who were ultimate consumers (end-users) of the motor gasoline purchased from Thornton should be presumed to have been injured by Thornton's pricing practices. See 10 CFR 205.282(e). Ultimate consumers would not be required to demonstrate that they absorbed the cost increases that resulted from Thornton's alleged overcharges, but would only be required to submit documentation of purchase volumes to be eligible for a refund. In contrast, with respect to resellers (retailers and jobbers) who resold Thornton's motor gasoline, we proposed that those claimants would be required to establish that they absorbed the alleged overcharges. Under the proposed procedures resellers who limited their claims to 50,000 gallons per

month would not be required to document the extent of injury, and would be presumed to have incurred injury as a result of Thornton's alleged overcharges.

The State of Texas filed comments in opposition to our proposed refund procedures. Texas contends that the Subpart V regulations require persons to establish injury as a result of an alleged regulatory violation in order to be eligible for a refund. Texas further argues that presumptions of any kind can only be utilized after the claimant has successfully proven injury. According to Texas, presumptions can be applied to determine the amount of a refund, but are not permitted to be used to establish injury. Although Texas fails to distinguish between consumers and resellers, Texas' comments appear to be directed to the proposed presumptions involving resellers.

Upon further review of the audit records, we have determined that although Thornton is a retailer-reseller, the consent order only pertains to the retail portion of the firm's operations. The final audit report states that "All reseller type transactions were analyzed for potential violations, and it was determined the profit margins [indicated] . . . insignificant overcharge potential. The reseller transactions were not included in this audit, but a detailed audit was performed on . . . company-operated service stations." Audit Report at 1. Consequently, from the record we can infer that the retail operation was the only aspect of Thornton's business which led to the consent order agreement. The consent order acknowledges that Thornton sold motor gasoline to "other gasoline distributors," but expressly states that it is intended to settle the DOE's claims against Thornton "which have arisen from the audit" and which concern "the specified transactions during the settlement period." Thornton consent order at ¶¶ 2 and 3. We have therefore determined that since the "specified transactions" in the consent order were strictly retail transactions, only retail customers will be eligible to receive a portion of the consent order funds. Thus, reseller refund procedures are not necessary in this case.

In light of our determination to establish refund procedures only for end-users it is not necessary for us to consider Texas' objections to the use of presumptions of injury with respect to resellers.⁽⁶⁾ Although Texas' objections do not appear to be directed toward the proposed procedures for end-user claimants, to the extent the State intended to address those procedures,

the State's objections should be rejected.

Our experience in prior refund proceedings has convinced us that it is not appropriate to require end-users to provide the same documentation of injury that we generally require of resellers. See, e.g., *Marion; Standard Oil Company (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983); *Standard Oil Company (Indiana)/Elgin, Joliet and Eastern Railway*, 11 DOE ¶ 85,105 (1983); *Webster Oil Company*, 12 DOE ¶ 85,070 (1984). Consumers of petroleum products generally fall into four categories: commercial end-users, regulated entities (e.g., public utilities), governmental agencies, and the general public (e.g., motorists). Commercial end-users which use petroleum products to manufacture and provide other goods and services do not resell the petroleum products in the same form. Their fuel costs are only one indistinguishable component of their prices for goods and services. Furthermore, these commercial end-users of petroleum products were not under price controls during the Thornton consent order period and were not required to maintain records showing the petroleum product cost justification for their prices. In the past we have found that an analysis of the impact of the increased cost of petroleum products in the final prices of products and services sold outside the petroleum industry would be beyond the scope of DOE refund proceedings. *Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*), and also that there is no practicable method for determining the extent to which individual end-users may have passed through any alleged overcharges to their own customers. See *Marion*, 12 DOE at 88,030, and cases cited therein. In the case of regulated entities we have stated that these types of end-users would not be required to demonstrate that they absorbed alleged overcharges on the grounds that they are generally required to pass on to their customers the benefits of any refund received. See *PVM*, 10 DOE at 88,387. With respect to governmental purchasers of petroleum products, we presumed that the taxpayers who would have been ultimately injured by the consent order firm's pricing practices would correspondingly benefit from a refund to the governmental body. In the case of individuals who purchase refined petroleum products for their own use (motoring, home heating), these ultimate consumers' inability to pass through any overcharges is obvious, since there are no down-stream purchasers from whom such a consumer could recover increased costs. In view of

the foregoing, we have determined that end-users absorbed the full impact of any overcharges. Therefore, end-users will only need to document the specific quantities of Thornton motor gasoline they purchased during the consent order period.

In the Proposed Decision, we stated that end-users' purchase documentation could be in the form of credit card or other receipts, and that if no gallonage is recorded on the receipt, a customer could extrapolate purchase volumes by estimating Thornton's per gallon prices. In a subsequent telephone conversation with Thornton, we learned that Thornton does not accept any credit cards, and that all transactions were made on a cash only basis.⁽⁷⁾ It is therefore likely that most customers will not have receipts. Accordingly, we have determined that an applicant may submit an estimate of purchases with a detailed explanation showing how the estimated purchase volumes were derived.

B. Allocation of Refund Money

In the Proposed Decision, we proposed that refunds be calculated according to a volumetric method. Under this method, refunds would be computed by multiplying an applicant's total purchase volumes by a per gallon volumetric amount computed by dividing the Thornton settlement amount by the total volume of covered petroleum products sold by Thornton during the consent order period. In this case, the volumetric amount is \$0.001714 (\$292,500 which will ultimately be remitted to the DOE divided by 170,653,035 gallons of motor gasoline sold by Thornton during the consent order period).⁽⁸⁾ No comments were received with regard to this proposal. Accordingly, we will implement the proposal.

We will also adopt the proposed minimum refund amount of \$15.00 based upon our experience in prior refund cases that the costs of processing claims outweighs the benefits of distributing refunds for less than this amount. See, e.g., *Urban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982), (9)

V. Application for Refund Procedures

We have determined that the procedures described above are the most equitable and efficacious means of distributing the Thornton consent order funds. Accordingly, we shall now accept applications for refunds from customers of Thornton who purchased motor gasoline from Thornton's retail outlets during the consent order period.

Each applicant should include in its application a statement of its motor gasoline purchases from Thornton during the consent order period. If no documentation of the gallons purchased is available, an applicant must submit a detailed explanation of how its volumes were estimated, including any pertinent information which supports its claim, e.g., the type and number of vehicles owned, the number of miles driven, the location of the Thornton outlets where gasoline was purchased, etc.

All applications must be received within 90 days after publication of the Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the OHA. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential. 10 CFR 205.283(a). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." See 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, the applicant should furnish the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should refer to Case Number HEF-0497, and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Thornton Oil Corporation pursuant to the Consent Order executed on April 6, 1983 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: November 14, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

Footnotes

(1) Thornton operates retail outlets in Connecticut, New York, New Jersey, Pennsylvania, Ohio, Michigan, Illinois, Indiana, Kentucky, Tennessee, West Virginia, Virginia, Maryland, North Carolina, South Carolina, Georgia, Florida, and Texas.

(2) No overcharges were found in a preliminary audit of Thornton's small reseller operations. As a result, Thornton's reseller

operations were dropped from the audit and no allegations of reseller overcharges were made.

(3) Thornton is making timely payments in accordance with the consent order provisions, and as of October 31, 1984, had paid \$182,782.70 to the DOE. The firm's payments are scheduled to be completed in May 1986.

(4) Comments on the second-stage refund procedures were filed by the states of Arkansas, Delaware, Kansas, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These states argue that any funds remaining in the consent order fund after refunds are distributed to meritorious claimants should be distributed to the states for use in energy-related projects.

(5) The DOE procedural regulations provide that an application for modification or rescission of a consent order will be considered only if an applicant "demonstrates significantly changed circumstances." 10 CFR 205.199(d) and 205.135(b)(1). Thornton has also made no showing whatsoever that there exist "significantly changed circumstances" within the meaning of these regulatory provisions.

(6) Moreover, these objections have been thoroughly considered and rejected in previous Decisions. See, e.g., *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,207 (1982). Texas has presented no basis for reconsidering our prior conclusions regarding the use of presumptions in refund proceedings.

(7) See Memorandum of July 13, 1984 telephone conversation between Lawrence Hammett, Vice President of Thornton, and Diane Shaw, OHA Staff Analyst.

(8) Although the DOE has not received the complete settlement amount in this case, the amount currently held in escrow is sufficient to permit us to consider first-stage refund claims on the foregoing basis. An eligible applicant will also receive a proportionate share of the interest accrued on the consent order fund since its deposit in the escrow account.

(9) Under the volumetric method for allocating refunds in this proceeding, we calculate that an applicant must have purchased at least 8,750 gallons of Thornton motor gasoline during the 22-month consent order period in order to qualify for the minimum \$15.00 refund. In contrast, according to Energy Information Administration data, the average motorist consumed approximately 1,080 gallons of motor gasoline per car during the consent order period. *Consumption Patterns of Household Vehicles, June 1979 to December 1980*, DOE/EIA-0319, at 2. Even if all of that motor gasoline were purchased from a Thornton outlet, that average motorist would qualify for a refund of only \$1.85. Thus, we anticipate that although many of Thornton's retail customers may have legitimate claims, most of those claims will fall below the \$15.00 threshold.

[FR Doc. 84-31244 Filed 11-27-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240049; FRL-2722-4]

Pesticides; Special Local Need Registrations; Voluntary Cancellations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA is correcting a notice that inadvertently listed as cancelled a section 24(c) registration of a pesticide product.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT:

Lela Sykes, 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. 718C, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2126).

SUPPLEMENTARY INFORMATION: In FR Doc. 84-15955 appearing at page 25298 in the **Federal Register** of June 20, 1984, EPA listed various cancellations of section 24(c) registrations for pesticide products. One of the cancellations was in error: CA 77 0084 for Black Leaf 40 [5887-7] Volck Supreme Oil Spray [239-2039] Tank Mix by FMC Corp., registered 4/15/77. This document gives notice that registration CA 77 0084 remains in effect. The correct registrant is the California Department of Agriculture and not FMC Corp. as listed in the **Federal Register** notice.

(Sec. 6(a)(1) of FIFRA, as amended, 86 Stat. 973, 89 Stat. 751) (7 U.S.C. 136))

Dated: November 9, 1984.

John W. Melone,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84-30544 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51537; TSH-FRL-2676-7]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-25220, beginning on page 37458, in the issue of Monday, September 24, 1984, make the following corrections:

1. On page 37458, in column three, under **PMN 84-1150**, second line "Methylene" should read "Thio".

2. On the same page, same column, under **PMN 84-1151** on the second line of the last paragraph, "300" should read "100".

3. On page 37459, in column three under PMN 84-1163 on line eleven, "BOD5" should read "BOD₅";
4. Also on the same line, "BOD20≤" should read "BOD₂₀";
5. And on line twelve, "LC50" should read "LC₅₀".

BILLING CODE 1505-01-M

[PP 9G2200/T469; FRL-2726-1]

Pirimiphos-Methyl; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide pirimiphos-methyl and its metabolites in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire September 27, 1985.

FOR FURTHER INFORMATION CONTACT: By mail:

Jay Ellenberger, Product Manager (PM)
12, 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. 202, CM#2m 1921 Jefferson Davis
Highway, Arlington, VA, (703-557-
2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the *Federal Register* of November 30, 1983 (48 FR 54117), announcing the extension of temporary tolerances for the combined residues of the insecticide pirimiphos-methyl, *O*-[2-diethylamino]-6-methyl-4-pyrimidinyl] *O,O*-dimethylphosphorothioate, the metabolite *O*-[2-ethylamino-6-methyl-pyrimidin-4-yl], *O,O*-dimethylphosphorothioate, and in free and conjugated form, the metabolites 2-dimethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol and 2-amino-6-methyl-pyrimidin-4-ol in or on the raw agricultural commodities corn, grain sorghum and wheat at 10.0 parts per million (ppm), rice at 15.0 ppm. A related food additive regulation has extended a tolerance for pirimiphos-methyl in rice and wheat milling fractions at 50.0 ppm and rice hulls at 60.0 ppm appears elsewhere in this issue of the *Federal Register*. These tolerances were issued in response to pesticide petition PP 9G2200, submitted by ICI Americas, Inc., Regulatory Affairs Department, Wilmington, DE 19897.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural

commodities named above when treated in accordance with the provisions of experimental use permit (10182-EUP-17), which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. ICI Americas, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire September 27, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: November 4, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-31158 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 9G2154/T470; FRL-2726-2]

Pirimiphos-Methyl; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for the combined residues of the insecticide pirimiphos-methyl and its metabolites in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire September 27, 1985.

FOR FURTHER INFORMATION CONTACT: By Mail:

Jay Ellenberger, Product Manager (PM)
12, 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. 202, CM#2, 1921 Jefferson Davis
Highway, Arlington, VA, (703-557-
2386).

SUPPLEMENTARY INFORMATION: EPA has renewed temporary tolerances for the combined residues of the insecticide pirimiphos-methyl, *O*-[2-(diethylamino)-6-methyl-4-pyrimidinyl] *O,O*-dimethylphosphorothioate, the metabolite *O*-[2-ethylamine-6-methyl-pyrimidin-4-yl] *O,O*-dimethylphosphorothioate, and in free and conjugated form, the metabolites 2-dimethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol and 2-amino-6-methyl-pyrimidin-4-ol in or on the raw agricultural commodities peanuts at 25.0 parts per million (ppm), peanuts hulls at 125.0 ppm, fat, meat and meat by-products of cattle, goats, hogs, horses, poultry and sheep (except liver and kidney) at 0.1 ppm, liver and kidney of cattle, goats, hogs, horses, poultry and sheep at 0.5 ppm and milk and eggs at 0.1 ppm. A related food additive regulation renewing a tolerance for pirimiphos-methyl in peanut oil at 50.0 ppm appears elsewhere in this issue of the *Federal Register*. These tolerances were renewed in response to pesticide petition PP 9G2154 submitted by ICI Americas, Inc., Regulatory Affairs Department, Wilmington, DE 19897.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the

above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 10182-EUP-15, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. ICI Americas, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire September 27, 1985. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: November 4, 1984.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-31157 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59173A; FRL-2725-5]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substance Control Act (TSCA), TME-85-1. The test marketing conditions are described below.

EFFECTIVE DATE: November 20, 1984.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC. 20460, (202-475-8992).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, numbers of workers exposed to the new chemical, and the levels and durations of exposure must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-1. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in TME-85-1. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain daily records of the number of workers exposed, the level of exposure, and the duration of exposure.

3. The applicant must maintain records of determinations that the gloves are impervious to the TME substance.

4. The applicant must maintain records of persons who wear impervious gloves, chemical safety goggles, and aprons during the manufacturing, processing, and use of the TME substance.

5. The applicant must maintain copies of any Material Safety Data Sheet used.

6. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

7. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME-85-1

Date of Receipt: October 10, 1984.

Notice of Receipt: October 19, 1984 (49 FR 41102).

Applicant: Confidential.

Chemical: (G) Modified styrene copolymer.

Use: (G) Industrial coating.

Production Volume: 9,400 kg.

Number of Customers: One.

Worker Exposure: Confidential.

Test Marketing Period: 6 months.

Commencing on: November 20, 1984.

Risk Assessment: Based on analogy with structurally related substances the Agency identified potential developmental toxicity and neurotoxicity concerns. However, under the conditions outlined above and the restrictions below, the estimated worker exposure to the test market substance will not be significant. Therefore, the test market substance will not pose an unreasonable risk to human health. No significant environmental concerns were identified and environmental release of the test market substance is expected to

be low. The test market substance will not pose an unreasonable environmental risk.

Additional Restrictions: The workers are required to wear impervious gloves and chemical safety goggles during operations that involve the manufacturing and processing and use of the substance. The Material Safety Data Sheet (MSDS) must include the requirements for workers to wear impervious gloves, chemical safety goggles, aprons, and warning to avoid inhalation.

The gloves must be determined by the applicant to be impervious to the TME substance under the conditions of exposure, including the duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation of the gloves by the TME substance and associated chemical substances.

In addition, the workers are required to avoid conditions where there is potential for inhalation of the TME substance during manufacturing, processing and use.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 20, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-31164 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59173B; FRL-2725-6]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-2. The test marketing conditions are described below.

EFFECTIVE DATE: November 20, 1984.

FOR FURTHER INFORMATION CONTACT: Candy Brassard, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202-475-8992).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-2. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. The production volume must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in TME-85-2. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.
2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME-85-2

Date of Receipt: October 10, 1984.

Notice of Receipt: October 19, 1984 (49 FR 41102).

Applicant: Confidential.

Chemical: (G) Modified polymer of alkanedioic acid.

Use: (G) A spray applied resin component of an industrial coating.

Production Volume: 75,000 kg.

Number of Customers: Ten.

Worker Exposure: Confidential.

Test Marketing Period: One year.

Commencing on: November 20, 1984.

Risk Assessment: No significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: November 20, 1984.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 84-31163 Filed 11-27-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review; Approvals

November 20, 1984.

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, Agency Clearance Officer, (202) 632-7513.

OMB No.: 3060-0048

Title: Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License Form No.: FCC 704

The approval on FCC 704 has been extended through 11/30/87. The April 1983 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

OMB No.: 3060-0051

Title: License Expiration Notice and Renewal Application Short Form Form No.: FCC 405-B

The approval on FCC 405-B has been extended through 11/30/87. The April 1982 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

OMB No.: 3060-0053

Title: Application for Consent to
Transfer of Control of Corporation
Holding Station License

Form No.: FCC 703

The approval on FCC 703 has been extended through 11/30/87. The November 1982 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

OMB No.: 3060-0088

Title: Annual Report of Licensee of
Private Operational Fixed Microwave
Radio Service Stations

Form No.: FCC 402-A

The approval on FCC 402-A has been extended through 11/30/87. The July 1982 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

OMB No.: 3060-0089

Title: Application for Land Radio
Station License in the Maritime
Services

Form No.: FCC 503

The approval on FCC 503 has been extended through 11/30/87. The May 1984 edition with the previous expiration date of 11/30/84 will remain in use until updated forms are available.

OMB No.: 3060-0093

Title: Application for Renewal of Radio
Station License in Specified Services

Form No.: FCC 405

The approval on FCC 405 has been extended through 11/30/87. The December 1981 edition with the previous expiration date of 10/31/84 will remain in use until updated forms are available.

William J. Tricarico,

Secretary, Federal Communications
Commission.

[FR Doc. 84-31102 Filed 11-27-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-403]

**Mutual Home Federal Savings and
Loan Association; Grand Rapids, MI;
Final Action; Approval of Conversion
Application**

Dated: November 21, 1984.

Notice is hereby given that on October 25, 1984, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Mutual Home Federal Savings and Loan Association, Grand Rapids, Michigan, for permission to convert to the stock form of organization. Copies of the application are available for inspection

at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agency of the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, P.O. Box 60, Indianapolis, Indiana 46206.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 84-31167 Filed 11-27-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION**Inactive Tariffs—Bureau of Tariffs;
Intent To Cancel**

The domestic offshore files of the Federal Maritime Commission contain numerous tariffs which have been classified as inactive either because the Commission's staff has been unable to contact the tariff filers at the addresses shown on the tariffs or the staff has been advised by the carrier or its agent that the tariffs no longer cover a common carrier service. The tariff publications of the following carriers, including their last known addresses, fall into the inactive category:

Aleut-Alaska Shipping Company, 600 S.
Brandon, Seattle, Washington 98108;
FMC-F No. 2Aleut-Alaska Shipping Company, 600 S.
Brandon, Seattle, Washington 98108;
FMC-F No. 3Alexander & Associates, 112 Erie
Avenue, Seattle, Washington 98122;
FMC-F No. 2Alse Almacen Inc., G.P.O. Box 884, San
Juan, Puerto Rico 00936; FMC-F No. 1Atlantic Consolidators, Inc., 2500 83rd
Street, North Bergen, New Jersey
07047; FMC-F No. 1Cal-Hawaii Freight Systems, Inc., 5901
South Eastern Avenue, Commerce,
California 90040; FMC-F No. 2Cal-Hono Freight Forwarders, Inc., 1470
E. 4th Street, Los Angeles, California
90033; FMC-F No. 1California Freight Specialists, Inc., 111
San Leandro Boulevard, San Leandro,
California 94577; FMC-F No. 5California Freight Specialists, Inc., 111
San Leandro Boulevard, San Leandro,
California 94577; FMC-F No. 6California Freight Specialists, Inc., 111
San Leandro Boulevard, San Leandro,
California 94577; FMC-F No. 7Caribbean Express Corp., 3751 W. North
Avenue, Chicago, Illinois 60647; FMC-
F No. 3Caribbean Freight Service, Inc., 11102
Downs Road, Pineville, North
Carolina 28134; FMC-F No. 1Caribbean Project Lines, 87-10 51st
Avenue, Elmhurst, New York 11373;
FMC-F No. 1Caribbean Project Lines, 87-10 51st
Avenue, Elmhurst, New York 11373;
FMC-F No. 2Caribe Shipping, Inc., 24 Dodworth
Street, Brooklyn, New York 11221;
FMC-F No. 3Christie-Lambert Van & Storage Co.,
Inc., 1010 6th Avenue N., Kent,
Washington 98031; FMC-F No. 1Coastal Barge Lines, Inc., 834 Nickerson
Street, Seattle, Washington 98111;
FMC-F No. 3Divesco International, P.O. Box 100-
Ortega Station, Jacksonville, Florida
32210; FMC-F No. 1Econofreight Caribbean, Inc., G.P.O. Box
70155, San Juan, Puerto Rico 00936;
FMC-F No. 1Gem Shipping Service, 305 Valasco
Street, Houston, Texas 77003; FMC-F
No. 3Ghezzi Trucking Inc., 2517 N.W. 195
Place, Seattle, Washington 98177;
FMC-F No. 5Hawaiian Container Corporation, 730
11th Street, Oakland, California 94606;
FMC-F No. 2Intermodal Freight Transportation, Inc.,
P.O. Box 3506, Carolina, Puerto Rico
00630; FMC-F No. 1Islands Freight Transportation, Inc., P.O.
Box 4374, Carolina, Puerto Rico 00630;
FMC-F No. 2Key Warehouse Corp., P.O. Box 524282,
Miami, Florida 33152; FMC-F No. 3La Isla Transport Corp., 166 South 1st
Street, Brooklyn, New York 11211;
FMC-F No. 2Maislin Transport of Delaware, Inc., 50
Harrison Avenue, Kearny, New Jersey
07032; FMC-F No. 1Marine Shippers, Inc., 1343 Logan
Avenue, Costa Mesa, California 92626;
FMC-F No. 3Maritime Transportation Resources,
Inc., Apartado 13641, Santurce, Puerto
Rico 00908; FMC-F No. 1Ocean Freight Consolidators, Inc., P.O.
Box 527, Mataway, New Jersey 07747;
FMC-F No. 1Pan American Express, Inc., 2612 W.
Division Street, Chicago, Illinois
60622; FMC-F No. 4Presto Shipping Inc., 14021 S.W. 56th
Terrace, Miami, Florida 33183; FMC-F
No. 1Sea Freight Forwarders, P.O. Box 5960,
Ketchikan, Alaska 99901; FMC-F No. 3Seabridge Freight Systems, Inc., 214
South Santa Fe Avenue, Los Angeles,
California 90012; FMC-F No. 2Smith Lighterage Company, Box 106,
Dillingham, Alaska 99576; FMC-F No.
6

St. Croix Freight Forwarders, Inc., 3320 N.W. 48th Street, Miami, Florida 33142; FMC-F No. 1

Thru-Island Express, Inc., 63-69 Hook Road, Bayonne, New Jersey 07002; FMC-F No. 2

Trans-Pacific Freightways Corp., P.O. Box 17789, Honolulu, Hawaii 96817; FMC-F No. 1

Twin Express, Inc., 1810 Tonnel Avenue, North Bergen, New Jersey 07047; FMC-F No. 7

Twin Express, Inc., 1810 Tonnel Avenue, North Bergen, New Jersey 07047; FMC-F No. 8

Twinex Transport Corporation, P.O. Box 522832, Miami, Florida 33152; FMC-F No. 1

Unifreight Corporation, G.P.O. Box 6001, San Juan, Puerto Rico 00936; FMC-F No. 2

Valley Express, Inc., 925 Market Street, Paterson, New Jersey 07513; FMC-F No. 2

Virgin Island Run Fast Express, Inc., P.O. Box 478, Sabana Seca Station, Puerto Rico 00749; FMC-F No. 1

Inactive tariffs reflect inaccurate information to the shipping public and serve no useful purpose in the Commission's active files. In addition, 46 CFR 550.3(p)(2) requires the cancellation of inactive tariffs. Accordingly, the Commission proposes to cancel the above listed tariffs in the absence of a showing of good cause as to why they should not be cancelled.

Now, Therefore it is Ordered, That the above carriers advise the Director, Bureau of Tariffs at 1100 L Street, N.W., Washington, D.C. 20573, in writing within 30 days after the publication of this Order in the **Federal Register** of any reason why the Commission should not cancel their inactive tariffs;

It is Further Ordered, That a copy of this Order be sent by certified mail to the last known address of the carriers listed herein;

It is Further Ordered, That the tariffs of all carriers named herein not responding to this Order will be cancelled;

It is Further Ordered, That this notice be published in the **Federal Register** and a copy thereof filed with any tariff cancelled pursuant to this notice.

By the Commission pursuant to authority delegated by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,
Director, Bureau of Tariffs.

[FR Doc. 84-31086 Filed 11-27-84; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573. Jarvis International Freight, Inc., 8114 Tiger Avenue, Houston, TX 77040, Ralph Wisemen, President.

By the Federal Maritime Commission.

Dated: November 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-31085 Filed 11-27-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Emmetsburg Bank Shares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 19, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Emmetsburg Bank Shares, Inc.*, Emmetsburg, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Iowa Trust & Savings Bank, Emmetsburg, Iowa.

2. *First Bancorporation of Batesville, Indiana*, Batesville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank and Trust Company of Batesville, Batesville, Indiana.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Charlton Associates*, Savannah, Georgia; to become a bank holding company by acquiring 48.657 percent of the voting shares of AmeriCorp, Inc., Savannah, Georgia, thereby indirectly acquiring AmeriBank, N.A., Savannah, Georgia, a *de novo* bank.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Kenneth Holding Company*, Kenneth, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Kenneth, Kenneth Minnesota.

2. *R.O.M. Financial Services, Inc.*, Chanhassen, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Chanhassen, Chanhassen, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Wakefield Bancshares, Inc.*, Wakefield, Kansas; to become a bank holding company by acquiring at least 97 percent of the voting shares of The Farmers and Merchants State Bank, Wakefield, Kansas.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ennis Bancshares, Inc.*, Waco, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Ennis State Bank, Ennis, Texas.

Board of Governors of the Federal Reserve System, November 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31145 Filed 11-27-84; 8:45 am]

BILLING CODE 6210-01-M

NBD BANCORP, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 U.S.C. 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve bank indicated or the offices of the Board of Governors not later than December 19, 1984.

A. Federal Reserve Bank of Chicago
(Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60609:

1. **NBD Bancorp, Inc.**, Detroit, Michigan; to merge with United Michigan Corporation, Flint, Michigan, thereby indirectly acquiring Genesee

Merchants Bank & Trust Co., Flint; The Peoples State Bank of Caro, Michigan, Caro; and Community State Bank, Fowlerville; all located in Michigan. NBD Bancorp, Inc., has also applied to acquire United Michigan Mortgage Co., Flint, Michigan, thereby engaging in making, acquiring or servicing loans or other extensions of credit for its own account or the account of others as would be made by a mortgage company.

Board of Governors of the Federal Reserve System, November 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31146 Filed 11-27-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Office of Historically Black College and University Programs; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Characteristics and Resources of Historically Black Colleges and Universities, with Emphasis on Interior-Specific Contract, Education and Training Needs and Opportunities

Abstract: This information is to be collected for the first time, as a part of a data base systems development project being performed under contract by Norfolk State University. The system will provide quick, accurate and comprehensive information on historically Black colleges and universities (HBUCUs) as it relates to potential DOI contract, education and training opportunities.

Frequency: Annual

Description of Respondents: Historically Black Colleges and Universities

Annual Responses: 112

Annual Burden Hours: 896

Bureau clearance officer: John Strylowski 202-343-6191

Dated: November 20, 1984.

Ira J. Hutchinson,

Director, Office of Historically Black College and University Programs.

[FR Doc. 84-31108 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

Information Collection Request Submitted for OMB Review

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of review by OMB.

SUMMARY: The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's (BLM) clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the BLM's clearance officer and the Office of Management and Budget's reviewing official at (202) 395-7340.

Title: 43 CFR Part 4700 Protection, Management, and Control of Wild Free-Roaming Horses and Burros.

Abstract: Respondents furnish documentation about the following:

1. Qualifications of applicants related to adoption of 1 to 4 wild horses or burros;
2. Qualifications of applicants related to adoption of more than four animals;
3. Certification of humane care and treatment of adopted wild horses and burros for a period of 1 year;
4. Removal of wild horses and burros from private land.

The documentation about adoption allows the Bureau of Land Management to determine if an applicant will be given the opportunity to adopt wild horses or burros. Adoption applicants provide information about their qualifications and capability to provide humane care and treatment for wild horses and burros under conditions specified by Federal regulations. Applicants for adoption of more than 4 wild horses or burros are requested to additional information related to their capability to provide proper care for the number of wild horses or burros requested. Applicants requesting title to adopted wild horses or burros supply

information about changes in name or address and about animals which they are presently maintaining. This information is needed by BLM to issue titles to animals as requested by the applicant. The request for removal of animals from private land is necessary to determine the need for removing wild horses and burros from these lands.

Bureau Form Numbers: 4710-10 and 4710-11. One additional form to record information related to the capability of applicants for adoption of more than 4 animals will be developed later.

Frequency: Occasionally.

Description of Respondents:

Applicants desiring to adopt wild horses or burros and applicants desiring title to adopted wild horses or burros for which they have provided humane care and treatment for 1 year. Landowners requesting the Bureau of Land Management to remove wild horses or burros from their property.

Annual response: 15,225.

Annual burden hours: 1,558.

Bureau Clearance Officer (alternate): Evelyn Weeks (202) 653-8853.

James M. Parker,
Associate Director.
November 19, 1984.

[FR Doc. 84-31174 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-84-M

[M-59763]

Realty Action—Exchange; Montana

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-59763—Exchange of public and private lands, in Teton, Lewis and Clark, Cascade, Meagher, Blaine and Judith Basin Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

Public Land

- T. 6 N., R. 9 E.,
Sec. 4, lot 4.
- T. 7 N., R. 11 E.,
Sec. 6, lot 7.
- T. 8 N., R. 5 E.,
Sec. 2, lot 3, SW $\frac{1}{4}$ SW $\frac{1}{4}$.
- T. 8 N., R. 7 E.,
Sec. 32, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 8 N., R. 10 E.,
Sec. 12, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 24, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.
- T. 9 N., R. 4 E.,
Sec. 12, SE $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{4}$ S $\frac{1}{4}$ W $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 10 N., R. 8 E.,

- Sec. 4, lot 1, NW $\frac{1}{4}$ SW $\frac{1}{4}$.
- T. 10 N., R. 9 E.,
Sec. 19, lot 5;
Sec. 28, lots 3, 4, 5, 6, 7;
Sec. 29, lots 2 thru 6, 11, 12, 14 thru 21.
- T. 10 N., R. 11 E.,
Sec. 14, NE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 21, lots 1, 6;
Sec. 22, lots 1, 3, 4;
Sec. 23, lot 3.
- T. 12 N., R. 3 E.,
Sec. 6, SE $\frac{1}{4}$ NE $\frac{1}{4}$.
- T. 12 N., R. 5 E.,
Sec. 6, lot 3, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$,
NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 10, lots 1, 2, 9, 10.
- T. 13 N., R. 2 E.,
Sec. 20, N $\frac{1}{2}$ NE $\frac{1}{4}$.
- T. 13 N., R. 5 E.,
Sec. 32, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 17 N., R. 6 E.,
Sec. 35, SW $\frac{1}{4}$ NE $\frac{1}{4}$.
- T. 17 N., R. 3 W.,
Sec. 18, lot 2;
Sec. 30, SW $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 20 N., R. 5 W.,
Sec. 32, W $\frac{1}{2}$ NW $\frac{1}{4}$.
- T. 12 N., R. 12 E.,
Sec. 1, lots 1, 4, E $\frac{1}{2}$ SW $\frac{1}{4}$.
- T. 12 N., R. 13 E.,
Sec. 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 6, lot 5;
Sec. 17, SW $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 13 N., R. 12 E.,
Sec. 11, W $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 15N $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 25, SE $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 13 N., R. 13 E.,
Sec. 8, E $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 17, W $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 18, NW $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 20, SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 30, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 33, SW $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 14 N., R. 13 E.,
Sec. 31, SW $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 29 N., R. 19 E.,
Sec. 15, SW $\frac{1}{4}$ SW $\frac{1}{4}$.
- T. 14 N., R. 1 E.,
Sec. 24, N $\frac{1}{2}$ NE $\frac{1}{4}$.

Aggregating 2,619.47 Acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

- T. 24 N., R. 8 W.,
Sec. 5, part of lot 1, Lots 5, 6, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 6, Lot 7, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, and
SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 7, Lots 1, 2, NE $\frac{1}{4}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 8, W $\frac{1}{2}$ NW $\frac{1}{4}$.

Aggregating 974.51 Acres.

DATES: For a period of 45 days from the date of receipt of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State

Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT:

Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws by not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for review at this BLM office.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment of \$200.00 paid to the United States of America by the Nature Conservancy.

5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange.

Date: November 18, 1984.

William J. Cutler,,

Acting District Manager.

[FR Doc. 84-31104 Filed 11-27-84; 6:45 am]

BILLING CODE 4310-DN-M

Circle Cliffs Combined Hydrocarbon Lease Conversion; Cedar City District Office, UT; Availability of Draft Environmental Impact Statement and Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement and public hearing.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has prepared a draft environmental impact statement (EIS) on a proposal by W. C. Kirkwood Oil and Gas to convert certain oil and gas leases to combined hydrocarbon leases in the Circle Cliffs Special Tar Sand Area. Copies of the draft EIS entitled "Circle Cliffs Combined Hydrocarbon Lease Conversion" are now available for public review and comment. The draft EIS analyzes the environmental impacts that would result from W. C. Kirkwood's plan for commercial development of the Circle Cliffs tar sands resource. Alternatives also considered are no action, restricted development, and a worst case development scenario.

In addition, notice is given that a public hearing will be held to seek public input on the EIS.

DATES: A public hearing will be held at 7 p.m. on December 20, 1984, at the Bureau of Land Management's Cedar City District Office. Written comments on the draft EIS will be accepted until January 28, 1985, at the Cedar City District Office.

ADDRESS: Please submit written comments to Dave Everett, EIS Team Leader, Bureau of Land Management, 1579 North Main, Cedar City, Utah 84720. Mr. Everett's telephone number is (801) 586-2401.

Copies of the draft EIS can be obtained from:

Bureau of Land Management, Utah State Office, CFS Financial Center, 324 South State Street, Salt Lake City, Utah 84111-2303

Bureau of Land Management, Cedar City District, 1579 North Main Street, Cedar City, Utah 84092

Bureau of Land Management, Public Affairs Office, Interior Building, 18th and "C" Streets, NW., Washington, D.C. 20240.

Dated: November 21, 1984.

James A. Moorhouse,
Acting State Director, Utah.

[FR Doc. 84-31099 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-DQ-M

[F-54344; AK-965-5-00262; GP-5-015]

Termination of Proposed Withdrawal and Reservation of Lands, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands requested by the United States Geological Survey, Department of Interior, for a magnetic and seismological observatory at Bender Mountain, Alaska.

EFFECTIVE DATE: November 28, 1984

ADDRESS: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, Alaska State Office, (907) 271-5060.

Notice of a proposed withdrawal and reservation of lands for the United States Geological Survey, Department of Interior, was published in the *Federal Register*, Vol. 44, No. 160 on pages 47993 and 47994 of the issue for August 16, 1979. The purpose of the application, serial number F-54344, was for a magnetic and seismological observatory. The applicant agency has cancelled its application involving the lands described in the *Federal Register* publication referred to above. Therefore, at 8:00 a.m. Alaska Standard Time on the date of this publication, such lands will be relieved of the segregative effect of the above mentioned application.

The lands will continue to be withdrawn by, and subject to, the terms and conditions of prior withdrawals of record.

November 15, 1984.

Mary Jane Clawson,
Chief, Branch of Lands.

[FR Doc. 84-31170 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-84-M

Clear Lake Resource Area—Realty Action for Sale of Public Lands in Glenn, Colusa, Yolo, Sonoma Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; sale of public lands, amendment.

SUMMARY: This action amends the Notice of Realty Action for the public land sale in the Clear Lake Resource Area originally published in the *Federal Register* on Wednesday, May 30, 1984 (49 FR 22547, May 30, 1984) and amended on Monday, July 16, 1984 (49 FR 28771, July 16, 1984).

The following described lands will be offered for sale by sealed bid at 10:00 a.m. on the third Wednesday of each month until the parcels are sold or until August 29, 1985.

Sale and parcel No.	Legal description	Fair market value
CA 15337.....	T. 19 N., R. 5 W., Sec. 18, SE $\frac{1}{4}$ SW $\frac{1}{4}$.	\$4,400
CA 15340.....	T. 14 N., R. 5 W., Sec. 26, SW $\frac{1}{4}$ SE $\frac{1}{4}$.	\$8,000
CA 15342.....	T. 8 N., R. 7 W., Sec. 4, lots 1 & 2.	\$62,550
CA 15343.....	T. 11 N., R. 3 W., Sec. 17, W $\frac{1}{2}$ SE $\frac{1}{4}$.	\$20,000

The following described lands will be offered for sale pending the outcome of an appeal.

Sale and parcel No.	Legal description	Fair market value
CA 15338.....	T. 6 N., R. 5 W., Sec. 9, NW $\frac{1}{4}$ SE $\frac{1}{4}$.	\$70,000
CS 15341.....	T. 8 N., R. 6 W., Sec. 32, SW $\frac{1}{4}$ SE $\frac{1}{4}$.	\$38,000

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

The successful bidder has 180 days from the time of the sale in which to submit the full purchase price.

Detailed information concerning the sale are available for review at the Ukiah District Office, P.O. Box 940, Ukiah, California 95482.

FOR FURTHER INFORMATION CONTACT: Cathie Dokken (707) 462-3873.

Edwin G. Katlas,
Acting District Manager, Ukiah.

[FR Doc. 84-31109 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-84-M

[C-28258]

Proposed Modification of Bureau of Reclamation Paonia Project; Colorado

November 16, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that those orders which withdrew lands for the Paonia Project be modified to expire 20 years from the date of the final order insofar as it affects 1,143.99 acres of public land. The lands will remain closed to surface entry and mining but have been and will continue to be open to mineral leasing.

DATE: Comments should be received on or before February 26, 1985.

ADDRESS: All comments should be addressed to State Director, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, BLM Colorado State Office, 303-294-7626.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that portions of the existing land withdrawals made by Bureau Orders of September 14, 1949, August 31, 1950, and April 9, 1957, as amended; and Public Land Orders 3081 and 3084, dated May 14, 1963, be modified to expire 20 years from the date of the final order pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as they affect the following described public lands:

Sixth Principal Meridian

T. 12 S., R. 89 W.,

Sec. 28, lot 1, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 33, lots 1 thru 7, inclusive, W $\frac{1}{2}$ SE $\frac{1}{4}$ N $\frac{1}{2}$ E $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 13 S., R. 89 W.,

Sec. 4, lots 5, 6, 10, 11, 12, 13, 14, 17, 18, 20, 21, and 22, and NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 5, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 8, lot 2, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and W $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 9, lots 2 and 3.

T. 13 S., R. 90 W.,

Sec. 18, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 14 S., R. 92 W.,

Sec. 3, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The areas described aggregate 1,143.99 acres of public land in Delta and Gunnison Counties, Colorado.

The purpose of these withdrawals is for the administration and protection of existing facilities in the Paonia Project. No change is proposed in the purpose or segregative effect of the withdrawals. The land will continue to be withdrawn from surface entry and mining, but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the State Director, Colorado State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the *Federal Register*. The existing withdrawals will

continue until such final determination is made.

Richard D. Tate,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 84-31112 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; Taylor Energy Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1106, Block 133, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on November 16, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 16, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31115 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Exxon Co. U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4001, Block 173, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on November 19, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 19, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31114 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Exxon Company, U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 4704, and 4711, Blocks 696 and 717, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Rockport, Harbor Island, and Flour Bluff, Texas.

DATE: The subject DOCD was deemed submitted on November 15, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 20 of the CFR.

Dated: November 16, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31171 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Texaco, U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Texaco U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2618, Block 387, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 16, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 16, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31173 Filed 11-27-84; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Termination of Countervailing Duty Investigation Concerning Amoxicillin Trihydrate and Its Salts From Spain

AGENCY: International Trade Commission.

ACTION: Termination of countervailing duty investigation under section 104(b)(1) of the Trade Agreements Act of 1979, with regard to amoxicillin trihydrate and its salts from Spain.

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, telephone number (202) 523-0368.

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979, subsection 104(b)(1), requires the Commission in the case of a countervailing duty order issued under section 303 of the Tariff Act of 1930, upon the request of a government or group of exporters of merchandise covered by the order, to conduct an investigation to determine whether an industry in the United States would be materially injured, or threatened with material injury, or whether the establishment of such an industry would be materially retarded, if the order were to be revoked. On June 17, 1982, the Commission received a request from the Government of Spain for the review of the outstanding countervailing duty order on amoxicillin trihydrate and its salts from Spain. Notice of the countervailing duty order was published on July 27, 1979 in the Federal Register 44 FR 44154).

On September 13, 1984, the Commission was notified by letter that Biocraft Laboratories, Inc., the original petitioner for the countervailing duty order, wished to withdraw its request for the imposition of countervailing duties under the above referenced countervailing duty order.

While there is no provision in the Trade Agreements Act of 1979, or in its legislative history, permitting termination of a transition case investigation, termination of a properly instituted countervailing duty investigation is permitted under section 704(a) of the Tariff Act of 1930. That

section directs the Commission to solicit public comment prior to termination and approve such termination only if it is in the public interest. Termination authority is explicit in cases based on newly filed countervailing duty petitions; it is implied with respect to existing countervailing duty orders.

On October 3, 1984, (49 FR 39117) the Commission published a notice in the *Federal Register* requesting public comment by November 2, 1984, on the proposed termination of the Commission investigation on amoxicillin trihydrate and its salts from Spain. No adverse comments were received in response to the Commission's notice.

The Commission is therefore terminating its investigation on amoxicillin trihydrate and its salts from Spain (T.D. 79-211). The termination of this investigation has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, if the countervailing duty order were to be revoked.

In addition to publishing this *Federal Register* notice, the Commission is serving a copy of this notice on all persons who have written the agency in connection with this investigation and is also notifying the Department of Commerce of its action in this case.

By order of the Commission.

Issued: November 23, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-31223 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-143]

Certain Amorphous Metal Alloys and Amorphous Metal Articles; Decision Not to Review Initial Determination Removing Confidential Designation From Certain Information

AGENCY: International Trade Commission.

ACTION: The Commission has determined not to review the presiding officer's initial determination (ID) making available for public inspection certain findings of fact and portions of an ID issued on May 14, 1984, concerning the violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

SUMMARY: The following findings of fact and portions of the May 14, 1984 ID, which heretofore were designated as confidential, are now available for public inspection:

P. 15, middle paragraph

P. 35, first line of last paragraph

P. 36, first and second full sentences, and fourth sentence

P. 40, second full paragraph, up to and including "it was critical,"

P. 60, first full paragraph, excluding second sentence

P. 95, last paragraph, first sentence findings of fact 118-22, 753-55

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, tel. 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337-TA-143, now terminated, was conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 and 19 U.S.C. 1337a) in the importation or sale of certain amorphous metal alloys and articles. The investigation was instituted on the basis of a complaint filed by Allied Corp., alleging the infringement of three U.S. patents assigned to Allied. See 48 FR 15963 (Apr. 13, 1983); 48 FR 43108 (Sept. 21, 1983); 49 FR 42803 (Oct. 24, 1984).

On May 14, 1984, the presiding officer issued an ID holding that there is a violation of section 337 in the importation of amorphous metal articles made by a process that would infringe one of the patents in controversy, if the process were performed in the United States. The Commission denied the parties' petitions for review and the violation ID became the Commission's determination. See 49 FR 29159 (July 18, 1984).

On July 6, 1984, respondents Nippon Steel Corp. and Nippon Steel U.S.A., Inc. filed a motion to "declassify" certain findings of fact and discussion in the violation ID that had been designated as confidential (Motion No. 143-83C). The discussion and findings in question relate to the validity of the patents in controversy. Nippon argued that the presiding officer had erred by granting confidential treatment to the material in question, because it was on, or was based on information on, the public record of the investigation. On July 13, 1984, complainant Allied filed a response opposing the motion in part. On Aug. 15, 1984, the Commission issued an order certifying the motion to the presiding officer for an ID.

After considering additional arguments by the parties, the presiding officer on Oct. 16, 1984, issued an ID granting the motion in part and denying it in part (Order No. 50). The parties did not file petitions for review, and the

Commission determined that a review on the Commission's own motion, under 19 CFR 210.55, was not warranted. The ID thus became the Commission's determination. 19 CFR 210.53(h).

Correction of Error

Page 9 of the confidentiality ID lists "p. 60, full paragraph, excluding second sentence" as part of the material that is to be made public. The correct notation is "p. 60, first full paragraph, excluding second sentence."

Public Inspection

Public inspection copies of the violation ID, the confidentiality ID, and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0471.

By order of the Commission.

Issued: November 23, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-31225 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-194]

Certain Aramid Fiber; Determination Not To Review an Initial Determination Declaring the Investigation More Complicated

AGENCY: International Trade Commission.

ACTION: Nonreview of initial determination (ID) declaring the above-captioned investigation "more complicated" and extending the relevant deadlines by 10 weeks.

SUMMARY: Pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and 19 CFR 210.54, the Commission has decided not to review an ID declaring the above-captioned investigation more complicated.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of General Counsel, U.S. International Trade Commission, telephone (202) 523-0189.

SUPPLEMENTARY INFORMATION: The Commission has decided not to review the ID (Order No. 13) declaring this investigation more complicated and granting a limited extension of time, because of the unusual circumstances that exist with regard to the broadened scope of the investigation, and delays

and difficulty in obtaining discovery. Respondents have raised several affirmative defenses in this investigation which substantially broadened the scope of discovery required to develop an adequate record in this investigation. These issues include both patent and antitrust issues and require extensive discovery.

Complainant DuPont filed a motion to strike several of these affirmative defenses and did not permit discovery with respect to these issues until the presiding officer resolved the question of the permissible scope of discovery on September 9, 1984. The deadline for completion of discovery was November 9, 1984. Consequently, the parties have had a substantially shorter period for discovery on these issues than generally obtains in section 337 investigations. Considering the circumstances of the delay in discovery, the substantial expansion in the scope and complexity of discovery, and the short period for discovery on these issues, the Commission has decided not to review the ID declaring the investigation more complicated.

Copies of the presiding officer's ID declaring this investigation more complicated and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

By order of the Commission.

Issued: November 19, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-31217 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-208, 209, and 210 (Preliminary)]

Barbed Wire and Barbless Wire Strand From Argentina, Brazil, and Poland

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-T-208, 209, and 210 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is

materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded; by reason of imports from Argentina, Brazil, and Poland of barbed wire and loosely twisted double wire strand suitable for fencing purposes (barbless wire), provided for in items 642.02 and 642.11, respectively, of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by January 3, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 19, 1984.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on November 19, 1984, by Forbes Steel and Wire Corporation, Canonsburg, PA.

Participation in the Investigation

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service

must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on December 12, 1984, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bruce Cates (202-523-0369) not later than December 11, 1984, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before December 14, 1984, a written statement of information pertinent to the subject of the investigations as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: November 20, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-31221 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-189 (Final)]**Calcium Hypochlorite From Japan****AGENCY:** International Trade Commission.**ACTION:** Rescheduling of the hearing to be held in connection with the subject investigation.**SUMMARY:** The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on December 20, 1984 to 10:00 a.m. on February 26, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 21, 1984.**FOR FURTHER INFORMATION CONTACT:** Larry Reavis (202-523-0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.**SUPPLEMENTARY INFORMATION:****Background**

On October 9, 1984, the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for December 20, 1984 (49 FR 43807, Oct. 31, 1984). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from December 17, 1984, to February 22, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by April 8, 1985.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on February 12, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on February 26, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission

not later than the close of business (5:15 p.m.) on February 22, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on February 19, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 22, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 8, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 8, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: November 23, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31224 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-184]**Certain Foam Earplugs; Decision Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement****AGENCY:** International Trade Commission.**ACTION:** The Commission has determined not to review the presiding officer's initial determination (ID) (Order No. 12) terminating the above-captioned investigation with respect to respondent S.S. Trading Co., Ltd. on the basis of a settlement agreement.**FOR FURTHER INFORMATION CONTACT:** Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.**SUPPLEMENTARY INFORMATION:** On June 28, 1984, complaint Cabot Corporation and respondent S.S. Trading Co., Ltd. filed a joint motion to terminate the investigation as to respondent S.S. Trading Co., Ltd. on the basis of a settlement agreement. The presiding officer issued an ID granting the joint motion for termination on September 24, 1984. No petitions for review or comments from Government agencies or the public were received.

Copies of the presiding officer's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Authority: Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 19 CFR 210.51 and 210.53.

By order of the Commission.

Issued: November 20, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-31218 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-184, 186, and 187 (Final)]

Potassium Chloride From East Germany, Spain, and the U.S.S.R.

AGENCY: International Trade Commission.

ACTION: Termination of investigation concerning potassium chloride from Spain and rescheduling of the hearing to be held in connection with investigations concerning potassium chloride from East Germany and the U.S.S.R.

SUMMARY: The Commission hereby announces the termination of investigation No. 731-TA-186 (Final), Potassium Chloride from Spain, and the rescheduling of the hearing to be held in connection with investigations Nos. 731-TA-184 (Final), Potassium Chloride from East Germany and 731-TA-187 (Final), Potassium Chloride from the U.S.S.R. The hearing has been rescheduled to begin at 10:00 a.m. on February 5, 1985.

For further information concerning the conduct of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 20, 1984.

FOR FURTHER INFORMATION CONTACT: Larry Johnson (202-523-0127), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1984, the Commission instituted the subject investigations and scheduled a hearing to be held in connection therewith for November 27, 1984 (49 FR 39115). Subsequently, the Commission was notified by the Department of Commerce that it was extending the date for its final determinations in the investigations concerning potassium chloride from East Germany and the U.S.S.R. (from November 20, 1984, to January 25, 1985) and was terminating its investigation concerning potassium chloride from Spain. The Commission, therefore, is revising its schedule and is terminating its investigation concerning potassium chloride from Spain. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determinations in antidumping investigations within 45 days of Commerce's final determination, or in these cases by March 11, 1985.

Staff report

A public version of the prehearing staff report in these investigations was placed in the public record on November 13, 1984, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on February 5, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC.

Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 28, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on January 29, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 29, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 11, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 11, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for

confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: November 21, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-31220 Filed 11-27-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-208]

Certain Shoe Stiffener Components; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 22, 1984, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Foss Manufacturing Co., Inc., Ward Hill, Haverhill, Massachusetts 01830. Supplemental information was filed on November 8, 1984. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain shoe stiffener components into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 3,427,733; (2) infringement of the claims of U.S. Letters Patent 4,350,732; and (3) misappropriation of trade secrets. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that, after a full investigation, the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT:

Steven H. Schwartz, or Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-4877 or 202-523-1272, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 19, 1984, Ordered That:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain shoe stiffener components into the United States, or in their sale, by reason of alleged (1) infringement of the claims of U.S. Letters Patent 3,427,733; (2) infringement of the claims of U.S. Letters Patent 4,350,732; and (3) misappropriation of trade secrets, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Foss Manufacturing Co., Inc., Ward Hill, Haverhill, Massachusetts 01830.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served.

British United Shoe Machinery Co., Ltd., P.O. Box 88, Belgrave Road, Leicester, England, LE45BX.

Emhart Corporation, P.O. Box 2730, Hartford, Connecticut 06146.

Gould & Scammon, Inc., 1130 Minot Avenue, Auburn, Maine 04210.

(c) Steven H. Schwartz¹ and Juan Cockburn, Esq., Unfair Import Investigations Division, United States International Trade Commission, 701 E Street N.W., Room 122 and Room 128, respectively, Washington, D.C. 20436, shall be the Commission investigative staff, a party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with

§ 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

By order of the Commission.

Issued: November 23, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-31226 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-190]

Certain Softballs and Polyurethane Cores Thereof; Determination Not To Review Initial Determination Terminating Respondent on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice of nonreview of initial determination (ID).

SUMMARY: The Commission has determined not to review an ID to terminate this investigation as to respondent Diamond Sports Co. on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

SUPPLEMENTARY INFORMATION: Notice of the ID was published in the Federal Register, 49 FR 43809 (Oct. 31, 1984). The Commission has received neither a petition for review of the ID nor comments from the public or from other Government agencies.

By order of the Commission.

Issued: November 21, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-31222 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-191]

Certain Stretch Wrapping Apparatus and Components Thereof; Decision Not To Review Initial Determination Terminating Investigation on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Termination of the investigation on the basis of a consent order.

SUMMARY: The United States International Trade Commission hereby gives notice of its decision not to review an initial determination (ID) terminating the above-captioned investigation. The ID terminated the investigation on the basis of a proposed consent order signed by complainant Lantech, Inc., respondents Muller Manufacturing, Ltd. and Muller Packaging Systems, Inc., and the Commission investigative attorney.

FOR FURTHER INFORMATION CONTACT: George Holoch, Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules § 210.53 (c) and (h) (19 CFR 210.53 (c) and (h)). Notice of the ID was published in the Federal Register of October 31, 1984, 49 FR 43810. No petition for review was filed, nor were any comments from Government agencies or the public received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

By order of the Commission.

Issued: November 20, 1984.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-31219 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

¹ Pending admission to the bar.

[Investigation No. 337-TA-174]

**Certain Woodworking Machines;
Prehearing Conference****Notice**

Notice is hereby given that the prehearing conference in this matter will commence at 9:00 a.m. on December 5, 1984, in Hearing Room B at the Interstate Commerce Commission Building at 12th and Constitution Avenue, NW., Washington, D.C., and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: November 21, 1984.

James P. Timony,

Administrative Law Judge.

[FR Doc. 84-31227 Filed 11-27-84; 8:45 am]

BILLING CODE 7020-02-M

**INTERSTATE COMMERCE
COMMISSION****[Ex Parte No. 388 (Sub-B)]****Intrastate Rail Rate Authority—Indiana**

AGENCY: Interstate Commerce Commission.

ACTION: Notice of certification.

SUMMARY: The Commission grants final certification to the Public Service Commission of Indiana under 49 U.S.C. 11501(b), to regulate intrastate rail transportation, subject to the condition precedent that it modify its standard as noted in the full decision.

DATES: If the necessary changes are made, certification will begin on January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: November 14, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Vice Chairman Andre, joined by Commissioners Sterrett and Strenio, dissented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 84-31151 Filed 11-27-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-No. 93X)]**Rail Carriers; the Baltimore and Ohio Railroad Co.—Abandonment
Exemption—in Mahoning County, OH**

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the abandonment by The Baltimore and Ohio Railroad Company of 1.01 miles of track between milepost 75.07 and milepost 76.08 in Mahoning County, OH.

DATES: This exemption is effective on December 28, 1984. Petitions for reconsideration must be filed by December 18, 1984. Petitions for stay must be filed by December 10, 1984.

ADDRESSES: Send pleadings referring to Docket No. AB-19 (Sub-No. 93X) to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representative: James J. Corbett, P.O. Box 6419, Cleveland, OH 44101.

FOR FURTHER INFORMATION: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan Area) or toll free (800) 424-5403.

Decided: November 5, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett,

Gradison, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred in the result and commented with a separate expression.

James H. Bayne,
Secretary.

[FR Doc. 84-31150 Filed 11-27-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE**Regulatory Flexibility Act Plan for the
Periodic Review of Rules**

AGENCY: Department of Justice.

ACTION: Notice of Regulatory Flexibility Act review plan.

SUMMARY: In accordance with the requirements of the Regulatory Flexibility Act, the Department of Justice is publishing a plan for the periodic review of its rules to determine whether they have or will have a significant economic impact upon a substantial number of small entities. The purpose of the review is to determine whether the rules need to be amended in any way in order to minimize any significant adverse economic impact upon small entities.

FOR FURTHER INFORMATION CONTACT:

Janis A. Sposato, Administrative Counsel, Justice Management Division, Department of Justice, Room 1220, 10th and Constitution Avenue, NW., Washington, D.C. 20530 (202-633-3452).

SUPPLEMENTARY INFORMATION: Section 610(a) of the Regulatory Flexibility Act, 5 U.S.C.A. 601-612 (West 1984), requires that each agency review its rules to determine whether they have or will have a significant economic impact upon a substantial number of small entities. That section also requires that the review of all rules existing as of the effective date of the Act, i.e., January 1, 1981, be completed within ten years. Therefore, listed below is the required plan developed by the Department of Justice for the review of its regulations.

Dated: November 19, 1984.

Janis A. Sposato,

Administrative Counsel, Justice Management Division.

Year of review	DOJ rule	Title	Responsible organization
1985	28 CFR part 16, subpart C	Production of FBI Identification Records in Response to Written Requests by Subjects Thereof	Federal Bureau of Investigation.
1985	28 CFR part 20, subpart C	Federal System and Interstate Exchange of Criminal History Record Information	Do.
1986	28 CFR part 14	Administrative Claims Under Federal Tort Claims Act	Civil Division.
1986	28 CFR part 15	Defense of Certain Suits Against Federal Employees, and Certification and Defense of Certain Suits Against Program Participants Under the National Swine Flu Immunization Program of 1976.	Do.
1986	28 CFR part 25	Recommendations to the President on Civil Aeronautics Board Decisions	Antitrust Division.
1986	28 CFR part 43	Recovery of Cost of Hospital and Medical Care Treatment Furnished by the United States	Civil Division.
1986	28 CFR part 48	Newspaper Preservation Act	Antitrust Division.
1986	28 CFR part 49	Antitrust Civil Process Act	Do.
1986	28 CFR part 57	Investigation of Discrimination in the Supply of Petroleum to the Armed Forces	Civil Division.
1987	28 CFR part 2	Parole, Release, Supervision and Recombination of Prisoners, Youth Offenders, and Juvenile Delinquents	U.S. Parole Commission.

Year of review	DOJ rule	Title	Responsible organization
1987	28 CFR part 4	Procedure Governing Applications for Certificates of Exemption Under the Labor-Management Reporting and Disclosure Act of 1959, and the Employee Retirement Income Security Act of 1974.	Do.
1987	28 CFR part 13	Atomic Weapons and Special Nuclear Materials Rewards Regulations	Land and Natural Resources Division.
1987	28 CFR part 16, subpart F	Public Observation of Parole Commission Meetings	U.S. Parole Commission.
1987	28 CFR part 61	Procedures for Implementing the National Environmental Policy Act	Land and Natural Resources Division.
1987	28 CFR part 63	Floodplain Management and Wetland Protection Procedures	Do.
1987	45 CFR part V	Foreign Claims Settlement Commission of the United States, Department of Justice	Foreign Claims Settlement Commission.
1988	28 CFR part 41	Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs.	Civil Rights Division.
1988	28 CFR part 42, subpart F	Coordination of Enforcement of Non-discrimination in Federally Assisted Programs	Do.
1988	28 CFR part 42, subpart H	Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance.	Do.
1989	28 CFR part 3	Gambling Devices	Criminal Division.
1989	28 CFR part 5	Administration and Enforcement of Foreign Agents Registration Act of 1938, as Amended	Do.
1989	28 CFR part 9	Remission or Mitigation of Civil Forfeitures	Do.
1989	28 CFR part 10	Registration of Certain Organizations Carrying on Activities Within the United States	Do.
1989	28 CFR part 12	Registration of Certain Persons Having Knowledge of Foreign Espionage, Counterespionage, or Sabotage Matters Under the Act of Aug. 1, 1956.	Do.
1989	28 CFR part 16, subpart A	Production or Disclosure Under 5 U.S.C. 552(a)	Office of Legal Policy.
1989	28 CFR part 16, subpart B	Production or Disclosure in Federal and State Proceedings	Do.
1989	28 CFR part 16, subpart D	Protection of Privacy of Individual Records	Do.
1989	28 CFR part 18	LEAA Administrative Review Procedure	Office of Justice Programs.
1989	28 CFR part 20, subpart A	General Provisions	Do.
1989	28 CFR part 20, subpart B	State and Local Criminal History Record Information Systems	Do.
1989	28 CFR part 22	Confidentiality of Identifiable Research and Statistical Information	Do.
1989	28 CFR part 23	Criminal Intelligence Systems Operating Policies	Do.
1989	28 CFR part 24	Implementation of the Equal Access to Justice Act in Department of Justice Administrative Proceedings	Office of Legal Policy.
1989	28 CFR part 30	Intergovernmental Review of Department of Justice Programs and Activities	Office of Justice Programs.
1989	28 CFR part 31	Formula Grants	Do.
1989	28 CFR part 32	Public Safety Officers' Death Benefits	Do.
1989	28 CFR part 42, subpart D	Nondiscrimination in Federally Assisted Programs—Implementation of section 815(c)(1) of the Justice System Improvement Act of 1979.	Do.
1989	28 CFR part 42, subpart E	Equal Employment Opportunity Program Guidelines	Do.
1989	28 CFR part 47	Right to Financial Privacy Act	Criminal Division.
1989	28 CFR part 50	Statements of Policy	Office of Legal Policy.
1989	28 CFR part 52	Proceedings Before U.S. Magistrates	Do.
1989	28 CFR part 59	Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties	Criminal Division.
1989	28 CFR part 60	Authorization of Federal Law Enforcement Officers to Request the Issuance of a Search Warrant	Do.
1990	8 CFR part 101	Presumption of Lawful Admission	Immigration and Naturalization Service.
1990	8 CFR part 103	Powers and Duties of Service Officers; Availability of Service Records	Do.
1990	8 CFR part 109	Employment Authorization	Do.
1990	8 CFR part 204	Petition to Classify Alien as Immediate Relative of a U.S. Citizen or as a Preference Immigrant	Do.
1990	8 CFR part 205	Revocation of Approval of Petitions	Do.
1990	8 CFR part 207	Admission of Refugees	Do.
1990	8 CFR part 208	Asylum Procedures	Do.
1990	8 CFR part 209	Adjustment of Status of Refugees and Aliens Granted Asylum	Do.
1990	8 CFR part 211	Documentary Requirements: Immigrants; Waivers	Do.
1990	8 CFR part 212	Documentary Requirements: Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole	Do.
1990	8 CFR part 213	Admission of Aliens on Giving Bond or Cash Deposit	Do.
1990	8 CFR part 214	Nonimmigrant Classes	Do.
1990	8 CFR part 215	Controls of Aliens Departing from the United States	Do.
1990	8 CFR part 221	Admission of Visitors or Students	Do.
1990	8 CFR part 223	Reentry Permits	Do.
1990	8 CFR part 223a	Refugee Travel Document	Do.
1990	8 CFR part 231	Arrival-Departure Manifests and Lists; Supporting Documents	Do.
1990	8 CFR part 232	Detention for Examination to Determine Mental or Physical Defects	Do.
1990	8 CFR part 233	Temporary Removal for Inspection	Do.
1990	8 CFR part 234	Physical and Mental Examination of Arriving Aliens	Do.
1990	8 CFR part 235	Inspection of Persons Applying for Admission	Do.
1990	8 CFR part 236	Exclusion of Aliens	Do.
1990	8 CFR part 237	Deportation of Excluded Aliens	Do.
1990	8 CFR part 238	Contracts with Transportation Lines	Do.
1990	8 CFR part 239	Special Provisions Relating to Aircraft: Designation of Ports of Entry for Aliens Arriving by Civil Aircraft	Do.
1990	8 CFR part 241	Judicial Recommendations Against Deportation	Do.
1990	8 CFR part 242	Proceedings to Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal.	Do.
1990	8 CFR part 243	Deportation of Aliens in the United States	Do.
1990	8 CFR part 244	Suspension of Deportation and Voluntary Departure	Do.
1990	8 CFR part 245	Adjustment of Status to that of Persons Admitted for Permanent Residence	Do.
1990	8 CFR part 246	Rescission of Adjustment of Status	Do.
1990	8 CFR part 247	Adjustment of Status of Certain Resident Aliens	Do.
1990	8 CFR part 248	Change of Nonimmigrant Classification	Do.
1990	8 CFR part 249	Creation of Records of Lawful Admission for Permanent Residence	Do.
1990	8 CFR part 250	Removal of Aliens Who Have Fallen into Distress	Do.
1990	8 CFR part 251	Arrival Manifests and Lists: Supporting Documents	Do.
1990	8 CFR part 252	Landing of Alien Crewmen	Do.
1990	8 CFR part 253	Parole of Alien Crewmen	Do.
1990	8 CFR part 264	Registration and Fingerprinting of Aliens in the United States	Do.
1990	8 CFR part 265	Notices of Address	Do.
1990	8 CFR part 274	Seizure and Forfeiture of Vehicles, Vessels and Aircraft	Do.
1990	8 CFR part 280	Imposition and Collection of Fines	Do.
1990	8 CFR part 282	Forms for Sale to Public	Do.
1990	8 CFR part 287	Field Officers; Powers and Duties	Do.
1990	8 CFR part 289	American Indians Born in Canada	Do.
1990	8 CFR part 292a	Listing of Free Legal Services Programs	Do.
1990	8 CFR part 293	Deposit of and Interest on Cash Received to Secure Immigration Bonds	Do.
1990	8 CFR part 306	Special Classes of Persons Who May be Naturalized: Virgin Islanders	Do.
1990	8 CFR part 312	Educational Requirements for Naturalization	Do.

Year of review	DOJ rule	Title	Responsible organization
1990	8 CFR part 316a	Residence, Physical Presence and Absence	Do.
1990	8 CFR part 318	Pending Deportation Proceedings	Do.
1990	8 CFR part 319	Special Classes of Persons Who May be Naturalized: Spouses of U.S. Citizens	Do.
1990	8 CFR part 322	Special Classes of Persons Who May be Naturalized: Children of Citizen Parent	Do.
1990	8 CFR part 324	Special Classes of Persons Who May be Naturalized: Women Who Have Lost U.S. Citizenship by Marriage	Do.
1990	8 CFR part 327	Special Classes of Persons Who May be Naturalized: Persons Who Lost U.S. Citizenship Through Service in Armed Forces of Foreign Country During World War II	Do.
1990	8 CFR part 328	Special Classes of Persons Who May be Naturalized: Persons with 3 Years Service in Armed Forces of the United States	Do.
1990	8 CFR part 329	Special Classes of Persons Who May be Naturalized: Veterans of the U.S. Armed Forces Who Served During World War I or World War II or Enlisted Under Act of June 30, 1950, as Amended	Do.
1990	8 CFR part 330	Special Classes of Persons Who May be Naturalized: Seamen	Do.
1990	8 CFR part 332	Preliminary Investigation of Applicants for Naturalization and Witnesses	Do.
1990	8 CFR part 332a	Official Forms	Do.
1990	8 CFR part 332b	Instruction and Training in Citizenship Responsibilities: Textbooks, Schools, Organizations	Do.
1990	8 CFR part 332c	Photographic Studios	Do.
1990	8 CFR part 332d	Designation of Employees to Administer Oaths and Take Depositions	Do.
1990	8 CFR part 333	Photographs	Do.
1990	8 CFR part 334	Petition for Naturalization	Do.
1990	8 CFR part 334a	Declaration of Intention	Do.
1990	8 CFR part 335	Preliminary Examination on Petitions for Naturalization	Do.
1990	8 CFR part 335a	Transfer, Withdrawal or Failure To Prosecute Petition for Naturalization	Do.
1990	8 CFR part 335c	Investigation of Petitioners for Naturalization	Do.
1990	8 CFR part 336	Proceedings Before Naturalization Court	Do.
1990	8 CFR part 337	Oath of Allegiance	Do.
1990	8 CFR part 338	Certificate of Naturalization	Do.
1990	8 CFR part 339	Functions and Duties of Clerks of Naturalization Courts	Do.
1990	8 CFR part 340	Revocation of Naturalization	Do.
1990	8 CFR part 341	Certificates of Citizenship	Do.
1990	8 CFR part 342	Administrative Cancellation of Certificates, Documents, or Records	Do.
1990	8 CFR part 343	Certificate of Naturalization or Repatriation; Persons Who Resumed Citizenship Under section 323 of the Nationality Act of 1940, as Amended, or section 4 of the Act of June 29, 1906	Do.
1990	8 CFR part 343a	Naturalization and Citizenship Papers Lost, Mutilated, or Destroyed; New Certificate in Changed Name; Certified Copy of Repatriation Proceedings	Do.
1990	8 CFR part 343b	Special Certificate of Naturalization for Recognition by a Foreign State	Do.
1990	8 CFR part 343c	Certifications from Records	Do.
1990	8 CFR part 344	Fees Collected by Clerks of Court	Do.
1990	8 CFR part 349	Loss of Nationality	Do.
1990	21 CFR chapter II	Drug Enforcement Administration, Department of Justice	Drug Enforcement Administration, Department of Justice
1990	28 CFR part 6	Traffic in Contraband Articles in Federal Penal and Correctional Institutions	Bureau of Prisons.
1990	28 CFR part 7	Rewards for Capture of Escaped Federal Prisoners	Do.
1990	28 CFR part 40	Standards for Inmate Grievance Procedures	Do.
1990	28 CFR chapter III	Federal Prison Industries, Department of Justice	Federal Prison Industries
1990	28 CFR chapter V	Bureau of Prisons, Department of Justice	Bureau of Prisons.

[FR Doc. 84-31172 Filed 11-27-84; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; Okolona Sewer Construction District, et al

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 8, 1984 a proposed consent decree in *United States v. Okolona Sewer Construction District, et al.*, Civil Action No. 84-1148-L(A), was lodged with the United States District Court for the Western District of Kentucky. The complaint filed by the United States alleged violations of the Clean Water Act by Okolona Sewer Construction District due to discharges of pollutants from its sewage treatment plant into Pond Creek, near Louisville, Kentucky. The complaint sought civil penalties for past violations, and injunctive relief to bring Okolona into compliance with the Clean Water Act. The consent decree provides that Okolona will cease discharge of pollutants into Pond Creek by merging into the Louisville and Jefferson County Metropolitan Sewer Construction District system.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC. 20530, and should refer to *United States v. Okolona Sewer Construction District, et al.*, D. J. Ref. 90-5-1-1-2140.

The proposed consent decree may be examined at the office of the United States Attorney, Room 211 U.S. Courthouse, 601 West Broadway, Louisville, Kentucky and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section,

Land and Natural Resources Division of the Department of Justice.

James M. Spears,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84-30990 Filed 11-27-84; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-84-230-C]

B & J Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

B & J Coal Company, Inc., Teaberry, Kentucky 41660 has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its Mine No. 1 (I.D. No. 15-14410) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all mobile face equipment be equipped with illumination devices.

2. The coal seam ranges from 33 to 36 inches in height. The Joy Miner equipped with lights is approximately 34 inches in height.

3. Petitioner states that the lighting devices installed on the miner have been torn off, causing an arcing effect, and the guards around the lights have dislodged roof bolts, creating a safety hazard.

4. As an alternate method, petitioner proposes to use two sealed beam headlights installed in the operator's compartment.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31065 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-231-C]

Black River Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Black River Mining Company, HC 76, Box 645, Ransom, Kentucky 41558 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-04236) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Thacker seam and ranges from 38 to 50 inches in height with consistent ascending and descending grades creating dips in the coalbed.

3. Petitioner states that canopies can strike and dislodge the roof support system, creating the potential of a roof fall. The canopies also restrict and

hamper the equipment operator's seating position and visibility, increasing the chances for an accident or injury.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31067 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-233-C]

Buffalo Ridge Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Buffalo Ridge Coal Co., Inc., c/o West-Co Engineering, Inc., Route 3, Box 54 SRS, Oneida, Tennessee 37841 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its No. 10 Mine (I.D. No. 40-01623) located in Anderson County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer banks of elevated roadways.

2. As an alternate method to providing berms on the roadway, petitioner proposes to equip the roadway with signs and other indicators to warn roadway users of hazardous areas, speed requirements and mining areas.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31068 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-213-C]

Canada Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Canada Coal Co., Inc., c/o Progressive Training & Research, Inc., Star Route 61, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 3 Mine (I.D. No. 15-11426) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that return air-courses be examined in their entirety on a weekly basis.

2. A rock fall, approximately 150 feet long, occurred in the return aircourse. This return is not used as an escapeway; the designated secondary escapeway is located in the conveyor belt entry.

3. Petitioner states that cleanup of this rock fall would expose miners to hazardous conditions which would be involved in shooting the rock, reroofbolting and retimbering.

4. As an alternate method, petitioner proposes to travel through a mandoor into the belt conveyor entry at the beginning of the fall, travel down the belt conveyor to a point below the fall, and travel through another mandoor back into the return.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31071 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-225-C]

Central Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Central Ohio Coal Company, P.O. Box 98, Cumberland, Ohio 43732 has filed a petition to modify the application of 30 CFR 77.902 (low- and medium-voltage ground check monitor circuits) to its Muskingum Mine (I.D. No. 33-00989) located in Morgan County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that three-phase low- and medium-voltage resistance grounded systems to portable and mobile equipment include a fail safe ground check circuit or other no less effective device to monitor continuously the grounding circuit to assure continuity.

2. The petitioner's voltage supply is a grounded delta. As an alternate method to using a resistance grounded system on the low- and medium-voltage supply system, petitioner proposes to use S.H.D. Power Cable from the protective device to portable heaters. This additional length of cable will not exceed 50 feet. The S.H.D.-type cable carries a continuous ground wire, will assure a safe and practical work standard, and will be installed according to National Electric Code standards.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31063 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-232-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1707 (escapeways) to its Jenkinjones No. 4 Mine (I.D. No. 46-04533) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the escapeway required to be ventilated with intake air be separated from the belt and trolley haulage entries for the entire length of such entries to the beginning of each working section.

2. Petitioner states that the last 700 feet of the track entry has such extremely wet and muddy conditions that the track haulage cannot be adequately maintained and haulage over the tracks may be unsafe.

3. As an alternate method, petitioner proposes to lay the track haulage in the intake escapeway of the last 700 feet. In support of this request, petitioner proposes to install an early warning fire detection system at the tailpiece with specific conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31061 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-212-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Matthews Mine (I.D. No. 40-00520) located in Claiborne County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install low-level carbon monoxide (CO) detectors with specific conditions at specified locations in the belt haulage entry.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31058 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-216-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Itmann No. 2 Mine (I.D. No. 46-01885) located in Wyoming County, West Virginia. The petition is filed

under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Parts of the Pole Green Return Air Courses were developed twenty years ago and now both the roof and roof supports have reached a stage of rapid deterioration. Rehabilitation of the affected areas will expose miners to hazardous working conditions.

3. As an alternate method, petitioner proposes to establish a ventilation evaluation point at a specific location in the affected area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31080 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-245-C]

Double L Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Double L Coal Corporation, P.O. Box 46, Big Rock, Virginia 24603 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-00403) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The normal mining height is 36 inches. However, a rider seam of coal now dips low enough to require mining

which temporarily results in a 72-inch mining height.

3. As an alternate method, petitioner proposes to operate an Elswick roof bolting machine without a cab or canopy. This machine has been converted to operate a hand-held coal drill. This machine will always be at least 15 feet outby the working face when used and the machine and operator will always be under supported roof during operation.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31069 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-28-C]

Garber Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Garber Coal Company, 523 E. Market Street, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Whites Slope (I.D. No. 36-06815) located in Dauphin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. Petitioner proposes to continue using the present filter-type self-rescuers as an alternative to providing self-contained self-rescuers, and states that this will provide the same measure of protection for the miners affected as that afforded by the standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31073 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-235-C]

H.A.T. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

H.A.T. Coal Company, 113 N. Oak Street, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 3 Slope (I.D. No. 36-07363) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

9. Petitioner states that the alternate method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31075 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-48-C]

K R K Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

K R K Coal Company, 120 Main Street, Joliet, Pennsylvania 17981, has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its K R K Slope (I.D. No. 36-06031) located in Schuylkill County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-rescue device or devices approved by the Secretary which is adequate to protect the person for one hour or longer.

2. The mine is wet and virtually dust free. The upper area of the mine was deep and strip mined, leaving ventilation to the surface by means of abandoned slopes, cracks, fissures and strip pits. This creates a natural draft

that would sweep noxious fumes to the surface away from the miners.

3. Petitioner states that the mine geology, undulation, thin coal and varying pitches make it impossible to wear the device while working. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. In addition, the wet conditions of the mine make it difficult to locate a suitable dry storage location for the self-rescuers.

4. Petitioner proposes to continue using the present filtertype self-rescuers as an alternative to providing self-contained self-rescuers.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31072 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-229-C]

Mid-Continent Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mid-Continent Resources, Inc., 1058 Road 100, P.O. Box 158, Carbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.1303 (permissible explosives, detonators, blasting devices and shot-firing units; stemming boreholes) to its Dutch Creek No. 1 Mine—Coal Basin Adit/Rock Tunnels Project (I.D. No. 05-00301) located in Pitkin County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that only permissible explosives and devices be used in a permissible manner underground.

2. Petitioner seeks a modification of the standard to permit the use of nonpermissible explosives and

detonating devices, without evacuating personnel out by the Rock Tunnel Project (RTP) portals, during the continued development of the RTP until the overlying coal beds are intercepted or methane is encountered in the RTP. All of the proposed blasting operations will be performed under specific conditions as outlined in the petition.

3. Petitioner states that the proposed alternate method, coupled with the safety precautions and conditions outlined in the petition, will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in the petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at the address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31076 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-215-C]

Mount Calvary Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mount Calvary Coal Co., Box 66 Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-13772) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that cabs or canopies be installed on the mine's electric face equipment.

2. The mine height ranges from 42 to 47 inches.

3. Petitioner states that the canopies are striking and dislodging the permanent roof support, creating the potential for a roof fall. In addition, the canopies restrict the equipment operator's visibility. This forces the operator to lean out from under the

canopy, exposing body parts to potential injury.

4. For these reasons, petitioner requests a modification of the standards.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 84-31066 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-210-C]

Sandy Fork Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sandy Fork Mining Co., Inc., Route 4, Box 30, Beverly, Kentucky 40913 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its Mine No. 11 (I.D. No. 15-13455) and Mine No. 12 (I.D. No. 15-14160), both located in Leslie County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that berms or guards be provided on the outer banks of elevated roadways.

2. Petitioner states that the installation of berms on the outer banks of the roadway would hamper proper maintenance of the roads by preventing the removal of snow and ice from the roadways, causing the road surfaces to deteriorate. Run-off water would channel down the roadways, washing gravel and dirt from the roads into settling ponds and silt ponds.

3. As an alternate method of installing berms, petitioner proposes that:

a. All equipment operators will be trained in the use of haulage equipment and the safety of vehicles on haulage roads;

b. All haulage equipment will have original manufacturer's brakes, Engine or Jacob brakes, and an emergency (parking) braking system;

c. Roadway surfaces will be kept free of debris, excessive water, snow and ice and maintained as free as practicable of small ditches (washboard effects);

d. Warning signs will be posted designating curves, steep grades where trucks should shift to lower gear, and where roadways are reduced to one lane traffic. Stop signs will be posted where one road intersects another, giving main haulage traffic the right of way. Signs will be posted designating passing points;

e. A traffic system will be put into use for these roads requiring that loaded trucks have the right of way on the highway side of roads regardless of their direction of travel; and

f. Adequate supplies of crushed stone or other suitable material will be stored at strategic locations along haulage roads for use when road surfaces become slippery.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 84-31074 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-228-C]

Thac West Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Thac West Mining, Inc., c/o Progressive Training & Research, Star Route-P.O. Box 61, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-12472) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine ranges from 36 to 48 inches in height with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the installation of canopies on the equipment would result in a diminution of safety because the canopies restrict the equipment operator's visibility. In addition, the canopies can strike the roof, increasing the chances of a roof fall.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 84-31070 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-201-C]

Twin Oak Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Twin Oak Coal Company, 119 Greenwood Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 1 Mine (I.D. No. 36-07388) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device or devices approved by the Secretary which is adequate to protect such person for one hour or longer.

2. Petitioner states that the mine is wet, virtually dust free, and has good ventilation. It is a heavily pitching anthracite mine with miner headings on 50-foot centers.

3. The mine geology, undulation, thin coal and varying pitches make it

hazardous to wear the device while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

4. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it very difficult to locate a suitable dry storage location for the self-rescuers.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31064 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-218-C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Co., Inc., 600 Grant Street, Room 1580, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Cumberland Mine (I.D. No. 36-05018) located in Greene County, Pennsylvania; its Maple Creek No. 1 Mine (I.D. No. 36-00970) and Maple Creek No. 2 Mine (I.D. No. 36-03425), both located in Washington County, Pennsylvania; and its Morton Mine (I.D. No. 46-01329) located in Kanawha County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage air not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use the ventilating air from conveyor belt entries as intake air to provide additional volume and velocity

for the working face. In support of this request, petitioner proposes that:

(a) A low-level carbon monoxide detection system with specific conditions will be installed at specific locations in each mine's belt conveyor entry;

(b) The construction of stoppings separating the belt haulage entry from the intake escapeway on main entries will be of concrete blocks, cinder blocks, brick or tile, and constructed with mortared joints, or constructed with material of equivalent strength.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard by preventing "still" areas where belt air is usually separated from other intake air, and will prevent potential air reversals caused by changes introduced in ventilating pressures.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at that address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31062 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-217-C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Co., Inc., 600 Grant Street, Room 1580, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its Cumberland Mine (I.D. No. 36-05018) located in Greene County, Pennsylvania; its Maple Creek No. 1 Mine (I.D. No. 36-00970) and Maple Creek No. 2 Mine (I.D. No. 36-03425), both located in Washington County, Pennsylvania; and its Morton Mine (I.D. No. 46-01329) located in Kanawha County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that devices be installed on all belts which will give warning automatically when a fire occurs on or near such belt.

2. As an alternate method, petitioner proposes to install a low-level carbon monoxide detection system with specific conditions at specific locations in each mine's belt conveyor entry.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 28, 1984. Copies of the petition are available for inspection at the address.

Dated: November 20, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31059 Filed 11-27-84; 8:45 am]

BILLING CODE 4510-43-M

LIBRARY OF CONGRESS

Copyright Office

Privacy Act of 1974; Establishment of New System of Records

AGENCY: Library of Congress, Copyright Office.

ACTION: Notice of establishment of new system of records.

SUMMARY: The Copyright Office last published the full text of its systems of records under the Privacy Act of 1974 (5 U.S.C. 552a) at 47 FR 36996, August 24, 1982. In order to facilitate access by members of the public to Copyright Office correspondence relating to the cable compulsory licensing system, the Office has decided to establish a new system of records containing copies of correspondence of the Register of Copyrights, the Copyright Office General Counsel and the Licensing Division with members of the public on the administration of the licensing system in section 111 of title 17 U.S.C. Although this information has previously been available in other files of the Office, establishment of this new system of records will make the

information more readily accessible to the public.

DATES: Comments should be received on or before December 28, 1984.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department D.S. Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue, SE., Washington, D.C.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

The Privacy Act Systems of Records of the Copyright Office are amended as follows:

1. In *Table of Contents*, add "CO-20—Secondary Transmissions by Cable Systems: Correspondence Files."

2. Add new system CO-20 as follows:

CO-20

SYSTEM NAME:

Secondary Transmission by Cable Systems: Correspondence Files.

SYSTEM LOCATION:

Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cable systems owners and other individuals who correspond with the Licensing Division, the Copyright Office General Counsel or the Register of Copyrights concerning the administration of the cable compulsory licensing system in section 111 of title 17 U.S.C.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

17 U.S.C. 111, 705.

ROUTING USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Office maintains these records to facilitate public access to correspondence of the Licensing Division, Copyright Office General Counsel and the Register of Copyrights on the administration of the section 111 compulsory licensing system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manila folders in a file cabinet and binders.

RETRIEVABILITY:

Correspondence usually accessible by date letter sent to member of public.

SAFEGUARDS:

These records are maintained in a room which is restricted to authorized personnel and locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Licensing Division, Copyright Office, Library of Congress, Washington, D.C. 20557.

NOTIFICATION PROCEDURE:

Inquiries about an individual's record should be in writing addressed to the Supervisory Copyright Information Specialist, Information and Reference Division, Copyright Office, Library of Congress, Washington, D.C. 20559.

RECORD ACCESS PROCEDURES:

Requests from individuals should be in writing addressed to the official designated under 'Notification Procedure.'

CONTESTING RECORD PROCEDURES:

See rules published in 37 CFR Part 204.

RECORD SOURCE CATEGORIES:

Licensing Division personnel, the Copyright Office General Counsel and the Register of Copyrights.

Dated: November 19, 1984.

Dorothy Schrader,

Associate Register of Copyrights for Legal Affairs.

Approved by:

Daniel J. Boorstein,

The Librarian of Congress.

[FR Doc. 84-31189 Filed 11-27-84; 8:45 am]

BILLING CODE 1410-03-M

[Docket RM 84-4]

Cable Compulsory License; Policy Decision Concerning Status of Low Power Television Stations

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of policy decision.

EFFECTIVE DATE: November 28, 1984.

1. Background

Section 111(c) of the Copyright Act of 1976, title 17 of the United States Code, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. This compulsory license is subject to various conditions, including the requirements that cable systems file Statements of Account semi-annually and pay statutory royalty fees in accordance with section 111(d)(2) and as adjusted by the Copyright Royalty Tribunal in accordance with section 801(b)(2).

Six years after the enactment of Section 111, the Federal Communications Commission (FCC) authorized the establishment of low power television stations entitled to originate programming. See 47 FR 21468 (1982), *on recon.*, 48 FR 21478 (1983). Since 1982, 117 low power television stations have gone on the air and an additional 259 construction permits have been granted. Lotteries for new construction permits are held every month; the FCC is expected to grant up to 4,000 of these permits.

The status of these low power television stations under the Copyright Act's definition of the "local service area of a primary transmitter" has been questioned. This definition establishes the demarcation between so-called "local" and "distant" signals under the cable compulsory license. This demarcation is critically important since large cable systems, whose semiannual gross receipts exceed \$214,000, compute their copyright royalties beyond the minimum fee¹ on the basis of distant signal carriage (*i.e.*, the "distant signal equivalent" formula is applied).

The definition of local service area is found in section 111(f):

The "local service area of primary transmitter," in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, . . .

The Copyright Act was enacted in 1976; the relevant section 111(f) definition refers to the type of television broadcast station that the FCC required cable systems to carry on April 15, 1976. Under one interpretation of the Act, since the low power television station category did not exist in 1976, they can

¹ All cable systems pay a minimum fee for the privilege of making secondary transmissions, irrespective of gross receipts or actual distant signal carriage. 17 U.S.C. 111(d)(B)(i), (C) and (D).

not be considered "must-carry" stations under the FCC rules in effect on April 15, 1976. Moreover, the FCC currently does not require cable retransmission of low power television stations. The distinction between local and distant signals found in 17 U.S.C. 111(f) is frozen as of the FCC's rules in effect on April 15, 1976. The Committee on the Judiciary explained that they used this date in the relevant section 111(f) definition since they believed "that any such change for copyright purposes, which would materially affect the royalty fee payments provided in the legislation, should only be made by an amendment to the statute." H.R. Rep. No. 1476, 94th Cong., 2d Sess. 99 (1976).

During the past year, representatives of cable systems have asked the Copyright Office whether these low power stations may be considered as "local" within the relevant definition of section 111(f). Reasoning from the language of the Act itself, the legislative history cited above, and the fact that the FCC did not choose to give these stations "must carry" status when they considered the matter, 48 FR 21475, 21482 (1983), the Copyright Office responded that low power television stations were not subject to the FCC's "must carry" rules and would presumably be classified as "distant" signals under the definition in 17 U.S.C. 111(f).

On September 25, 1984, various representatives of the low power television community asked the Copyright Office to reconsider its position on the status of low power television stations under the section 111(f) definition of "local service area of primary transmitter."

In response to the urgency of these requests, the Copyright Office held a public hearing on October 12, 1984, for the purpose of eliciting comment on the correct interpretation of the Copyright Act as it relates to the status of signals of low power television stations retransmitted by cable systems. Specifically the Copyright Office invited comment in two areas: (1) If a cable system retransmits a low power television signal, should the signal be characterized as "local" or "distant" for purposes of applying the distant signal equivalent value formula? If the response is that the signal should be considered "local," how are the limits of the station's "local service area" defined and by what authority? (2) If a cable system retransmits a low power television station on the basis of a voluntary license from the station and all owners of copyright in all copyrighted works transmitted by the

low power television station have granted explicit voluntary licenses for the secondary transmission by cable, must the cable system nevertheless specify that carriage in its Statement of Account and pay copyright royalties under the compulsory license, (assuming the cable system retransmits at least one additional broadcast signal), or is the retransmission of such a low power television station outside the cable compulsory license since all copyright owners have consented voluntarily to the retransmission?

2. Summary of the Hearing and Comment Record

At the October 12, 1984, hearing representatives from the American Low Power Television Association (ALPTA), Low Power Television, Inc., Community Broadcasters of America, Inc., Community Antenna Television Association (CATA), ACTS Satellite Network, Inc., American Christian Television System, Inc., and seven operators of low power television stations testified. The comment period was held open until October 22, 1984, and twenty-two comments were received. In addition to the comments submitted by those who testified at the hearing, comments were submitted by the Motion Picture Association of America (MPAA), Major League Baseball, the National Association of Broadcasters, Multivisions, Ltd., Bogner Broadcast Equipment, Times Mirror Cable Television, Inc., National Cable Television Association, and more individual operators of low power television stations.

a. Status of Low Power Stations. Everyone who testified at the October 12 hearing took the position that low power television stations should be considered local signals within section 111(f). Several different arguments were presented for reaching this conclusion. The ALPTA and other members of the low power community took the position that the interpretation given by the Copyright Office is not required by the statute and is inconsistent with congressional intent. In support of the ALPTA argument an October 1, 1984, letter to the Register of Copyrights from Representative Robert W. Kastenmeier, Chairman of the Subcommittee on Courts, Civil Liberties and the Administration of Justice, and Senator Charles McC. Mathias, Jr., Chairman of the Subcommittee on Patents, Copyrights and Trademarks, was introduced in which these Members of Congress expressed the view that when section 111 was enacted all local signals were subject to must carry status and may carry local low power signals were

not contemplated, but "Congress" intention was clear in wanting to distinguish between signals that were truly local and others that would be classified as distant." In this letter these Members of Congress indicate that any ambiguity in the law will be clarified by an amendment but ask the Copyright Office for "an interim indication . . . resolving any ambiguities in a manner to effectuate original intent . . ."

CATA argued that low power television is not a new service but an evolution and modification of the long standing television translator rules. To support this position CATA asserted that most of the rules governing translators also apply to LPTV stations. The same application forms are used by both, and a translator can convert to LPTV status by simply filing a letter asking for the authority to originate programming.

CATA minimizes the 1982 FCC decision that denied "must carry" status to LPTV stations by arguing that it is a post 1976 rule change that has no effect on the relevant definition in copyright law and that it was made as a result of the deregulation climate at the FCC.

In accord with their position that a LPTV station is a "deregulated translator," CATA stated that LPTV local service must be defined in the same manner that the local service area of a television translator was defined under the FCC rules in 1976. A determination of local status depends on whether the translator serves the cable community: the license so specifies, the signal is actually available, or the translator provides a "quality signal" to the cable community.

Representatives of Community Broadcasting and individual LPTV station operators testified concerning the need to obtain local status in order to be carried by cable systems.

Although no opposition to the ALPTA position was given at the October 12 hearing, during the comment period, representatives of copyright proprietors submitted statements in support of the interpretation originally given by the Copyright Office. The MPAA argued that if the statutory definition of "local service area" is disregarded, there will be no way to determine when a low power station is "local" and when it is "distant."

Responding to CATA's translator argument, Major League Baseball asserted that some translator stations did not have "must carry" rights under the April 15, 1976, FCC rules and that Copyright Office should not consider LPTV stations as "deregulated

translators" since the FCC had not adopted such a construction. Finally, they argued any decision that carriage of a LPTV signal receivable off-the-air within a thirty-five mile zone is royalty-free must be made by Congress.

Other commentators supported the ALPTA position. Times Mirror Cable Industry, Inc. agreed with ALPTA that a ruling that locally broadcast LPTV signals are "local" under § 111 could be based upon the statutory language. Times Mirror argued that a LPTV station is a broadcast station whose signal is subject to compulsory licensing under section 111(c) but that its signal is not the signal of a "television broadcast station" for the purpose of defining the "local service area" in section 111(f). Times Mirror reached this conclusion by maintaining that "television broadcast station" in section 111(f) is a term of art referring to full power television stations. Times Mirror also observed that section 111(f) provides an alternative for defining the local service area of broadcast stations which do not possess mandatory carriage rights, *e.g.*, radio stations; that the FCC "must carry" rules for translators do not specifically define the local service area; and that the local area served for LPTV could be determined in the same way. Alternatively, Times Mirror argued that LPTV could at least be treated as local broadcast stations when carried by cable systems in their community of license and any other community served from the same headend.

Multivisions, Ltd. took the position that the Copyright Office's interpretation ignored the "common sense" of the statute, was overly simplistic, and at odds with the probable congressional intent. To support this position Multivisions quoted from the Seventh Circuit Court of Appeals opinion that the courts should "interpret the definitional provisions of the new act flexibly, so that it would cover new technologies as they appeared, rather than . . . narrowly and so force Congress periodically to update the act." *WGN Continental Broadcasting Co. v. United Video, Inc.*, 685 F.2d 218 (7th Cir. 1982), rehearing denied 693 F.2d 628. Multivisions asserted that the "mechanistic application of a 'distant' label to all LPTV signal carriage would be at odds with the intent of the Copyright Act."

The comments submitted by the National Association of Broadcasters (NAB) and individual cable operators supported the ALPTA argument that LPTV signals should be classified as "local" without elaborating on it. Both NAB and several of the operators did

suggest that this "local" classification should apply only in an area approximating the normal coverage zone of such stations.

b. *Retransmission Consents.* As to the second issue, all of the witnesses and commentators agreed that retransmission licenses could be negotiated, and royalties therefrom would substitute for compulsory license royalties for the particular signal for which consent had been secured. The MPAA wrote that such consents are a "practical, marketplace solution." As the hearing, however, LPTV operators testified that acquiring all of the consents necessary was a long and arduous procedure.

3. Policy Decision—Status of Low Power Television Signals

Having reviewed the statute and the legislative history in connection with an examination of the divergent views presented at the October 12 hearing and during the comment period and having noted the Kastenmeier-Mathias letter, the Copyright Office has concluded that the status of low power television stations under the cable compulsory license of the Copyright Act is ambiguous. Consequently, the Copyright Office will take a neutral position on this specific issue, awaiting the legislative clarification mentioned in the letter from Senator Mathias and Representative Kastenmeier. In examining Statements of Account, therefore, the Copyright Office will not question the determination by a cable system that a low power station's signal is "local" within an area approximating the normal coverage zone of such station.

a. *Retransmission Consent.* On the second issue presented in the September 25 ALPTA letter, opposing interests presented uniform responses that cable systems may carry low power television stations pursuant to negotiated retransmission consents. There was no suggestion that this could not be done outside the compulsory licensing provisions of section 111. If copyright owners and cable systems uniformly agree that negotiated retransmission consents supersede the compulsory license requirements, the Copyright Office has no reason to question this interpretation provided that the negotiated license covers retransmission rights for all copyrighted works carried by a particular broadcasting station for the entire broadcast day for each day of the entire accounting period. Since it appears that the negotiated license would supersede the compulsory license under these circumstances, cable systems would not have to take account

of the signal of the low power television station for which the copyright owners' consents have been obtained in paying copyright royalties.

(17 U.S.C. 111, 702)

Dated: November 19, 1984.

Dorothy Schrader,
Associate Register of Copyrights for Legal Affairs.

Approved by:
Daniel J. Boorstin,
The Librarian of Congress.

[FR Doc. 84-31168 Filed 11-27-84; 8:45 am]

BILLING CODE 1410-03-M

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES Performance awards, ranks and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the *Federal Register*.

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Reginald W. Griffith, Robert E. Gresham, Daniel H. Shear, Richard L. Petrocci and Armen Tashdian.

DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Malcolm L. Trevor, Special Assistant for Administration to the Executive Director, National Capital Planning Commission, 1325 G Street, N.W., Suite 1007, Washington, D.C. 20576, (202) 724-0206.

Dated: November 20, 1984.

Kathleen K. McKay,

Assistant General Counsel.

[FR Doc. 84-31107 Filed 11-27-84; 8:45 am]

BILLING CODE 7520-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 111 to Facility Operating License Nos. DPR-31, and Amendment No. 105 to Facility Operating License No. DPR-41, issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for Operation of the Turkey Point Plant Unit Nos. 3 and 4 (the facilities) located in Dade County, Florida. The amendments are effective as of the date of issuance and shall be implemented within 60 days of issuance.

The amendments permit the expansion of the spent fuel storage capacity for Turkey Point Plant Units 3 and 4. This expansion would be accomplished by reracking the existing spent fuel storage pools with neutron absorbing (poison) spent fuel racks composed of individual cells made of stainless steel. Reracking the spent fuel pools would increase the Turkey Point Plant Units 3 and 4 storage capacities from 621 to 1404 spaces for each of the units. The new fuel storage racks will be arranged in two discrete regions within each pool. Region 1 will consist of 286 locations which will normally be used for core off-loading. Region 2 will consist of 1118 locations and will provide normal storage for spent fuel assemblies meeting required burnup considerations. The existing fuel storage racks have a nominal center-to-centerline spacing of 13.7 inches. The new Region 1 fuel storage racks will have a 10.6 inch centerline-to-centerline spacing and Region 2 will be 9.0 inch centerline-to-centerline spacing. The major components of the fuel rack assemblies are the fuel assembly cell, Boraflex (neutron absorbing) material and the wrapper. The wrapper covers the Boraflex material and provides venting of the Boraflex to the Pool environment.

The effective multiplication factor (K_{eff}) of the fuel assembly array is designed to maintain the required subcriticality of K_{eff} equal to or less than

0.95 for both Regions 1 and 2. The transmittal letter requesting the amendments dated March 14, 1984, includes the requested Technical Specification changes, the licensee's determination on significant hazards considerations and the supporting Spent Fuel Storage Facility Analysis Report.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in these license amendments.

Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was initially published in the *Federal Register* (49 FR 23715) and in the monthly publication (49 FR 29925) on July 7, 1974. A request for a hearing was filed on July 9, 1984, by the Center for Nuclear Responsibility, Inc. and Ms. Joette Lorion.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from persons, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that these amendments involve no significant hazards consideration.

The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, these amendments have been issued and made immediately effective and any hearing will be held after issuance.

A separate Environmental Assessment has been prepared pursuant to 10 CFR Part 51. The Notice of Issuance of Environmental Assessment and Finding of No Significant Impact was published in the *Federal Register* (49 FR 45514) on November 16, 1984.

For further details with respect to the action see (1) the application for the amendments dated March 14, 1984, as and supplemented on July 2 and 23, August 14 and 22, September 10 and 28, October 5, 9, 18 and 26, and November 16, 1984, (2) Amendment Nos. 111 and 105 to Facility Operating License Nos. DPR-31 and DPR-41 (3) the Commission's related Safety Evaluation and (4) Environmental Assessment and

Notice of Issuance of Environmental Assessment and Finding of No Significant Impact. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 21st day of November 1984.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Branch Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 84-31207 Filed 11-27-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co.; Monticello Nuclear Generating Plant; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Facility Operating License No. DPR-22, issued to the Northern States Power Company (the licensee), which revised the Technical Specifications for operation of the Monticello Nuclear Generating Plant (the facility), located in Wright County, Minnesota. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to implement the Average Power Range Monitor/Rod Block Monitor/Technical Specifications (ARTS) Improvement Program.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the *Federal Register* on September 13, 1984, 49 FR 36038. No request for a hearing or petition for leave to intervene was filed following this notice.

Also, in connection with this action, the Commission prepared an Environmental Assessment and Finding

of No Significant Impact which was published in the *Federal Register* on November 16, 1984 (49 FR 45512).

For further details with respect to this action, see (1) the application for amendment dated May 30, 1984, as supplemented May 31, 1984, and September 6, 1984, and as clarified in a submittal dated October 17, 1984, (2) Amendment No. 29 to License No. DPR-22, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 16th day of November 1984.

For the Nuclear Regulatory Commission,
Domenic B. Vassallo,
Chief, Operating Reactors Branch #2,
Division of Licensing.

[FR Doc. 84-31206 Filed 11-27-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-354-OL]

Public Service Electric and Gas Co., et al. (Hope Creek Generating Station); Order To Show Cause Why OL Proceeding Should Not Be Dismissed

November 21, 1984.

Before Administrative Judges Marshall E. Miller, Chairman, Dr. Peter A. Morris, Dr. David R. Schink.

The Board on August 10, 1984, entered an Order which provided that the sole intervenor in this proceeding, the Public Advocate of New Jersey (Public Advocate), "will be given to and including August 20, 1984, to identify its witnesses and to make them reasonably available for depositions within two weeks thereafter. Noncompliance with such dates may be grounds for dismissal or other sanctions" (p. 2-3). That Order was entered in response to a motion filed by the Applicants July 30, 1984, "To Compel Designation of Witnesses and Their Availability For Depositions and/or to Dismiss the Proceeding."

The pending contentions of the Public Advocate were admitted by the Board from the bench at a special prehearing conference held November 22, 1983. Those rulings were reaffirmed in a Special Prehearing Conference Order entered December 21, 1983. The latter Order also provided that the "parties

are directed to commence discovery immediately and to proceed with expedition." The parties were further "encouraged to make voluntary disclosure, both formally and informally, of all information, data, documents and the like which could reasonably be relevant to the admitted issues" (Order at page 19).

The Public Advocate responded to our Order on August 20, 1984, by listing its witnesses but requesting an extension "until October 1984" for their depositions. The witnesses thus identified were members of MHB Technical Associates of San Jose, California, including Dale Bridenbaugh, Richard Hubbard, and Gregory Minor. Robert N. Anderson of San Jose State University was also described as a possible witness whose availability was not certain, but as soon as the Public Advocate "is able to discuss the matter with Professor Anderson, we will notify the Board and the parties of his status" (at page 2).

The Applicants filed a motion to dismiss the proceeding on August 24, 1984, arguing that it had vainly attempted since January, 1984, to take the depositions of the Intervenor's expert witnesses who could furnish the bases for this contentions. It was urged that the Public Advocate's actions constituted "inexcusable dilatory conduct" that amounted to "willful neglect . . . over an extensive period of time" (at pages 3 and 10).

The Staff opposed the Applicants' motion for dismissal, and did not oppose allowing the witnesses to be deposed in October. However, the Staff further stated that this "extension should only be granted, however, if the Public Advocate gives assurance that its witnesses are thoroughly prepared so that additional depositions are not required" (Staff's Response dated September 10, 1984, at page 3).

The Applicants filed their amended motion to dismiss the proceeding on November 13, 1984. They pointed out that the Public Advocate had wholly failed to comply with even "the relaxed schedule proposed by . . . himself" calling for the production of witnesses for depositions during the month of October (at page 2 and 3). None of the witnesses had been produced for depositions, and the status of Prof. Robert N. Anderson had never been clarified.

The Board believes that the state of the record requires that the Public Advocate be required to show cause why he and his contentions should not be dismissed. Accordingly, a conference with parties and counsel will be held as described below. In addition, there

should be a status report on all aspects of this proceeding. All pending motions will be heard, and any other issues, whether procedural or substantive, will be considered. Counsel should be prepared to address the question of whether the proliferating NRC schedules of professional witnesses should be permitted to cause delays in this OL proceeding. All filings which the parties desire the Board to consider shall be in the hands of all Board members at least one week prior to the scheduled conference. If any party deems it necessary to proffer testimony at such conferences, the nature and scope of the testimony shall be disclosed to the Board and parties one week prior thereto.

Please take notice that a conference with parties and counsel will be held at 9:00 a.m. on December 17, 1984 at the U.S. Nuclear Regulatory Commission Hearing Room, located at 4350 East/West Highway, 5th Floor, Bethesda, Maryland.

It is so ordered.

Dated at Bethesda, Maryland this 21st day of November 1984.

For the Atomic Safety and Licensing Board,
Marshall E. Miller,
Administrative Judge.

[FR Doc. 84-31205 Filed 11-27-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co.; and the Cleveland Electric Illuminating Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-3, issued to the Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment submitted by application dated November 12, 1984, would add a new condition to the Facility Operating License. The incorporation of the proposed license condition into the operating license would allow for the operation of the Davis-Besse facility in modes 1, 2 or 3 without the SUFP and associated piping isolated from outside the AFW pump rooms when the SUFP is operating. The condition would require Toledo Edison to observe three new operations

restrictions relating to the use of and future modification to the startup feedwater pump (SUF). The license condition would require Toledo Edison to station an operator in the SUFP area when the SUFP is in operation to monitor the status of associated piping failure. This operator would be required to take certain actions in event of piping failure. When the SUFP is not in operation, Toledo Edison would be required to isolate and maintain isolation of certain piping associated with the SUFP from outside the rooms containing the SUFP and auxiliary feedwater (AFW) pumps.

The license condition would require Toledo Edison to install a SUFP, associated piping, and valves such that the hazard to the AFW pumps from SUFP operation is removed. This installation is to be completed prior to commencing Cycle 6.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 28, 1984, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition of leave to intervene. Request 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 or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. 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., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq. Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW.,

Washington, D.C. 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemented 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 with respect to this action, see the application for amendment dated November 12, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 23rd day of November 1984.

For the Nuclear Regulatory Commission,
John F. Stolz,

Chief, Operating Reactors Branch No. 4,
Division of Licensing.

[FR Doc. 84-31204 Filed 11-27-84; 8:45 am]
BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (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: Extension.
2. The title of the information collection: Application for License to Export Nuclear Material and Equipment.
3. The form number if applicable: NRC Form 7.
4. How often the collection is required: Once for each separate request for a specific export license.
5. Who will be required or asked to report: Any person in the U.S. who wishes to export nuclear material and equipment subject to the requirements for a specific export license.

6. An estimate of the number of responses: 400.

7. An estimate of the total number of hours needed to complete the requirement or request: 30 minutes for each form.

8. Section 3504(h), Pub. L. 96-511 does not apply.

9. Abstract: Any person in the U.S. wishing to export nuclear material and equipment requiring specific authorization should file an application for a license on NRC Form 7. The application will be reviewed by the NRC and by the Executive Branch and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue a license authorizing the export.

Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, 295-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 20th day of November, 1984.

For the Nuclear Regulatory Commission.

John Philips,

Acting Director, Office of Administration.

[FR Doc. 84-31202 Filed 11-27-84; 8:45 am]

BILLING CODE 7590-01-M

Office of Management and Budget Review of Information Collection Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (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, revision, or extension: Revision
2. The title of the information collection: Modifications to 10 CFR Part 55, Operator's Licenses, 10 CFR 50.74 and Regulatory Guides 1.134, 1.149 and 1.8.
3. The form number if applicable: NA
4. How often the collection is required: On occasion, annually and one time only.
5. Who will be required or asked to report: Individuals requiring a license to

operate the controls at a nuclear facility and their employers.

6. An estimate of the number of responses: 3,552

7. An estimate of the total number of hours needed to complete the requirement or request: 6,821

8. Section 3504(h), Pub. L. 96-511 does not apply.

9. Abstract: 10 CFR Part 55 requests detailed information of an applicant applying for a license as a reactor operator. In addition, NRC is establishing a procedure for obtaining approval for the use of simulation facilities in the partial conduct of operator licensing operating tests.

ADDRESSES: Copies of the submittal will be made available for inspection of copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 16th day of November 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 84-31203 Filed 11-27-84; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan; Final Amendments

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments.

SUMMARY: On September 19 and October 31, 1984, the Northwest Power Planning Council amended three portions of its Northwest Conservation and Electric Power Plan (Power Plan). This notice describes those amendments.

FOR FURTHER INFORMATION CONTACT: Tom Foley, Manager of Conservation and Resources (regarding amendment of Appendix D); or Mark Cherniack, Conservation Analyst (regarding amendments of Action Item 12.13 and Program Design Principle 1E) at 850 S.W. Broadway, Portland, Oregon 97205, 503-222-5161, toll-free 1-800-222-3355 in Montana, Idaho, and Washington, and toll-free 1-800-452-2324 in Oregon.

SUPPLEMENTARY INFORMATION: The Pacific Northwest Electric Power and Conservation Planning Act, Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839 (the Act) allows the Council to amend the Power Plan from time to time. The Council recently amended three portions of the Power Plan. In adopting each amendment, the Council complied with all requirements of the Act and the Power Plan regarding substantial, non-technical amendments. Pursuant to those requirements, in the case of each amendment the Council:

- Announced the proposed amendment, public hearings and public comment period through the **Federal Register**, the Council's mailing list, and the Council's newsletter;
- Held public hearings in Oregon, Washington, Idaho and Montana;
- Accepted written comments;
- Consulted with Bonneville Power Administration (Bonneville), regional utilities, state and local governments and other interested parties, and;
- Compiled an administrative record.

Program Design Principle 1E

Notice of proposed amendment of Program Design Principle 1E (Chapter 10, page 10-7) was published at pages 25908-25910 of the **Federal Register** of June 25, 1984. The Council held a public comment period and hearings on the proposed amendment during July. At its regular public meeting in Kalispell, Montana on August 8, 1984, the Council decided to reopen the comment period to take additional public comment regarding the cost and administrative efficiency of the Council's proposal to use regional population weighted median income to determine eligibility for regional weatherization programs. Accordingly, a notice was published at pages 33188-33189 of the **Federal Register** of August 21, 1984 indicating that the Council would accept written comments regarding that issue through September 4, 1984. Based upon comments received, the Council amended Program Design Principle 1E at its September 19, 1984 meeting in Yakima, Washington to read as follows:

1E. Provide a program that pays 100 percent of the actual cost of all structurally feasible and regionally cost effective conservation measures for low-income households, at a cost not to exceed 4.0 cents per kilowatt-hour saved. This program shall be made available to households with an annual income specified by the U.S. Office of Management and Budget as 125 percent of the poverty level.

As amended, the Program Design Principle changes the formula for

determining the eligibility of low-income persons for 100 percent financing of home weatherization under Bonneville Power Administration's (Bonneville) weatherization program.

Oral comments on the proposed amendment were received at the public hearings. In addition, the Council received eight written comments. Five comments were from low-income and human service agencies, one from Bonneville, one from a public utility association and one from the Washington State House of Representatives Office of Program Research.

Six of the eight written comments proposed that the Council choose the Office of Management and Budget (OMB) guidelines to determine eligibility. Two major themes emerged as reasons:

1. Budget/Service Impact

The commenters stated that nearly doubling the number of eligible households will increase competition for the fixed funding levels in the Bonneville weatherization budget. There is specific concern that those in the low-income population who are particularly vulnerable—elderly, handicapped, families with young children—will not be served because they might end up last in line behind the larger number of eligible participants.

Response: The Council recognized that there would be an increase in the eligible population. The Council's intent through this design principle was to serve a larger proportion of low-income electric consumers who were not able to take advantage of weatherization programs in the region. Bonneville has agreed to serve a proportionate share of low-income households. Bonneville currently assumes that the low-income program represents approximately 10 percent of the overall weatherization budget.

The overall residential weatherization budget level is indicative of the slower pace of conservation during a time of surplus. The amount of funds available for low income weatherization will be relatively limited regardless of income guidelines until such time that the region and the Council decide to step up the pace for reasons of greater resource acquisition or greater social equity considerations. Council staff estimated that under current Bonneville budget levels and current OMB eligibility criteria, completion of low-income weatherization regionwide would take more than 60 years.

The Council noted that most community action agencies currently prioritize service to vulnerable segments

of the low-income population and encourages this established practice to continue regardless of specific income guidelines.

2. Ability of Community Action Agencies (CAA) To Operate With Non-OMB Income Guidelines

The commenters stated that some CAA's will not be able to work with the Council's guidelines because:

(a) The mission statements of some CAA's currently would not permit the agency to work with other than OMB guidelines;

(b) In at least one state, the CAA's may be prohibited from using equipment purchased through U.S. Department of Energy (USDOE) funds for non-OMB clients;

(c) If Bonneville funds do not cover the full cost of weatherization, matching funds from other programs will not be available because of OMB restrictions; and

(d) Bonneville is proposing to offer up to \$150 for minor repairs. Currently up to \$300 is available through other federal programs. There would be no opportunity to match funds for non-OMB clients.

Response: The Council has responded to concerns about some agencies having difficulty in operating Bonneville's weatherization program with non-OMB guidelines by choosing to utilize OMB guidelines for at least the full term of the FY 85 program. The Council will continue to monitor and assess the effectiveness of Bonneville and its contractors to achieve the established proportionate share levels in the low income sector.

In the Two Year Action Plan, the Council specified a program which pays 100 percent of the actual cost of all structurally feasible and regionally cost-effective conservation measures for low income households at a cost not to exceed 4.0 cents (1980 dollars) per kilowatt-hour saved. The Council expects Bonneville to operate the program consistent with this objective.

The Council noted that USDOE does not prohibit by regulation or practice the use of vehicles, tools or equipment purchased for use in programs which operate under OMB income guidelines, in programs which do not use OMB guidelines. As long as such other use supplements, but does not supplant, the original purpose of the goods, USDOE encourages cooperation among programs. USDOE expects proper cost sharing allocations if the goods are used in other programs. The regional USDOE office leaves management application of the regulations up to the state program operators.

At this time the Council believed the level of funding offered for structural repairs is a matter between Bonneville and its contractors. The Council also noted that the amount offered by Bonneville will increase the total available repair budget for homes to \$450.

The remainder of the comments raised the following issues:

3. Support the Council's Position.

The Council received two written responses from low-income/human service agencies which supported the Council's position because: the new guidelines would broaden eligibility to a significant segment of the low-income population which lies just above the OMB definition yet remains ineligible for current programs. The agencies indicated that there would be no or few administrative problems with new guidelines.

Response: This support was noted by the Council.

4. Use of OMB Guidelines for Households of Nine or More

One commenter suggested that for households with nine or more persons, the OMB guidelines be used.

Response: The Council accepted use of OMB guidelines for all household sizes.

5. Recordkeeping Requirements

Bonneville commented that the proposed definition does not reduce recordkeeping requirements and may increase the cost of delivering the program to the region.

Response: The Council believed that the use of a single regionwide income guideline is administratively simpler than what was originally specified in the Two Year Action Plan. The Council's intent was to provide a guideline which minimized administrative requirements given its overall objective to broaden eligibility. The Council called for further comment on this point during a second public comment period described below. The recommended use of OMB guidelines should not increase recordkeeping requirements or costs in the program.

6. Definition Confusion

Bonneville stated that, because the Council's proposed definition was different from other low income programs, consumers might be confused.

Response: The Council has recommended the use of OMB guidelines which are consistent with current program operation and public information.

7. Penetration Impact

Bonneville stated that there is an unknown budget and program penetration impact resulting from the 30 percent increase in the incentive for low income consumers. This, coupled with the new income definition, could result in fewer low income residences being weatherized.

Response: The Council expected an increase in consumer interest in the program because of the 100 percent financing provision. There may also be an unknown impact on consumer acceptance because of the requirement of installation of all structurally feasible measures. Bonneville has agreed to budget for a proportionate share of low-income households. The Council has recommended the use of OMB guidelines which should not impact the budget or program results.

8. Derivation of the Population Weighted Median Income

Bonneville questioned the documentation of the proposed regional population weighted median income.

Response: The regional population weighted median income was derived in the following manner: The state median incomes of Idaho, Oregon and Washington were taken from the 1980 census. An average median income of the 13 counties in western Montana which are in Bonneville's service territory was taken from the 1980 census. Each state's percentage of total regional population (the three states plus western Montana) was determined and then multiplied by each state's median income and summed to derive a regional median figure which accounted for differences in state median income and population distribution. Since 1980 census figures were given in 1979 dollars, the Gross National Product deflator of 1.316 for 1979-1983 was uniformly applied to all income figures to give a regional median figure expressed in 1983 dollars.

9. Responsiveness of Council Proposal

Bonneville stated that the original proposed amendment did not address concerns that were raised, and it questioned the Council's intent.

Response: The statistical analysis submitted by Bonneville to the Council on April 10, 1984, compared county median incomes in 1979 dollars with OMB guidelines expressed in current dollars. However, the general direction of the analysis was useful and enabled the Council staff to complete a thorough analysis on which it based its initial recommendation to use a regional

population weighted regional median income.

The Council intended that an expanded population of low income consumers in electrically heated households in the region have access to Bonneville's weatherization program. The recommendation to utilize OMB guidelines will change the Council's original intent until a further determination of contractor and program effectiveness is made.

10. Additional Costs of Non-OMB Guidelines

Bonneville stated that the administrative costs of implementing the proposed non-OMB income guidelines could be approximately \$2.9 million or an increase of 5 percent in the weatherization program budget for administrative purposes. Bonneville further stated that this cost analysis reflected a generalization of costs which may vary greatly among operators.

Response: The Council has not accepted this analysis as a basis for its recommendation to utilize OMB guidelines. The Council believed a more detailed analysis would be appropriate before confirming any cost figures, including an analysis of the costs of delivering the low-income program in whole or part outside the present contractor system.

11. Effect of Changing Guidelines on Current Operators

Bonneville stated that the Council should not depart from OMB guidelines at this point or even to indicate an intention to do so in the near future. Bonneville also stated it has been less successful in weatherizing low income homes within the OMB guidelines than was hoped. Discouraging current operators of the Bonneville program or other federal low income weatherization program from participating with Bonneville would only compound the problem.

Response: The Council in recommending use of OMB guidelines is also concerned with developing capability in both the public and private sectors to deliver conservation programs in a timely and effective manner. The Council intends to monitor closely the operation and penetration rates of the Bonneville low-income weatherization program in FY 85 and to continue assessing the effectiveness of Bonneville and its program operators.

Action Item 12.13

Notice of proposed amendment of Action Item 12.13 (Street and Area Lighting, Chapter 10, page 10-18) was published at pages 35881-35883 of the

Federal Register of September 12, 1984. After holding a public comment period and public hearings, the Council amended Action Item 12.13 at its October 31 meeting in Butte, Montana to read as follows:

12.13 Continue financial assistance for the street and area lighting program at a minimum viable level. The minimum viable level is that level of program activity which will maintain the regionwide capability to achieve savings in street and area lighting.

The Action Item as amended changes the Council's direction to Bonneville regarding its Street and Area Lighting Program. The Council's Power Plan originally called for termination of the Street and Area Lighting Program because it was expected to produce only short-term savings not needed during the current regional power surplus. However, subsequent information supplied by Bonneville and others indicated that maintaining the program at a minimum viable level would not only help acquire power savings that would continue through the current temporary surplus, but would also contribute to building conservation capability within the region.

The Council received only one comment (from Public Utility District No. 1 of Clallam County) during the public comment period held on the proposed amendment. That comment made three points:

1. Duration of Conservation Savings

Clallam stated that the region would benefit from maintaining the Street and Area Lighting Program at a minimum level by receiving conservation savings for at least the useful life of each new efficient fixture (at least 20 years).

Response: The Council has consistently supported the installation of conservation measures which have long useful lifetimes. It is clear that the installation of efficient fixtures is likely to provide savings to the region beyond the current surplus. The Council proposed this amendment partly for this reason.

2. Maintenance of an Inventory of Efficient Fixtures

The commenter stated that, due to inventory considerations, utilities which have participated in the existing program will probably continue to use energy efficient fixtures in new accounts.

Response: The Council was not able to make a determination about future utility practices, but hoped that utilities would adopt such energy conservation practices. The Council agrees that if Clallam's suggestion is correct,

continuation of the program could help build local capability to maintain efficient lighting systems through the current surplus period and into future periods when savings will be necessary.

3. Provision for Fast Start-Up

Clallam also stated that the maintenance of this program at a minimum level would allow for fast start-up when and if a more extensive program becomes necessary.

Response: The Council agrees. The Council had developed with Bonneville a set of criteria for regional conservation capability building which include elements related to the establishment of trained labor force and sufficient availability of conservation materials and equipment. Continuation of the Street and Area Lighting Program and at minimum viable level will clearly preserve the option of speeding up the program when and if it is needed.

Appendix D

Notice of proposed amendment of Appendix D ("Method of Surcharge") was published at pages 35881-35883 of the *Federal Register* of September 12, 1984. After holding a public comment period and public hearings, the Council amended Appendix D at its October 31 meeting in Butte, Montana to read as follows:

"Section 4(f)(2) of the Act provides for Council recommendation for surcharges on customers for those portions of their loads within the region that are within states or political subdivisions which have not, or on customers which have not, implemented conservation measures that achieve savings of electricity comparable to the model conservation standards. The Council is responsible for drafting a "methodology" for the calculation of surcharges. The Council, in Action 25 of Chapter 10 of this Plan, has recommended to the Administrator that he impose a surcharge on customers serving jurisdictions which do not adopt the model conservation standards or achieve comparable savings. The purpose of the surcharge is twofold: 1) to recover costs imposed on the region's electric system by failure to adopt the model conservation standards or achieve comparable savings, and 2) to provide a strong incentive to utilities and state and local jurisdictions to adopt and/or enforce the standards or comparable alternatives. The following is the "methodology" for calculating surcharges:

1. The following model conservation standards must be adopted or comparable savings must be achieved in order to avoid surcharges:

- Model Standards for new residential buildings, Action 2;
- Model Standards for new commercial buildings, Action 6;
- Model Standards for conversion to electric space heat in residential buildings, Action 3; and
- Model Standards for conversion to electric space conditioning in commercial buildings, Action 7.

2. The Administrator shall identify those customers, states, or political subdivisions which have not:

- a. Implemented each of the model standards listed in paragraph 1; or
- b. Achieved comparable savings of electricity through other conservation methods, such as utility electric service requirements, incentive programs or rate designs.

3. The surcharge shall then be calculated by the Bonneville Administrator as follows:

a. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and is not exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10 percent of the cost to the customer of all firm power purchased from Bonneville under the Power Sales Contract.

b. If the customer is not purchasing firm power from Bonneville under a Power Sales Contract, but is exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be 10 percent of the cost to the customer of the power purchased from Bonneville in the exchange.

c. If the customer is purchasing firm power from Bonneville under a Power Sales Contract and also is exchanging under a Residential Purchase and Sales Agreement, the surcharge is calculated to be a) 10 percent of the cost to the customer of firm power purchased under the Power Sales Contract *plus*, b) 10 percent of the cost to the customer of power purchased from Bonneville in the exchange multiplied by the fraction of the utility's exchange load that is served by the utility's own resources.

This calculation of the surcharge is designed to eliminate the possibility of surcharging a utility twice on the same load. In the calculation, the portion of a utility's exchange resource that is purchased from Bonneville and already surcharged under the power sales contract is subtracted from the exchange resources before establishing a surcharge on the exchange load.

d. If only a portion of a utility's service area has not adopted the model standards or achieved comparable savings, the surcharge calculated under a, b, or c above is to be multiplied by the

non-complying jurisdiction's share of the utility's total load.

e. The surcharge shall be removed when model conservation standards have been adopted and enforced or alternative programs, estimated by the Administrator in consultation with the Council to save an equivalent amount of electricity, have been implemented.

4. A utility electric service requirement that results in construction of electrically space conditioned buildings which are the equivalent of buildings in compliance with the model conservation standards constitutes an alternative plan that achieves comparable electricity savings. The Council intends to continue analyzing alternatives to building codes to achieve the construction of energy-efficient buildings to obtain cost-effective resources for the region.

5. Any entity that chooses not to adopt a particular model conservation standard within the allotted period for adoption and wishes to avoid a surcharge must declare, before that period expires, how it intends to achieve comparable savings. In addition, that entity must indicate how it intends to demonstrate attainment of comparable savings.

To assist Bonneville in estimating comparable electricity savings from alternative plans, the entity should present its best estimate of new residential and commercial building construction in the non-complying jurisdictions within its service territory. Bonneville shall determine, in consultation with the Council, whether the alternative conservation plan of an entity will achieve comparable savings. When determining electricity savings that would have occurred had the standards been adopted, jurisdiction-specific weather data and construction estimates, where available, should be used along with the Council's residential and commercial heat loss models.

The Council recognizes that in many cases data will not be available. In these cases Bonneville should rely on average electricity savings estimated by building type and climate zone and included in the Plan. For residential buildings, Bonneville should assume the following regarding houses built to the model conservation standards: 1) houses in climate zone 1 would save, on average, 5,130 kWh per year; 2) houses in climate zone 2 would save, on average, 8,508 kWh per year; and 3) houses in climate zone 3 would save, on average, 7,830 kWh per year. For commercial buildings and where good estimates are not available for the number of new houses, the savings should be determined by

multiplying total expected regional average megawatt savings by sector from the standards, as shown in the Plan, by the utility's share of total regional load in the applicable sectors. Estimates of savings from conversion standards should be made on a case-by-case basis. The Council recognizes that these estimates will be difficult to make, but also that estimated savings from conversion standards probably will be small relative to savings from building standards. The Council will work with Bonneville on these estimates as requested.

If only a portion of a utility's service area has not adopted the standards, the lost electricity savings calculated in the above paragraph should be multiplied by the non-complying area's share of the utility's total applicable load.

If the Bonneville Administrator determines that the alternative plan will not achieve comparable savings, he shall notify the entity that its alternative plan has been judged to be not equivalent to the model conservation standards and that Bonneville will begin adding a surcharge to the entity's bill on a date certain. The surcharge will be calculated as described in Paragraph 3 of this method. If subsequent modifications to the entity's alternative plan bring it into compliance with the stated goals of the standards, then the surcharge shall be removed.

A general method of determining the electric energy savings of an alternative conservation plan shall be developed in consultation with the Council and included in Bonneville policy to implement the surcharge. Also, a method shall be included in the policy for terminating the surcharge once model standards have been adopted and enforced or comparable savings have been achieved."

Review and analysis of public comments follows. This includes responses to comments received both on the issue paper which preceded the proposed amendment and on the proposed amendment itself.

Comments were received from the following entities on the surcharge issue paper:

- Bonneville Power Administration (Bonneville)
- Washington State Energy Office (WSEO)
- Snohomish PUD #1 (SPUD)
- Pacific Northwest Generating Company (PNGC)
- Central Lincoln People's Utility District
- Clearwater Power Company and Idaho Cooperative Utilities Association (joint comment)

- City of Heyburn, Idaho
- Association of Idaho Cities
- Jim Lazar
- Seattle City Light (SCL)
- Ravalli County Electric Cooperative, Inc.
- City of Soda Springs, Idaho

Comments were received from the following entities during the comment period of the rulemaking regarding the proposed amendments:

- Snohomish PUD #1 (SPUD)
- City of Heyburn, Idaho
- Portland General Electric (PGE)
- Public Power Council (PPC)
- Western Montana Electric Generation and Transmission Cooperative
- Oregon Rural Electric Cooperative Association (OREC)
- Eugene Water and Electric Board (EWEB)
- Grant County Public Utility District
- Midstate Electric Cooperative
- Idaho Cooperative Utilities Association
- Fall River Rural Electric Cooperative
- Camas County, Idaho
- Association of Idaho Cities
- Mayor W.F. Whittom, Rupert, Idaho
- Lower Valley Power and Light
- Mindoka City/County Building Department
- Montana Local Government Energy Office
- Seattle Master Builders Association (SMB)
- Columbia Power Cooperative
- Public Utility Commissioner of Oregon (Oregon PUC)
- Pacific Power and Light (PP&L)
- Harney Electric Cooperative (HEC)
- City of Aberdeen, Washington
- League of Publicly Owned Utilities of Oregon
- City of Burley, Idaho
- Lincoln Electric Cooperative, Inc.
- Klamath Basin Home Builders
- Donald McDonald
- Tillamook Peoples Utility District (TPUD)
- Peoples Organization for Washington Energy Resources (POWER)
- Raft River Electric Cooperative
- Idaho State Senator Laird Noh
- Idaho State Homebuilders Association
- Commissioner Hopsa, Canyon County, Idaho

1. Determination of Which Loads To Surcharge

SPUD, Central Lincoln, HEC, EWEB, PP&L, OREC, and TPUD proposed that the surcharges be applied only to new residential and commercial load not in

compliance with the model conservation standards rather than the entire utility load. SPUD and others cited the Act, as follows, to support their proposals:

"... the Administrator may thereafter impose such a surcharge... on customers for those portions of their loads... which have not implemented conservation measures..." 16 U.S.C. 839b(f)(2).

Central Lincoln, among others, also argued that because the surcharge is meant to recover "additional costs" incurred and that additional costs can only come from new load not in compliance with the standards, only new residential and commercial load should be surcharged.

Response: If the surcharge were imposed only on new loads not in compliance, the structures producing those loads would have to be surcharged 100-300 percent of their electric bill to recover costs imposed on the system. Since under the law a surcharge can be 50 percent at the maximum, the Administrator would not be able to recover costs if the surcharge applied only to non-complying structures. Moreover, while the Northwest Power Act does not define "loads" subject to surcharge, the language of section 4(f)(2) can be reasonably interpreted to mean surcharges apply to *total* loads within applicable jurisdictions within the region, not just incremental loads resulting from failure to adopt the standards. 16 U.S.C. 839b(f)(2). The intention of Congress becomes clearer if one looks at the complete quotation from Section 4(f)(2) and not the partial citation in SPUD's comments:

"... the Administrator may thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within states or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards."

It can also be argued that this provision's reference to a surcharge on "the Administrator's customers" required surcharge on total loads placed on Bonneville. Also, the total loads interpretation is consistent with the purpose of the surcharge—to recover the costs imposed on the region by non-compliance and to create incentives for adoption. The House Commerce Report on the Power Bill states "The surcharge would be imposed on the customer by Bonneville, in order to provide substantial incentives for States and

localities to adopt effective conservation measures and thus accelerate achievement of conservation objectives ' H. Rep. 96-976, Part I, at 56 (1980).

2. Double-Counting

SPUD testified that double counting would result in some cases if the surcharge applied to both firm sales and the residential exchange loads.

Response: The Council agrees and the amendment to Appendix D eliminates the chance of double surcharging.

3. Firms Loads Only

Bonneville proposed that only firm loads should be subject to the surcharge because a surcharge on non-firm loads would weaken Bonneville's market position and could result in Bonneville spilling while less economical thermal plants are operated by regional utilities.

Response: The Council agreed with this comment for the reason stated in Bonneville's written comments and because, in consultations with Bonneville staff, it became clear that it would be difficult to show that costs have been imposed on the non-firm part of the system by failure to adopt standards.

4. Treatment of Residential Exchange

Bonneville, while agreeing that residential exchange loads should be subject to the surcharge, suggested that a rationale for imposing a surcharge on that load be developed that looks only at the immediate costs imposed on the system by an exchanging utility that has not adopted the standards or achieved comparable savings. Since Bonneville does not immediately develop resources to serve that load, the only immediate additional costs are the costs to Bonneville of a larger exchange load than would have occurred if the utility's new residential load were in compliance. Bonneville argues that, although this approach would make a calculated surcharge somewhat smaller, the conclusion that a 10 percent surcharge should be imposed would not change.

Response: The possibility of a surcharge being imposed on the residential exchange load constitutes a large incentive to adopt codes in heavily populated areas in the region. If Bonneville's rationale were adopted, exchanging utilities could simply hold back from the exchange the portion of their residential load resulting from non-complying buildings. They could argue that since this portion of the load is not imposing costs of Bonneville, their exchange load would not be subject to the surcharge. Where utilities continue

to exchange their entire load, Bonneville's rationale is sound.

It seems reasonable, to achieve the objectives of the Act, to subject exchange loads to the surcharge on the basis that exchanging utilities have a right, through the power sales contracts, (which contracts each exchanging utility also has with Bonneville) to put a load on Bonneville with seven years' notice. The potential size of this load is larger if standards are not adopted or comparable savings are not achieved. This has the effect of increasing not only the amount of resources ultimately needed but also the costs incurred in planning for future load. Increased costs would be incurred by holding a larger number of options at a given time, for example.

5. Inconsistent Definition of Exchange Loads

PGE and Oregon PUC argued that, during negotiations with Bonneville on long-term conservation contracts, Bonneville's stance was that the residential exchange load did not constitute a load on the Administrator. Because of this, exchanging utilities would have to pay a contract charge to participate in Bonneville's conservation programs. But, the Council's revision to Appendix D includes surcharging the exchange because that load imposes costs on the Administrator or his customers, both in the near-term by increasing the size of the exchange and on a long-term planning basis. PGE is concerned by the apparent inconsistencies between Bonneville's treatment of the exchange load and the Council's.

Response: As noted above, the Northwest Power Act does not define those "loads" served by the Administrator to which surcharges may be applied. Because residential buildings under construction in an exchanging utility's service territory constitute a potential load on the Administrator, failure to build efficiently now imposes a "planning cost" on the region, including the Administrator. Thus, a surcharge on the exchange load appears to be consistent with the purpose of surcharges (acquisition of cost-effective power savings). The definition of the Administrator's loads for the purposes of Bonneville's conservation contracts is a separate issue not involved in this rulemaking. However, the Council agrees that the Administrator would benefit from conservation in an exchanging utility's service territory, making it appropriate for the Administrator to share in the funding of conservation with that utility. Bonneville and utilities have not yet

arrived at equitable ways to share in the cost of conservation where Bonneville has no ability to recover costs in rates. This is the case with utilities that exchange only. The Council staff will continue to follow developments in Bonneville's cost sharing discussions with regional utilities.

6. Limited Surcharge of Exchange Loads

The Association of Idaho Cities recommended that surcharges be imposed on exchanging utilities only if those utilities have not adopted the residential standards. Failure to adopt the commercial standards should not result in a surcharge. The rationale for this recommendation is that for a utility whose contracts with Bonneville are limited to exchanges, the residential load is the only load that can impose a cost on the Administrator by failing to adopt standards.

Response: Any utility in the region that is a signatory to a Power Sales Contract with Bonneville can put a load (residential, commercial, etc.) on the Administrator with seven years' notice. Thus, failure to adopt commercial building standards puts a "planning cost" on the region. These costs may take the form of additional options in the Council plan to meet potential future Bonneville load, and ultimately could result in additional generating resources to meet the loads of inefficient commercial buildings.

7. Support for Flat 10 Percent Surcharge

Bonneville, in a comment on the first issue paper on the subject of surcharges, suggested that the Council's surcharge methodology be developed as a 10 percent across-the-board surcharge on firm loads of jurisdictions which do not adopt the standards or achieve comparable savings.

Response: The Council agreed with this recommendation and incorporated it into the proposed amendment to Appendix D. Staff analysis has shown that to recover additional costs, a surcharge of greater than 10 percent would be necessary only for utilities that purchase a relatively small share of their needs from Bonneville. Bonneville argues effectively that it is these very utilities that "have a strong tradition of developing resources to serve their own needs. . . ." If they continue to develop their own resources, then the costs imposed on the rest of the regional system would be diminished. Thus, the 10 percent minimum surcharge is likely to recover costs imposed on the rest of the system by Bonneville's partial requirements customers. Also, a major

consideration in adopting this proposal is that Bonneville staff effort in implementing the surcharge will be dramatically reduced.

8. Higher Percentage Surcharge

SCL, one of the Bonneville partial requirements customers that would have triggered a calculated surcharge that could have been higher than 10 percent, commented that it would approve of a surcharge method that results in higher percentage surcharges. This position is consistent with its stand on conservation; that is, conservation anywhere in the region benefits the entire region. SCL does, however, recognize the advantages of a simpler method of calculating surcharges, and would have no quarrel in the region adopted an across-the-board 10 percent surcharge.

Response: The 10 percent across-the-board surcharge was proposed for reasons stated above in the response to Bonneville's public comment.

9. Base Surcharge on Costs

Several of the comments stated that the surcharge must be based solely on costs imposed on the Administrator by failure to adopt standards. Thus, a 10 percent flat rate is illegal because there will have been on consideration of costs imposed on the Bonneville system.

Response: The Northwest Power Act directs that "in no case may such surcharges be less than 10 per centum . . . of the Administrator's applicable rates for such load. . . ." 16 U.S.C. 839b(f)(2). Also, as noted above, the Act's legislative history refers to the surcharge's function as a "substantial incentive." House Commerce Report, H. Rep. 96-976, Part I, at 56 (1980). It also states that "there is a 10 percent floor and 50 percent ceiling on surcharges . . ." *Id.* The Council believes that the 10 percent flat surcharge called for in the amendments to Appendix D is required when, as the Council has estimated, actual additional resource costs caused by non-adoption of the model standards amount to less than 10 percent of Bonneville's rates. As indicated in the Council's issue paper preceding the proposed amendments, the Council estimated the costs of non-adoption using conservative assumptions. The issue paper showed that, except in rare circumstances, the surcharge based on costs imposed on the electrical system would be less than 10 percent minimum required by law. As a result, the amendments call for a 10 percent flat surcharge.

10. Inequitable Treatment of Small Utilities

A number of commenters focused on the difficult position of small, rural, full-requirements customers of Bonneville. These utilities have no recourse but to purchase all their power from Bonneville and possibly incur the surcharge, while at the same time they feel powerless to influence the adoption of standards. Many of these commenters emphasized their small proportions of residential and commercial loads, the very low growth rates of these loads, and the absence of building code enforcement in their service areas.

Response: Buildings constructed to the standards are judged by the Council to be cost-effective suppliers of electricity. The region will most likely need additional supplies of electricity in the future, depending on the fate of thermal generating plants under construction in the region. If new buildings are built inefficiently, higher costing resources will have to be built, leading in the long run to higher electricity prices for all. The Council has suggested that individual utilities evaluate their legal authority to impose service requirements on new electric heat customers. For example, a service requirement that electrically space conditioned buildings be designed and built to use an amount of electricity for space conditioning equivalent to that used by a building constructed to the model conservation standards would satisfy the requirements of the Act and the Plan and would enable a utility to avoid the surcharge. The Council also directed its staff and Bonneville staff to work together with these utilities to help them adopt alternative plans to avoid the surcharge. Examples of this kind of plan could include measures such as aggressive marketing of Super Good Cents homes together with weatherization of new electrically heated buildings. Finally, the Council also suggests that contracts with state or other agencies (as now exist in Oregon) for building code enforcement in rural areas may be feasible in other states.

11. Surcharge of Non-Bonneville Power

SMB stated that it is not fair to surcharge power that is not purchased from Bonneville.

Response: Contrary to SMB's assertion, only power purchased by a utility from Bonneville either under a Power Sales Contract or a Residential Exchange and Sales Agreement would be subject to a surcharge. The Northwest Power Act authorizes Bonneville to impose such surcharges only upon its customers.

12. Surcharge of Total Load

Several of the comments stated that it was unfair to surcharge total load (including irrigation and industrial loads) when the residential and commercial sectors would be responsible for the increased load due to non-adoption of standards.

Response: As noted above, the Northwest Power Act's authorization of a surcharge on Bonneville "loads" within non-adopting jurisdictions did not restrict the surcharge to residential and/or commercial loads. Application of the surcharge to total loads is consistent with the Congressionally-recognized incentive purpose of the surcharge as well.

13. Impact on Ratepayers

POWER commented that the stockholders, not the ratepayers, of IOU's should bear the burden of surcharge costs. The Idaho Cooperative Utilities Association and Lower Valley Power and Light commented that higher rates resulting from the surcharge would reduce loads and increase rates even more.

Response: The Council's legal authority regarding surcharges is limited to developing a method for surcharge and recommending that Bonneville impose surcharges. 16 U.S.C. 839(f) (1) and (2). State public commissioners have the authority to establish rates for their private utilities and to allocate responsibility for costs among classes of ratepayers and between ratepayers and stockholders. The Council has no such authority. Public utilities and cooperatives have similar authorities with regard to rate allocation.

14. Exemptions

Several of the comments were directed at the need for exemptions from the surcharge for rural utilities with low housing density and for utilities with very low electricity prices. Rural utilities would face higher enforcement costs, thereby making the standards too costly in their service territories. Customers for utilities with low rates would be forced to make a purchase of conservation that appears not to be cost-effective from their perspective.

Response: The proposed amendments did not address the question of exemptions from the surcharge. The Council believes the exemption issue deserves a separate process of consideration. In response to public comments, the Council has prepared and released an issue paper on exemptions. Based upon public comments received on that issue paper, the Council will decide whether to propose plan

amendments to address exemptions. Any such proposed amendments would be subjected to the same type of rulemaking process followed for these surcharge method amendments. See also the response to comment 10 above.

15. Status of Alternative Plans With Regard to Billing Credits and Bonneville Utility Conservation Contracts

The existing Method of Surcharge, Appendix D to the Plan, states that "... conservation savings to be achieved by the alternative conservation plan may be offered to Bonneville for acquisition under a utility conservation contract or a billing credit contract as desired by the entity." Bonneville staff have expressed concern over this language. Bonneville's position is that ratepayers are not paying for the cost of model conservation standards—except for incremental adoption and enforcement costs—and, therefore, ratepayers should not pay for alternatives to the model conservation standards.

Response: The Council agrees that an inconsistency existed, and has removed the cited language from the amendment.

16. Delay of Deadline for Imposition of Surcharge

Sixteen of the comments recommended a delay in the surcharge imposition date. Most of the commenters suggested that the surcharge should not be imposed until after the Bonneville Residential Standards Demonstration Program (RSDP) has been completed and results are available. A few of the commenters said that no decision should be made on surcharges until the Council has made a decision on exemptions from the standard or the surcharge. Still others urged delay of the surcharge until the cost-effectiveness of the standards was proven.

Response: The RSDP is not a test of whether standards are cost-effective. Rather, RSDP is a technical assistance training program to assist builders in becoming familiar with building energy efficient buildings. Bonneville's current thinking regarding development of its surcharge policy is that no surcharge would in fact be imposed before July of 1986. This is because Bonneville would need the six-month period from January 1, 1986 model standards deadline to determine whether or not alternative plans are in compliance. Thus, the region will have two years of experience with RSDP homes before any surcharge could be imposed. The Council expects the RSDP data to reinforce the Council's determination that the standards are cost-effective and economically feasible. The standards were based on extensive

and detailed cost and feasibility information and analysis.

As noted above, because of the importance of the issue, exemptions are being treated as a separate issue by the Council. Based on the evidence developed in the current issue paper review, the Council may eventually decide to amend the plan to allow exemptions from the standard for certain classes of customers. The Council believes it is best to put a revised method for surcharges in place now while considering whether to begin a separate, careful, public process to consider possible exemptions.

See also response 18 below concerning the cost-effectiveness issue raised by this comment.

17. Accuracy of Council Calculations

SMB and PP&L questioned the accuracy of the calculations done by the Council staff in the issue paper which preceded the proposed amendments. In that paper, the proposed surcharge based on a 10 percent minimum was estimated to produce twice the revenue that would be collected if the surcharge were based on costs imposed on the electric system. SMB alleged that a 10 percent flat surcharge would actually collect revenues amounting to 10 times the additional costs expected to be imposed on the system by failure to adopt standards. PP&L estimated the results of the 10 percent flat surcharge would amount to five times such costs.

Response: The issue paper's analysis was a comparison of the revenues collected based on costs to the system versus revenues collected with a 10 percent minimum surcharge. That analysis showed that, with reasonable assumptions about Bonneville's wholesale rate and costs of the avoided resource based on a coal plant, the 10 percent minimum was more than adequate to cover costs imposed on the system for failure to adopt standards in any given year. Both PP&L's and SMB's comments on technical accuracy actually support the 10 percent minimum surcharge contained in the proposed amendment. That is, each of the analyses shows that a surcharge based on a specific calculation for each jurisdiction not in compliance with the standards will almost surely be less than the 10 percent minimum surcharge. As noted above, the Northwest Power Act requires that the surcharge be at least 10 percent of Bonneville's applicable rates.

However, there are several technical flaws in the SMB comments. Its statement says, "The first false assumption [made by the Council staff] is the use of the Bonneville's 1984

electric rates for what the region would pay for conservation." This assumption was never made. The SMB confused the adjustment that was being made to the coal plant costs to account for the revenue to Bonneville when a coal plant is operating to serve load. If the standards had been in place, that revenue would have been lost. In the Council staff analysis, it was assumed that the current Bonneville wholesale rate would remain constant in 1984 dollars at 22.5 mills/kWh. (This is a reasonable assumption, as Bonneville has forecasted a nominal dollar 7(b) rate of 59 mills/kWh for 2002. Discounting at 6 percent a year to account for the assumption about inflation yields 20.7 mills/kWh in 1984 dollars.) The SMB also incorrectly assumed that the Council's avoided resource cost of 40 mills/kWh (1980 dollars) was only valid for the last coal plant in the high forecast. Although the Council is currently reevaluating the avoided resource cost, the 40 mills/kWh estimate is consistent with a coal plant being backed down by water to a 50 percent capacity factor. Therefore, the SMB's assumption is not reasonable.

The SMB's bottom line is apparently that if the Council uses high-load forecast avoided cost figures from 2002 (which the Council did not), the Council should use high-load forecast prices from 2002. Doing this, the SMB estimated the costs imposed on the system to be 55.6–49.7 or 5.9 mills/kWh instead of the Council estimate of 33.1 mills/kWh (i.e., 55.6–22.5). (The 55.6 mills/kWh is 40×1.36 to convert to 1984 dollars and the 49.7 mills/kWh is 36×1.38 to convert to Council estimates of average regional retail rates in 2002 to 1984 dollars.) First of all, the average regional rate is not the appropriate rate to use in this calculation; Bonneville's wholesale rate should be used. That rate expressed in 1984 dollars is 20.7 mills/kWh in 2002, as was shown above. Using the correct figure, costs imposed on the region would be 55.6–20.7 or 34.9 mills/kWh, higher even than what the Council used. Secondly, it is not appropriate to look only to the end of the planning horizon to determine the costs imposed on the system from non-adoption in 1986.

In considering the issue paper's estimate of the additional costs of failure to adopt the standards, it is important to note the Council's very conservation assumption about the life of a home (30 years). If the Council had used 60 years, the costs imposed on the system would have been 40 percent higher. Thus, by the SMB estimates, the "over-collection" would have been by a

factor of about seven. By the Council's estimate there would be little "over-collection."

PP&L claimed that, from the Bonneville rate case, the regional marginal cost is estimated to be 35.9 mills/kWh (1987 dollars) instead of 40 mills/kWh (1980 dollars) or 55.6 mills/kWh (1984 dollars) used in the staff analysis. Further, in the rate case Bonneville projects a priority firm rate of 24.2 mills/kWh (1985 dollars). Ignoring the different years dollars for ease of explanation, PP&L then calculates the costs to the system based on the 30 year lives of one year's buildings in non-compliance to be \$34.1 million dollars compared to the staff estimate of \$95.6 million. Thus, in PP&L's analysis, "over-collection" would be by a factor of five. SMB suggested that the Council use "an average between medium-low and medium-high for all of its calculations, including foregone conservation savings." The Council is currently evaluating what its marginal resource is for each load forecast. The Council used the conservative 40 mills/kWh estimate to make sure that its calculations of costs imposed on the system by failure to adopt standards covered all potential resource costs. In addition, after examining the Bonneville rate case it appears to the Council that the 35.9 mills/kWh is a cost to serve new load as opposed to the 40 mills/kWh estimate, which is the costs of an avoided resource in the Council analysis. The difference is that the cost to serve new load will be less than the cost of an avoided resource when the system is in surplus. The Council took more of an approach based upon the Public Utility Regulatory Policies Act, looking at the avoided resource. With either approach, a different recommendation regarding the level of surcharge would not be justified. As noted above, the Northwest Power Act requires that surcharges amount to at least 10 percent of Bonneville rates.

In summary, the Council reviewed each calculation criticism made by SMB and found each to be flawed.

18. Cost-effectiveness of the Standard

Several of the comments questioned the cost-effectiveness of the standards, including whether or not it was cost-effective for the system to adopt standards as early as 1986.

Response: Questions regarding the cost-effectiveness of the standards were not germane to the proposed amendments at issue in this rulemaking. The proposed amendments related solely to the method of calculating surcharges. However, the Council welcomes any new information

regarding the cost-effectiveness of the standards, and carefully reviews all submissions. Questions regarding the cost-effectiveness of the model standards were carefully considered by the Council in development of its Power Plan. Based upon the construction costs and energy consumption data made available to it through the extensive, two-year process which led to the adoption of the model standards, the Council was satisfied at the time of such adoption that the standards were cost-effective to the region and economically feasible for consumers.

The Council determined that the region could acquire energy savings through the construction of efficient new buildings at a cost substantially less than obtaining equivalent amounts of power from coal or nuclear plants. The Council is not aware of new data sufficient to raise doubt regarding that decision. Of course, the Council carefully reviews any new information submitted on this subject.

19. Enforcement

Most of the comments touched on problems regarding enforcement of the standards by local governments and utilities (particularly rural electric cooperatives). The comments ranged from urging the Council to encourage adoption at the state level and reduce the pressure for utility adoption to allegations that utility enforcement is illegal as it vests police powers and governmental functions in a utility. Fall River Cooperative thought it might be barred from enforcement by the rules of the Rural Electrification Administration.

Response: Again, these comments did not relate directly to the proposed amendments at issue in this rulemaking. However, the Council has reviewed each submission and will consider them in its efforts to promote implementation of the standards. The Council has directed its staff to work with Bonneville to assist such utilities in developing methods of complying with the standards. Also, the Council has called on Bonneville to reimburse state and local governments for the full incremental costs of adopting and enforcing the standards.

20. Indoor Air Quality

Some commenters raised concern regarding indoor air quality problems that could be caused by building homes to the model standards.

Response: These comments did not relate directly to the proposed surcharge method amendments at issue in this rulemaking. However, the Council did carefully consider indoor air quality

concerns when developing its model conservation standards.

21. Application of Standards to Mobile Homes

One commenter suggested that it was unfair to impose surcharges for failure to adopt the model standards for residences while the standards do not apply to mobile homes.

Response: The Council's model standards do not apply to mobile homes because mobile home construction is regulated by the federal government, not state or local building codes. The Council is working with Bonneville and the United States Department of Housing and Urban Development to determine if standards could be cost-effective for mobile homes. The Council's Plan calls for actions that would coordinate the Department's mobile homes standards with those of the Council.

22. Application of Surcharge to Users of Other Fuels

Western Montana Generation and Transmission Cooperative and the Idaho Cooperative Utilities Association stated that it was unfair to apply the surcharge only to users of electricity and not to users of other fuels (including wood, gas, etc.).

Response: The Northwest Power Act only authorizes surcharges on electrical rates. Neither Bonneville nor the Council have any authority to recommend or impose surcharges on users of other energy sources.

23. Constitutional Bar to Enforcement of Standards

The Idaho Cooperative Utility Association stated that "since the underlying statutory basis for the implementation of model conservation standards through a state or local building code emanates from a federal statute, fundamental issues of federal constitutional dimension are raised." The Association cited *National League of Cities v. Usery*, 426 U.S. 833 (1976), in which the Supreme Court held that Congress may not regulate commerce so as to force directly upon a state Congress' choices as to essential decisions regarding the conduct of "traditional local government functions." The Association claimed that adoption and enforcement of building codes falls within the definition of such functions.

Response: Concerns regarding enforcement of the model standard are not directly relevant to the proposed changes to the method of surcharge at issue in this rulemaking. However, the

Council does not agree with the Association's claim regarding constitutional obstacles to model standards implementation. First, nothing in the Council's plan requires the adoption of a particular building code. The model standard simply requires a certain level of energy efficiency, and states, localities and local governments are free to meet the standard by implementing either the Council's suggested building code or another conservation program of their choosing achieving comparable savings. Second, neither the *Usery* case nor the cases following it block implementation of the standards. *Usery* concerned Department of Labor minimum wage and maximum hour provisions for state and local government employees. (Although the *Usery* principle was recently reargued before the Court in the context of work rules in *Garcia and Donovan v. San Antonio Metropolitan Transit Authority*, Nos. 82-1913 and 82-1951, the Council has been informed that the reargument did not touch on the concerns raised here by Idaho Cooperative Utilities Association.) In later cases the Supreme Court has refused to extend *Usery's* holding to energy-conservation legislation similar to the Northwest Power Act. For example, in 1982 the Court upheld the Public Utility Regulatory Policies Act's (PURPA) requirements that states enforce conservation-related rate design standards and consider other such standards. *FERC v. Mississippi*, 456 U.S. 742 (1982). The Court noted that, in the case of PURPA, "Congress naturally concluded that the energy problem was nationwide in scope, and that these developments demonstrated the need to establish federal standards regarding retail sales of electricity, as well as federal attempts to encourage conservation and more efficient use of scarce energy resources." *Id.*, at 757. See also, *Hodel v. Virginia Surface Mining and Reclamation Association*, 452 U.S. 264 (1981) (provisions of federal surface mining law prescribing performance standards for mining on steep slopes did not violate Tenth Amendment limitation on congressional exercise of commerce power as interfering with state's traditional governmental function of regulating land use). The Council is confident that its model standards, and the potential imposition of surcharges by Bonneville, do not run afoul of the Constitution.

24. Surcharge During Surplus

Some commenters doubted the need for surcharges when the region is experiencing a power surplus.

Response: One purpose of the surcharge is to serve as an incentive to ensure that new homes in the region are built to be energy-efficient. The Council has determined that obtaining energy savings through the model standards is much less expensive than, for example, building new power plants. Even during the temporary surplus, it is important that the region promote energy-efficient new housing so that this least-expensive energy resource is not ignored. The current surplus provides the region with an opportunity to prepare for later, inevitable power demands.

25. Refunds

SMB stated that it would "be unfair to levy a surcharge based upon the Council's projection of lost energy savings unless there were a provision for refunds. . . ." The Council should therefore provide for a refund to those jurisdictions which add retrofitting at a later date, and recover at least some of the "lost" savings.

Response: The SMB's "refund" suggestion, as included in its comment, was not described clearly enough to allow the Council to adequately understand it. Any such "refund" mechanism would have to be implemented by Bonneville, the entity authorized by the Northwest Power Act to impose the surcharge and allocate revenues from the surcharge. In fact, the Act's direction to Bonneville to "allocate any revenues from such charges in such manner as the Administrator determines will help achieve the purposes of [the surcharge provision]" (16 U.S.C. 839e(h)) arguably could cover such a "refund."

26. "Cost of Non-Compliance Over Time"

SMB urged the Council to change the method from a one time surcharge to a method which accounts annually for the "cost of non-compliance over time." SPUD raised a similar concern.

Response: As indicated in the Council's issue paper preceding the proposed amendment,

The existing methodology in Appendix D considers cost imposed on the system on an annual basis by those buildings not constructed to the Model Standards. This aspect of the existing method poses two problems. The first problem is that it would require Bonneville to carry each building on its accounts throughout its lifetime and account for it each year when it calculated the annual surcharge. Secondly, if the surcharge methodology only includes annual costs while not recognizing the costs associated with non-compliance over time, there would be no surcharge for failure to adopt during times of surplus even though future costs would be imposed on the system. And, in future years it would be very difficult

to determine the costs incurred as a result of historical non-conformance with the standards. The surcharge methodology would be much simpler if a building were included in the surcharge calculation only once and then removed from the accounts. Also, the surcharge would end once standards were adopted. This would heighten the sense of a surcharge as an incentive to adopt standards and a way to recover costs imposed on the system, and not as a penalty to be meted out for failure to adopt. The surcharge amount would be equal to the present value of the alternative resource that could supply an equivalent amount of energy.

In developing its amendment to use a simple 10 percent surcharge, the Council determined that the 10 percent rate was the most reasonable alternative. The SMB's suggestion would potentially result in surcharging a utility for 50 years or more for failure to adopt the standards in any one year. The Council does not view this as a desirable outcome. The amendment is designed to capture the total impact on the system through the structure's life. Once the jurisdiction adopts the standards, the imposition of the surcharges ends.

The effect of the proposed amendment will be to improve the method of surcharging in the following ways:

- State and local jurisdictions and Bonneville customers will be able to see clearly how the surcharge might effect them;
- Bonneville's administrative duties will be lessened as it will not have to maintain voluminous records on consumers in its customers' service territories;
- The surcharge will be imposed only during the period that standards are not adopted or equivalent energy savings realized; and
- Potentially time consuming and data intensive calculations will be eliminated.

The Council also directed its staff to work with Bonneville and regional utilities to develop alternative conservation measures achieving energy savings comparable to those achieved by the model conservation standards set forth in the Council's Power Plan.

Edward Sheets,

Executive Director.

[FR Doc. 84-31106 Filed 11-27-84; 8:45 am]

BILLING CODE 0000-00-M

Demand Forecasting Advisory Committee; Regular Meeting

AGENCY: Demand Forecasting Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Presentation of Power Planning Division Workplan.
 - Summary of Economic Forecast.
 - DSI's
 - Fuel Prices
 - Discussion of Evaluation of BPA Residential Demand Model (RRHED).
 - Discussion of JJA report on components of BPA Commercial Demand Model suitable for use by the Council forecasting system.
 - Discussion of inputs for Residential Forecasting Model.
 - Presentation of Decision Analysis Model.
- Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Demand Forecasting Advisory Committee.

DATE: Monday, December 3, 1984, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Terry Morlan, (503) 222-5161.

Edward Sheets,
Executive Director.

[FR Doc. 84-31113 Filed 11-27-84; 8:45 am]

BILLING CODE 0000-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Programs: U.S. Postal Service and City of Philadelphia, and Philadelphia School District, and advance notice of modification to an existing system of records.

SUMMARY: The purpose of this document is to provide information for public comment concerning the Postal Service's proposal to conduct a computer matching program, and to propose the addition of a new temporary routine use to system USPS 050.020, Finance Records—Payroll System.

DATE: Any interested party may submit written comments regarding the matching program and the proposed new routine use. Comments on this notice must be received on or before December 28, 1984.

ADDRESS: Comments may be mailed to Records Officer, U.S. Postal Service, 475 I'Enfant Plaza West, SW., Washington, D.C., 20260-5010, or delivered to Room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received

may also be inspected in Room 8121 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing a new temporary routine use for system USPS 050.020, Finance Records—Payroll System, in connection with its plans to begin identifying postal employees who are also on the employment rolls of the (1) City of Philadelphia, and (2) Philadelphia, Pennsylvania School District. The routine use, if adopted, will be in effect for a period of one year from its effective date. The purpose of this proposed action is to determine whether suspected violations of federal or state laws or Postal Service regulations have occurred in connection with the improper receipt of dual benefits by these employees. Of particular concern is the possible misuse of sick leave of the improper receipt of continuation of pay under the workers' compensation program.

Set forth below in the information required by the Revised Supplemental Guidance for Conducting Computerized Matching Program issued by the Office of Management and Budget (47 FR 21656; May 19, 1982).

Report of Computer Matching Program

In accordance with 39 U.S.C. 404, the Postal Service proposes to perform a match by computer of employees on the payroll of the Philadelphia Post Office, and Bulk Mail Center (BMC), and the Management Sectional Center (MSC) Southeastern at Devon, Pennsylvania, and the MSC South Jersey at Ballmawr, New Jersey, against the City of Philadelphia's listing of its employees. In addition, the Postal Service proposes to perform a match by computer of employees on the payroll of the above-mentioned BMC and MSCs against the Philadelphia School District's listing of its employees. The City of Philadelphia (CP) and the Philadelphia School District (PSC) will each provide a computer tape listing of their employees by name and social security number which the Postal Service will separately match against its Payroll System files for the purpose of identifying Postal Service employees common to both lists—i.e., "hits." Postal Service Payroll System files contain general payroll information including name, social security number, salary, family compensations, benefit deductions, accounts receivable, leave data, addresses, records of attendance and other relevant payroll information.

Upon completion of the match, and after the lists are compiled, the Postal

Service will return to the CP and to the PSD their computer tapes and will disclose to CP and PSD only relevant details for the "hits" but not other information or names in its payroll system. All information obtained or utilized will remain under the control of the Postal Inspection Service and/or the investigative service for the CP and PSD Internal Controller's Office. Except for any individual investigative case file that may be established within the parameters of system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983), all other information compiled as a result of this matching effort will be destroyed as soon as the determination is made that it relates to a legitimate, non-fraud situation.

Proposed System Modification To Add New Routine Use

On a one-time basis, the Postal Service proposes to disclose a limited amount of information from the payroll records of certain postal employees to the Internal Controller's Office of the Philadelphia, Pennsylvania School District (PSD) and the City of Philadelphia (CP). This information will be used to identify postal employees who have fraudulently received compensation benefits from either the Postal Service, the PSD, or the CP. The Postal Service believes that an integral part of the reason that employee payroll records are maintained is to protect the legitimate interests of the Government and therefore, such a routine use is compatible with the purpose of maintaining these records. System 050.020 last appeared in 49 FR 37489 dated September 24, 1984. As provided in 5 U.S.C. 552a(e)(11) for new routine uses, interested persons are invited to submit written views or arguments on the routine use proposed. After any comments submitted have been considered, final notice of the routine use will be published. Accordingly, it is proposed to modify system USPS 050.020, Finance Records—Payroll System, to add a new temporary routine use to allow this disclosure as follows:

USPS 050.020, Finance Records—Payroll System

"34. (Temp.) Disclosure of information about postal employees on the employment rolls of the Philadelphia, Pennsylvania School District (PSD) and on the employment rolls of the City of Philadelphia (CP) may be made to the PSD and CP for a one-time comparison with the PSD's and CP's time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year ending _____.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-31148 Filed 11-27-84; 8:45 am]

BILLING CODE 7710-12-M

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Final notice of routine uses for existing system of records.

SUMMARY: The purpose of this document is to publish final notice of the Postal Service's addition of two routine uses to system USPS 050.020, Finance Records—Payroll System.

EFFECTIVE DATE: November 28, 1984.

FOR FURTHER INFORMATION CONTACT: Martha J. Smith, Records Office, (202) 245-5568.

SUPPLEMENTARY INFORMATION: The Postal Service plans to assist the Department of Defense (DOD) in its two-part effort, as follows:

Part 1—In support of the Government's initiative under the Debt Collection Act of 1982, the Postal Service will assist the DOD in its efforts to identify current postal employees who have separated from military service and are indebted to the DOD and, if necessary, assist DOD in collecting the over-due debts from those employees. Upon request, on a semiannual basis, the Postal Service will provide to the DOD a computer tape of its employees with name and social security account number. The DOD will match this tape against its debtor files in the Defense Manpower Data Center Data Base for the purpose of identifying those persons who have separated from military service while indebted to DOD for reenlistment bonus, travel/transportation advances, etc. The DOD will return the uncopied computer tape to the Postal Service immediately after the match has been run. The DOD will provide to the Postal Service a tape of the matched employees and the Postal Service will then provide the home addresses of those employees. Disclosures made under this part are for the limited purpose of enabling DOD to identify indebted postal employees; to notify them of their indebtedness to the United States; and to take subsequent action to collect the debts.

Part 2—The Postal Service will assist DOD in its efforts to meet its Congressional reporting requirements under its Federal Sector Reserve Screening Program. This will involve screening current Postal Service

employees for military reserve status and identifying those employees in positions critical to Postal Service operations who may not be subject to reserve callup as a result. For this purpose, upon request, on an annual basis, the Postal Service will provide to DOD a computer tape of its current employees by name, social security account number and salary for comparison with DOD's Ready Reservists file. Upon completion of the comparison process, DOD will return the uncopied computer tape to the Postal Service and, in addition, will provide to the Postal Service a tape of Postal Service employees with a military mobilization obligation.

Advance notice of the proposed adoption of the routine uses was published on August 23, 1984 at 49 FR 33515. No comments were received in response to the advance notice. System USPS 050.020 last appeared in 49 FR 37489 dated September 24, 1984. Publication of this notice is in accordance with the Privacy Act Implementation guidelines issued by the Office of Management and Budget (47 FR 28966).

Accordingly, the Postal Service is adding two new routine uses to system USPS 050.020, Finance Records—Payroll System, as follows:

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System, 050.020

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

32. To provide to the Department of Defense (DOD), upon request, on a semiannual basis, the names, social security account numbers and home addresses of current postal employees for the purpose of identifying those employees who are indebted to the United States under programs administered by the Secretary, DOD, and for taking subsequent actions to collect those debts.

33. To provide to the Department of Defense (DOD), upon request, on an annual basis, the names, social security account numbers, and salaries of current postal employees for the purpose of updating DOD's listings of Ready Reservists and reporting reserve status information to the Postal Service and the Congress.

A complete statement of system USPS 050.020, as modified by this notice, appears below.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

SYSTEM LOCATION:

Payroll system records are located and maintained in all Departments, facilities and certain contractor sites of the Postal Service. However, Postal data centers are the main locations for payroll information. Also, certain information from these records may be stored at emergency records centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USPS employees and postmaster relief/replacement employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain general payroll information including retirement deduction, family compensations, benefit deductions, accounts receivable, union dues, leave data, tax withholding, allowances, FICA taxes, salary, name, social security number, payments to financial organizations, dates of appointment or status changes, designation codes, position titles, occupation codes, position titles, occupation code, addresses records of attendance, and other relevant payroll information. Also includes automated Form 50 records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 1003.5 U.S.C. 8339.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—

1. Information within the system is for handing all necessary payroll functions and for use by employee supervisors for the performance of their managerial duties.

2. To provide information to USPS Management and executive personnel for use in section decisions and evaluation of training effectiveness. These records are examined by the Selection committee and Regional Postmasters General.

3. To compile various lists and mailing list, i.e., Postal Leader, Women's lists, i.e., Postal Leader, Women's Programs, Newsletter, etc.

4. To support USPS Personnel Programs such as Executive Leadership, Non-Bargaining Positions Evaluations of Probationary Employees, Merit Evaluation, Membership and Identification Listings, Emergency Locator Listings, Mailing Lists, Women's Programs, and to generate retirement eligibility information and analysis of employees in various salary ranges.

Use—

1. Retirement Deduction—To transmit to the Office of Personnel Management a roster of all USPS employees under Title 5 U.S.C. 8334, along with a check.

2. Tax Information—To disclose to Federal, State and local government agencies having taxing authority, pertinent records, relating to individual employees, including name, home address, social security number, wages and taxes withheld for other jurisdiction.

3. Unemployment Compensation Data—To reply to State Unemployment Offices at the request of separated USPS employees.

4. Employee Address File—For W-2 tax mailings and Postal mailing such as Postal Life, Postal Leaders, etc.

5. Salary payments and allotments to financial organizations—To provide pertinent information to organizations receiving salary payments or allotments as elected by the employee.

6. FI (SS Tax) Deduction—To SS Administration as record of earnings under the SS act for all casual employees not under retirement.

7. Determine eligibility for coverage and payments of benefits under the Civil Service Retirement System, the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program and transfer related records as appropriate.

8. Determine the amount of benefit due under the Civil Service Retirement System, the Federal Employees, Group Life Insurance Program and the Federal Employees Health Benefits program and authorizing payment of that amount and transfer related records as appropriate.

9. Transfer to Office of Workers Compensation Program, Veterans Administration Pension Benefits Program, Social Security Old Ages, Survivor and Disability Insurance and Medicare Programs, military retired pay programs, and Federal Civilian employee retirement systems other than the Civil Service Retirement System, when requested by that program or system or by the individual covered by this system or by the individual covered by this system of records, for us in determining an individual's claim for benefits under such system.

10. Transfer earnings information under the Civil Service Retirement System to the Internal Revenue Service as requested by the Internal Revenue Code of 1954, as amended.

11. Transfer information necessary to support a claim for life insurance benefits under the Federal Employees' Group Life Insurance, 4 East 24th Street, New York, NY 10010.

12. Transfer information necessary to support a claim for health insurance benefits under the Federal Employees' Health benefits Program to a health insurance carrier or plan participating in the program.

13. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature to the appropriate agency whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

14. To request or provide information from or to a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant, or other benefits.

15. As a data source for management information of production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individual for personnel research or other personnel management functions.

16. May be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

17. Certain information pertaining to Postal Supervisors may be transferred to the National Association of Postal Supervisors.

18. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry

from the congressional office made at the request of that individual.

19. Disclosure may be made from the record of an individual, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.

20. Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

21. Inactive records may be transferred to a GSA Federal Records Center prior to destruction.

22. To provide to the Office of Personnel Management (OPM) approximately 19 data elements (including SSAN, DOB, service competition date, retirement system, and FEGLI status) for use by OPM's Compensation Group collected are not for the purpose of making determinations about specific individuals but are used only as a means of ensuring the integrity of the active employee/annuitant data systems and for analyzing and statistically projecting Federal retirement and insurance system costs. The same data submission will be used to produce summary statistics for reports of Federal employment.

23. Information contained in this system of records may be disclosed to an authorized investigator appointed by the Equal Employment Opportunity Commission, upon his request, when that investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR Part 1613, and the contents of the requested record are needed by the investigator in the performance of his duty to investigate a discrimination issue involved in the complaint.

24. Records in this system are subject to review by an independent certified public accountant during an official audit of Postal Service finances.

25. May be disclosed to a Federal or State agency providing parent locator services or to other authorized persons as defined by Pub. L. 93-647.

26. Disclosure of information about particular postal employees may be made to requesting states in connection with approved computer matching programs, limited to only those data elements considered relevant to making a determination of eligibility under unemployment insurance programs administered by the states (and by those states to local governments); to improve program integrity; and to collect debts

and overpayments owed to those governments and their components.

27. To union-sponsored insurance carriers for the purposes of determining eligibility for coverage and payments of benefits under union-sponsored, non-Federal insurance plans and transferring related records as appropriate.

28. (Temp.) To provide the Department of Education home address information on former postal employees for the purposes of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Education and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of one year ending February 3, 1985.

29. (Temp.) Disclosure of information about particular postal employees on the employment rolls of the City of New Orleans, Louisiana, may be made to the New Orleans' Department of City Civil Service (NOCCS) for comparison with the NOCCS time/attendance/payment files.

Note.—This routine use will be in effect for a period of one year ending June 15, 1985.

30. (Temp.) Disclosure of information about particular postal employees who work in the District of Columbia and in the States of Maryland and Virginia may be made to the Government of the District of Columbia, Department of Human Service (DC-DHS) for comparison with the DC-DHS welfare program files.

Note.—This routine use will be in effect for a period of one year ending September 24, 1985.

31. (Temp.) To provide the Department of Housing and Urban Development the names, social security account numbers and home addresses of postal employees for the purpose of notifying those individuals of their indebtedness to the United States under programs administered by the Secretary of Housing and Urban Development and for taking subsequent actions to collect those debts.

Note.—This routine use will be in effect for a period of five years ending September 24, 1989.

32. To provide to the Department of Defense (DOD), upon request, on a semiannual basis, the names, social security account numbers and home addresses of current postal employees for the purposes of identifying those employees who are indebted to the United States under programs administered by the Secretary, DOD, and for taking subsequent actions to collect those debts.

33. To provide to the Department of Defense (DOD), upon request, on an annual basis, the names, social security account numbers, and salaries of current postal employees for the purposes of updating DOD's listings of Ready Reservists and reporting reserve status information to the Postal Service and the Congress.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Preprinted forms, magnetic tape, microforms, punched cards, computer records and card forms.

RETRIEVABILITY:

These records are organized by location, name and social security number.

SAFEGUARDS:

Records are contained in locked filing cabinets; are also protected by computer passwords and tape library physical security.

RETENTION AND DISPOSAL:

Records are retained and updated throughout employment with the Postal Service. Upon separation records become historical data, this data is retained at the local site for two years then forwarded to the Federal Records Center nearest the pay location.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Finance Department and APMG, Employee Relations Department at Headquarters.

NOTIFICATION PROCEDURE:

Request for information on this system of records should be made to the head of the facility where employed, giving full name and social security number. Headquarters employees should submit requests to the System Manager.

RECORD ACCESS PROCEDURES:

See Notification above.

RECORD SOURCE CATEGORIES:

Information is furnished by employees, supervisors and the Postal Source Data System.

[FR Doc. 84-31149 Filed 11-27-84; 8:45 am]

BILLING CODE 7710-12-M

RAILROAD RETIREMENT BOARD

Proclamation Regarding Railroad Unemployment Insurance Account

Pursuant to section 8(a) of the Railroad Unemployment Insurance Act,

the Railroad Retirement Board has determined, and hereby proclaims, that the balance to the credit of the railroad unemployment insurance account as of the close of business September 30, 1984, was a deficit of \$647,496,459.53. Based on this balance and pursuant to the table in section 8(a) of the Railroad Unemployment Insurance Act, the contribution rate to finance the railroad unemployment insurance program for calendar year 1985 shall be 8.0 percent.

In witness whereof the members of the Railroad Retirement Board have hereunto set their hands and caused its seal to be affixed.

Done at Chicago, Illinois, this 19th day of November 1984.

R. A. Gielow,

Chairman.

Earl Oliver,

Member.

C. J. Chamberlain,

Member.

By the Railroad Retirement Board.

Donald J. Parker,

Acting Executive Director.

[FR Doc. 84-31105 Filed 11-27-84; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23493; 70-5943]

American Electric Power Company, Inc.; Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan

November 21, 1984.

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio, 43215, a registered holding company, has filed with this Commission a post-effective amendment to its proposal in this proceeding pursuant to Sections 6(a) and 7 of the Public Utility Holding Company of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

By orders in this proceeding dated February 8, 1977, April 19, 1978, March 29, 1979, August 8, 1979, May 1, 1980, June 30, 1981, June 15, 1982, June 29, 1983, and June 29, 1984 (HCR Nos. 19879, 20506, 20979, 21180, 21544, 22113, 22539, 22989, and 22353), AEP was authorized to issue and sell, from time to time through June 30, 1985, up to 44,000,000 shares of its authorized but unissued common stock, \$6.50 par value, pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Plan").

AEP now proposes to amend the Plan to provide, effective January 1, 1985, (i) that the price of shares of the company's common stock purchased with reinvested dividends will be 100% of the average of the daily high and low sales prices of the common stock, as published in the *Wall Street Journal* report of New York Stock Exchange—Composite Transactions, for the period of five trading days ending on the day of purchase, rather than 95% of such average, and (ii) that participants, other than eligible employees, may no longer invest by making optional cash payments pursuant to the Plan, and that eligible employees may continue to make such optional payments only by means of payroll deductions, subject to a minimum monthly limit of \$5 and a maximum monthly limit of (A) 10% of regular salary or wages or (B) \$1,000, whichever is less.

The amended proposal and 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 December 18, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address 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 proposal, as now amended or as it may be further amended, may be authorized.

For the Commission, by Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31135 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 23488; 70-7050]

Eastern Edison Co.; et al.; Proposed Issuance and Sale of Short-Term Notes to Banks

In the matter of Eastern Edison Company, 110 Mulberry Street, Brockton, Massachusetts 02403; Blackstone Valley Electric Company, Washington Highway, P.O. Box 1111, Lincoln,

Rhode Island 02865; Montaup Electric Company, P.O. Box 2333, Boston, Massachusetts 02107.

November 20, 1984.

Eastern Edison Company ("Eastern Edison"), Montaup Electric Company ("Montaup"), and Blackstone Valley Electric Company ("Blackstone") (collectively, the "Companies"), electric utility subsidiaries of Eastern Utilities Associates, a registered holding company, have filed a proposal with this Commission pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act").

The Companies propose to issue and sell short-term notes to banks, from time to time during the period from December 28, 1984, to December 27, 1985, in aggregate amounts outstanding at any one time not to exceed \$10 million for Eastern Edison, \$30 million for Montaup, and \$5 million for Blackstone.

Each note will be dated the date of issuance and will mature no later than September 30, 1986. Some notes will bear interest at a floating prime rate, have maximum maturities of nine months, and be prepayable at any time without premium. Other notes will bear interest at available money market rates, in all cases less than the prime rate at the time of issuance, will have maximum maturities of nine months, and will not be prepayable. Credit lines with banks are subject in some cases to commitment fees (%% on the line of credit) and/or compensating balance requirements (no greater than 10% of the line of credit). With such fees and/or balances, no line of credit would result in an effective cost of borrowing greater than 12.41% based on a prime rate of 11.75%.

The Companies will use the proceeds of the proposed notes, together with other funds available, to: (1) Renew outstanding notes payable to banks as they become due and (2) finance their respective 1985 cash construction expenditures which are currently estimated to be approximately \$11,345,000 in the case of Eastern, \$41,940,000 in the case of Montaup, and \$3,023,000 in the case of Blackstone.

The proposal and any 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 December 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants 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 proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31134 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 23491; 70-7044]

System Fuels, Inc. et al.; Proposal To Enter Into Revolving Credit Agreement

In the matter of System Fuels, Inc., One Poydras Plaza, New Orleans, Louisiana 70113; Arkansas Power & Light Company, First Commercial Building, Little Rock, Arkansas 72201; Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174; Mississippi Power & Light Company, Electric Building, Jackson, Mississippi 39201; New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112.
November 21, 1984.

System Fuels, Inc. ("SFI"), a fuel supply procurement subsidiary of Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), and New Orleans Public Service Inc. ("NOPSI") which are, in turn, public utility subsidiaries of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed a proposal pursuant to Sections 6(a), 7, and 12(b) and Rules 45 and 50(a)(2) thereunder.

SFI proposes to borrow and reborrow through December 31, 1987, pursuant to a Revolving Credit Agreement ("Credit Agreement") with Comerica Bank-Detroit ("Bank"), up to an aggregate principal amount at any one time outstanding not to exceed \$15,000,000. All borrowings under the Credit Agreement will mature on December 31, 1987. The borrowings will be evidenced by a single master note of SFI, representing the obligation of SFI to pay the amount of the commitment (\$15,000,00) or, if less, the aggregate unpaid principal amount of all loans made by the Bank thereunder, plus accrued interest. The proposed borrowings will be in addition to other borrowing arrangements currently maintained by SFI for the purpose of securing funds from external sources to

finance its fuel supply business and which have previously been authorized by this Commission (HCAR Nos. 22228, 22628, and 22659).

Loans under the Credit Agreement will bear interest on the unpaid principal amount thereof at (i) a floating rate per annum equal to the sum of: (1) $\frac{1}{2}$ of 1% and (2) the daily Federal Funds rate, defined as the opening interest rate per annum bid each banking day by the Bank for overnight deposits of federal funds from member banks of the Federal Reserve System ("Standards Floating Rate"), (ii) a floating rate per annum equal to the rate of interest announced periodically by the Bank as its prime rate ("Alternate Floating Rate") of (iii) a fixed rate per annum equal to a rate of interest for a designated period of time agreeable to SFI and the Bank at the time of such loan ("Fixed Rate"), provided that the Fixed Rate shall in no event exceed the Bank's prime rate on the date the Fixed Rate is set plus $1\frac{1}{2}\%$. Assuming a prime rate of $11\frac{1}{4}\%$ and, as expected, full utilization of the Commitment by SFI, the maximum effective cost of money for any such loan at a Fixed Rate would be $13\frac{1}{4}\%$. At the expiration of any Fixed Rate period, such Fixed Rate loan will convert to the Standard Floating Rate.

Unless SFI shall have otherwise notified the Bank, loans will bear interest at the Standard Floating Rate. Subject to the terms of the Credit Agreement, SFI will be permitted at any time to elect to have loans bear interest at the Alternate Floating Rate by giving notice to the Bank specifying the principal amount to be subject to such rate at least two business days in advance. Loans may bear interest at a Fixed Rate at any time that the Bank and SFI may agree on a rate for a designated period of time.

The Credit Agreement will provide that SFI, may, at its option, but subject to certain conditions specified therein, terminate early or reduce, from time to time, the Commitment. Further, SFI will be permitted at any time, without premium or penalty, to prepay, in whole or in part, the unpaid principal amount of the Note; provided, however, that without the consent of the Bank, SFI may not prepay any loan to which a Fixed Rate applies except upon the last day of the Fixed Rate period.

Pursuant to the terms of the Credit Agreement, SFI will covenant and agree to keep certain of its assets specified therein ("Collateral") free and clear of all liens and encumbrances, except certain permitted encumbrances, and will further covenant and agree, but only upon receipt of 60 days' prior written notice from the Bank, to grant to

the Bank, to the extent permitted by applicable laws, a first priority, perfected security interest (or other analogous security device) in the Collateral, subject to prior permitted encumbrances, to secure the performance by SFI of its obligations to the Bank under the Credit Agreement and the Note.

In addition, and as an inducement to the Bank to enter into these financing arrangements with SFI, the Operating Companies propose to join with SFI as parties to the Credit Agreement and to covenant and agree with the Bank, that they will take any and all action as may be necessary to keep SFI in a sound financial condition and to place SFI in a position to discharge, and to cause SFI to discharge, its obligations to the Bank pursuant to the Credit Agreement and the Note. Under the Credit Agreement, SFI will pay to the Bank a commitment fee computed at the rate of $\frac{3}{4}$ of 1% per annum on the average daily unused portion of the Commitment.

The proposal and any 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 December 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants 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 proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[PR Doc. 84-31127 Filed 11-27-84; 8:45 am]

BILLING CODE 9010-01-M

[Release No. 14245; 812-5817]

Toronto-Dominion Holdings (U.S.A.), Inc.; Application for Order Exempting Applicant

November 21, 1984.

Notice is hereby given that Toronto-Dominion Holdings (U.S.A.), Inc. ("Applicant"), c/o Joseph S. Stout, Jr., Esquire, Winthrop, Stimson, Putnam & Roberts, 40 Wall Street, New York, New

York 10005, a wholly-owned subsidiary of The Toronto-Dominion Bank (the "Bank") filed an application on April 9, 1984, and an amendment thereto on October 30, 1984, for a Commission order, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), conditionally 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.

Applicant states that its only outstanding securities are common shares owned by the Bank. Applicant states that, subsequent to April 30, 1982, the Bank transferred to Applicant its interest in certain of its United States subsidiaries, a minority interest in a small business investment company and certain real estate. Applicant states further that the small business investment company has been liquidated and Applicant has received liquidating distributions consisting of cash and securities of four companies which Applicant has disposed of for cash.

Applicant has five subsidiaries previously owned by the Bank, all of which are engaged in activities permitted by the Bank Holding Company Act of 1956 (the "Bank Holding Company Act") to which the Bank is subject. The five subsidiaries are: (1) Toronto Dominion Investments, Inc. ("Investments"), engaged in investing in securities, which securities do not include more than 5 percent of the outstanding voting shares of any company; (2) The Toronto-Dominion Bank Trust Company (the "Trust Company"), engaged in trust company activities of a fiduciary, agency or custodian nature, excluding the making of loans and investments and the acceptance of deposits except as permitted under the Bank Holding Company Act; (3) Toronto-Dominion (Colorado), Inc. ("Colorado"), engaged in making or acquiring loans and other extensions of credit; (4) Toronto-Dominion (Illinois) Inc. ("Illinois"), engaged in making or acquiring loans and other extensions of credit; and (5) Toronto Dominion (New England), Inc. ("New England"), engaged in soliciting and other servicing activities for the Bank and its affiliates.

Applicant states that the Trust Company is a "bank" as defined in the Act and that New England neither holds nor invests, nor proposes to hold or invest, in securities. Applicant states further that Investments and Colorado are not "investment companies" by

virtue of Section 3(c)(1) of the Act. Applicant states that it may form additional subsidiaries which will be banking subsidiaries. Applicant represents that its subsidiaries and itself will not constitute more than 10% of the Bank's assets.

Applicant wishes to provide funds received from the issuance and sale of commercial paper and other debt securities to the Bank and its affiliates, including subsidiaries of Applicant but excluding Investments, and any small business investment company (as defined in Section 662 of the Small Business Investment Act of 1958) (an "SBIC") in which the Bank has an equity interest, and any other affiliate of the Bank which is not a banking subsidiary and which is engaged primarily in investing in securities other than securities received in commercial lending transactions, trust company activities and other activities closely related to banking. Accordingly, substantially all of Applicant's assets will consist of the capital stock of, and amounts lent to or deposited with, the Bank and certain of its affiliates.

Applicant states that it is subject to substantial supervision and may only engage in servicing and other bank related activities expressly permitted to subsidiaries of bank holding companies under the Bank Holding Company Act. Applicant presently engages in servicing activities for the Bank and its affiliates. Applicant's activities are also circumscribed because of its relationship to the Bank which itself is subject to extensive regulation.

According to the application, on March 31, 1981, the Commission issued an order (Investment Company Act Release No. 11711), pursuant to Section 6(c) of the Act, exempting the Bank from all provisions of the Act to permit the Bank's issuance and sale of its commercial paper and other debt securities in the United States. On March 19, 1982, the Commission issued an order (Investment Company Act Release No. 12329), pursuant to Section 6(c) of the Act, exempting a domestic finance subsidiary of the Bank (the "Finance Subsidiary") from all provisions of the Act to permit issuance and sale of its commercial paper and other debt securities in the United States. Applicant states that the Finance Subsidiary has not issued, and so long as certain tax legislation continues in effect, it is not expected that the Finance Subsidiary will issue any securities other than those held by its parent.

Applicant proposes to issue and sell in the United States unsecured commercial paper promissory notes (the "Notes") in bearer form and

denominated in United States dollars, which Notes will be unconditionally guaranteed as to principal, interest and premium, if any, by the Bank. Applicant does not expect that in the first year it would sell Notes in the United States which, together with comparable notes sold by the Bank and the Finance Subsidiary, would exceed an aggregate of \$750,000,000 at any time outstanding, although this amount may be exceeded in future years.

Applicant contemplates that it will offer and sell the Notes with such terms and in such manner as to qualify the Notes for an exemption from registration, pursuant to Section 3(a)(3) of the Securities Act of 1933 (the "1933 Act"). Applicant proposes to issue Notes of prime quality, eligible for discounting by Federal Reserve Banks, in minimum denominations of \$100,000 and with a maturity of 270 days or less, exclusive of days of grace, and without provision for extension, renewal or automatic "rollover".

Applicant represents that, prior to issuance of the Notes or other debt securities (collectively, "Debt Securities") in the United States, such Debt Securities shall have received one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and United States counsel shall have certified, prior to such issuance, that the rating has been received respecting the securities then to be issued; provided, however, that no rating need be obtained respecting any issue, if, in the opinion of Applicant's counsel (counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in Rule 502 under the 1933 Act and relevant "no-action" letters made public by the Commission), an exemption from registration is available under the 1933 Act, whether under Section 4(2) of the 1933 Act or Regulation D thereunder or otherwise.

Applicant represents that the notes will not be advertised or otherwise offered for sale to the general public, other than an announcement of the establishment of the commercial paper facility as a matter of record, but instead will be offered and sold to institutional and other sophisticated investors, including individuals who normally purchase commercial paper notes of this type. The Notes will generally be sold through major United States commercial paper dealers, although Applicant may also directly sell the Notes.

Applicant further represents that it may offer and sell, from time to time, Debt Securities other than the Notes, which will be unconditionally

guaranteed as to principal, interest and premium, if any, by the Bank. Such securities will be offered and sold to qualified investors in: (1) Private placements under an exemption from registration under the 1933 Act, based on the availability of such exemption in the opinion of United States counsel; (2) offerings in connection with which Applicant has received a letter from the Commission's staff stating that it would not recommend enforcement action to the Commission under the specified circumstances; or (3) registered public offerings.

Applicant represents that all Debt Securities will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of Applicant. Applicant represents further that the Bank's guarantees of the Notes and other Debt Securities will be the Bank's direct liabilities and will under Canadian law rank *pari passu* among themselves and equally with all deposit liabilities of the Bank and with all other unsecured, unsubordinated indebtedness of the Bank with the exception of any amounts (other than indebtedness evidenced by the Bank's debentures which will be subordinate to the guarantees) due to the Government of Canada or any province thereof, in trust or otherwise, which amounts in the case of an insolvency of the Bank shall be a first and second charge, respectively, on the Bank's assets. In addition, the Bank's guarantees will rank prior to any of its subordinated indebtedness, including all issues of debentures, and to claims of holders of the Bank's equity securities.

Applicant undertakes to ensure that the commercial paper dealers in the United States through which it sells the Debt Securities will, and if Applicant or any affiliates directly offer such securities for sale, it or such affiliate will, provide to each offeree, prior to sale, a memorandum which describes the Bank's and Applicant's business and contains their most recently published audited fiscal year-end balance sheets and income statements, together with such financial information as is publicly available for any interim period. The memorandum will: (1) Describe any material differences between the relevant Canadian accounting principles and generally accepted accounting principles applicable to United States banks, (2) be at least as comprehensive as those customarily used in similar offerings of debt securities in the United States, and (3) be updated periodically to reflect material changes in Applicant's or the Bank's financial

status. Applicant consents to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon its compliance with the foregoing undertakings regarding disclosure documents.

Applicant represents that it will not issue or sell Debt Securities (other than short-term paper) until it has received (1) an opinion of its United States counsel to the effect that, under the circumstances of the proposed offering, Investments, Colorado, Illinois and any other comparable subsidiary would continue to be exempt from registration under the Act, or (2) a Commission order, pursuant to Section 6(c) of the Act, to the effect that none of such subsidiaries is an "investment company" as defined in the Act. Applicant is not requesting that the Commission review or approve the opinion of counsel regarding the availability of any such exemption.

As a condition to the requested order Applicant will not issue any equity securities to any person other than the Bank and its wholly-owned subsidiaries; and no proceeds of the sale of any Debt Securities will be lent to or deposited with Investments, any SBIC in which the Bank has an equity interest, or any other affiliate of the Bank which is not a banking subsidiary and which is engaged primarily in investing in securities other than securities received in commercial lending transactions, trust company activities and other activities closely related to banking.

Applicant represents that it will engage, either directly or indirectly, only in such activities as permitted from time to time by the Bank Holding Company Act. Applicant will not form additional subsidiaries unless they engage in activities permitted by the Bank Holding Company Act and unless they either (a) are not investment companies as defined in the Act, without giving effect to Section 3(c)(1) thereof, or (b) engage in extending credit.

Applicant will appoint a bank, trust company or a corporation providing corporate services for lawyers in the United States as its authorized issuing and paying agent with respect to the Debt Securities. Applicant will appoint such company or its United States counsel as its agent to accept service of process in any action based on the Debt Securities and instituted in any State or Federal court by the holder of any of the Debt Securities. Applicant will expressly submit to the jurisdiction of any State or Federal court in the City and State of New York in respect of any such action, except to the extent that it

contests the manner of service on its agent. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Debt Securities have been paid.

Applicant will also be subject to suit in connection with the Debt Securities in any court in the United States which would have jurisdiction because of the manner of the offering of the Debt Securities or otherwise. Neither the issuing or paying agent, nor the agent for service of process, will be a trustee for the holders of Debt Securities or have any responsibilities or duties to act for such holders as would a trustee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 17, 1984, 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 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,
Acting Secretary.

[FR Doc. 84-31126 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23492; 70-7010]

Transok, Inc.; Proposal To Establish a Subsidiary Gathering Company

November 21, 1984.

Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma, 74101, a natural gas transmission subsidiary of Central and South West Corporation ("CSW"), a registered holding company, has proposed a transaction subject to Sections 6, 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935 and Rule 45 thereunder.

Transok proposes to form a wholly owned subsidiary corporation, Transok Gathering Company ("Gathering") to construct and operate natural gas

gathering and compressor systems. The purpose of establishing this subsidiary is to ensure that Transok's status as an intrastate transporter of natural gas will not be jeopardized by the activities of Gathering.

Gathering will provide various natural gas gathering and compressor services to producers, transporters and certain end users of natural gas. Performance of such services will require Gathering to design, construct, operate and maintain natural gas gathering and compressor facilities. Transok expects that Gathering will own such facilities, which will be used in providing the services offered by Gathering. However, in some cases, Gathering may provide various services using facilities of others. Gathering may tap its pipeline into various intra- and inter-state pipelines.

Transok proposes to incorporate Gathering under the laws of the State of Oklahoma with an authorized capital of 1000 shares of common stock without par value. Transok will subscribe to all of Gathering's common stock at a subscription price of \$1.00 per share. Transok estimates that Gathering will expend \$17 million through 1988. Transok therefore requests authority to contribute up to \$17 million when needed no later than 1988 in either equity or debt to Gathering to support its activities. Transok proposes to provide such contribution out of its operating revenues or borrowings from the CSW money pool.

Transok estimates that the fees to be paid or incurred by it in connection with this transaction are \$5,000.

The proposal and any 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 December 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the 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 proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31136 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23489; 70-7053]

UNITIL Corp.; Proposed Acquisition of Electric Utility Securities

November 20, 1984.

UNITIL Corporation ("UNITIL"), 436 South River Road, R.F.D. 5, Bedford, New Hampshire, 03102, a New Hampshire Corporation, has proposed to this Commission, a transaction subject to Sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

UNITIL is a newly-organized corporation formed for the purpose of becoming a holding company and acquiring the common stock of Concord Electric Company ("Concord") and Exeter & Hampton Electric Company ("Exeter"), both of which are New Hampshire corporations and electric utility companies as defined in Section 2(a)(3) of the Act. UNITIL, Concord and Exeter have entered into an Agreement and Plan of Exchange ("Plan") which provides for the restructuring of Concord and Exeter through two simultaneous statutory share exchanges. Under the Plan, on the effective date of the exchanges: (a) Each issued and outstanding share of Concord common stock, no par value, the holder of which does not perfect dissenters' rights in accordance with state law, will be exchanged, without any action on the part of the holder thereof, for 2 shares of UNITIL's common stock, now par value; and (b) each issued and outstanding share of Exeter common stock, the holder of which does not perfect dissenters' rights in accordance with state law, will be exchanged, without any action on the part of the holder thereof, for 2.15 shares of UNITIL common stock. As a result UNITIL will become the sole common shareholder of Concord and Exeter. The rights of holders of Concord and Exeter preferred stock will be unaffected by the exchanges. Both Concord's voting shareholders and Exeter's common shareholders have approved the Plan.

Concord is an electric utility company engaged in the purchase, transmission, distribution, and sale of electricity at retail in a service area of approximately 240 square miles and to approximately 20,300 customers in Concord and twelve

surrounding towns, all in New Hampshire. At June 30, 1984, Concord reported total assets of \$18,631,650, net utility plant of \$15,217,015 and total common stock equity of \$5,727,558. For the twelve months ended June 30, 1984, Concord reported operating revenues of \$26,330,150 and net income applicable to common stock of \$694,316.

Exeter is an electric utility engaged in the purchase, transmission, distribution and sale of electricity at retail in a service area of approximately 167 square miles and to approximately 28,000 customers in Exeter and in all or part of fifteen surrounding towns, all in New Hampshire. At June 30, 1984, Concord reported total assets of \$18,442,379, net utility plant of \$15,676,144 and total common stock equity of \$6,581,822. For the twelve months ended June 30, 1984, Exeter reported operating revenues of \$28,332,227 and net income applicable to common stock of \$1,076,113.

UNITIL has organized two subsidiaries. UNITIL Service Corp. ("UNITIL Service"), a New Hampshire Corporation, was formed to supply a variety of administrative and management services to Concord and Exeter, including financial management, ratemaking, auditing, employee benefit planning, insurance procurement and purchasing services. Because Concord and Exeter currently share the cost of certain professional services with Fitchburg Gas and Electric Company ("Fitchburg"), a Massachusetts utility, UNITIL anticipates that UNITIL Service will also supply similar services under contract to Fitchburg. The second subsidiary organized, UNITIL Power Corp. ("UNITIL Power"), a New Hampshire Corporation, is to act as a wholesale supplier of electricity to Concord and Exeter.

It is stated that Concord and Exeter are each relatively small but are similar in numbers of customers and in electric load, and require similar management direction. Currently they share some management and professional employees and the proposed transaction is intended to formalize this relationship, insuring that the benefits of shared management and professional employees are continued and to promote managerial and operating efficiency through greater management specialization and consolidation of operating functions. It is also believed that the holding company structure will enable the companies to obtain economical and reliable power supply because rather than purchasing their entire energy requirements from a single supplier, as is currently the case, their

combined load requirements should permit the negotiations of supply contracts with several suppliers, thus reducing the adverse cost and supply risks inherent in depending upon one supplier. In addition, the creation of a new enterprise twice the size of each of the companies individually, with corresponding larger revenues, net income, cash flow, capitalization, and equity, should result in greater financial strength which should improve the companies' ability to market securities upon favorable terms. Finally, the UNITIL system, it is stated, will provide Concord and Exeter with a corporate structure that promotes economies of scale and consolidation without changing the character of the individual companies.

UNITIL is not now a registered holding company, and does not intend to register as such if the acquisition is approved and the Plan consummated. UNITIL believes that it will be entitled to an exemption under Section 3(a)(1) of the Act because it and its public utility subsidiaries will be "predominantly intrastate in character and carry on their business substantially in a single state in which such holding company and every such subsidiary company thereof are organized." UNITIL intends to claim such exemption by appropriate filing pursuant to Rule 2.

The proposal and any 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 December 14, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address 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 proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31133 Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23494; 70-7038]

Yankee Atomic Electric Co.; Proposed Issuance and Sale of Short-Term Notes to Banks and/or Commercial Paper to Dealers; Exception From Competitive Bidding

November 21, 1984.

Yankee Atomic Electric Company ("Yankee Atomic"), 1671 Worcester Road, Framingham, Massachusetts, 01701, an electric utility subsidiary of New England electric System and Northeast Utilities, registered holding companies, has filed a proposal with this Commission pursuant to Sections 6, 7, 9 and 10 of the Public Utility Holding Company Act of 1935 and Rules 42(b)(2), 50(a)(2), and 50(a)(5) promulgated thereunder.

Yankee Atomic proposes to issue and sell up to a maximum aggregate outstanding principal amount of \$15 million of short-term notes to banks and/or commercial paper to dealers through December 31, 1986. The bank notes are expected to be sold to the Bank of Nova Scotia ("Nova Scotia") and/or the Bank of Nova Scotia International (United Kingdom), Ltd. ("International"). The commercial paper will be sold to Merrill Lynch Money Market Incorporated ("Merrill"), and/or Lehman Commercial Paper Incorporated ("Lehman") and/or First Boston Corporation ("Boston"). The proceeds will be used for Yankee Atomic's 1985-1986 expenditures including approximately \$27,000,000 for nuclear fuel and \$11,300,000 for plant improvements and to repay note indebtedness.

Voluntary prepayment of bank borrowings, in whole or in part, is not subject to premium or penalty. However, if Yankee Atomic makes voluntary prepayment on advances by International on other than a LIBO Rate rollover date, Yankee Atomic is required to compensate this bank for any loss or expense. Advances made by Nova Scotia shall bear interest at $\frac{1}{2}$ of 1% above its base rate per annum. Borrowings from International shall bear interest $\frac{3}{4}$ of 1% above its 1, 2, 3, 6, or 9-month LIBO Rate as selected from time to time by Yankee Atomic. Yankee Atomic is to pay a monthly standby fee of $\frac{3}{4}$ of 1% per annum on the average daily unborrowed portion of the line of credit. Assuming borrowings at the maximum amount of the lines of credit, based on the current base rate of 12.25% and using the 6-month LIBO Rate of 11.25%, the effective interest cost to Yankee Atomic under borrowings with Nova Scotia and International would be 12.75% and 12%, respectively. Assuming borrowings at

the maximum amount of the line of credit, using the 9-month LIBO Rate of 11.5%, the effective interest cost to Yankee Atomic under borrowings with International would be 12.25%.

The commercial paper will be in the form of unsecured promissory notes having maturities of up to 270 days. It will not be prepayable prior to maturity. Merrill and/or Boston and/or Lehman will initially reoffer the commercial paper at a discount rate, not more than $\frac{1}{8}$ of 1% per annum less than the prevailing discount rate to Yankee Atomic. Commercial paper notes having a maturity of more than 90 days will not be issued if the effective interest cost exceeds that at which Yankee Atomic could borrow from Nova Scotia or International.

The proposal and any 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 December 17, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address 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 proposal, as filed or as amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31131, Filed 11-27-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21509; File No. SR-MCC-84-9 and SR-MSTC-84-8]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Clearing Corp. and Midwest Securities Trust Co.

November 21, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 30, 1984, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC") (collectively, "MCC/MSTC") filed with the Securities and Exchange Commission the proposed

rule changes as described herein. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

The proposed rule changes would require each broker-dealer applicant for MCC/MSTC membership and each broker-dealer participant¹ to provide to MCC/MSTC a completed questionnaire² relating to the applicant's or participant's financial and operational status.³ Under the proposal, participants would be required to file the questionnaire with MCC/MSTC on an annual basis.

MCC/MSTC believes that the information provided on the questionnaire will enable MCC/MSTC to monitor more effectively its participants' financial and operational status. Specifically, in light of the rapidly changing financial marketplace, MCC/MSTC must be aware of participants' financial activities that are outside of MCC/MSTC, but which could increase potential financial risks to MCC/MSTC and its participant community. For example, a broker-dealer may be substantially involved in risky transactions that are processed outside of MCC/MSTC or could significantly change its business mix without MCC/MSTC's knowledge. In either case, that broker-dealer may experience financial difficulty, but MCC/MSTC might not learn of the difficulty until MCC/MSTC-related

¹ The proposals apply only to broker-dealer participants. MCC/MSTC plan to develop a similar questionnaire for financial institution participants, e.g. banks.

² Pursuant to MCC Article VIII, Rule 1, Section 3(vi) and MSTC Article V, Rule 1, Section 3(2), MCC/MSTC may require participants to furnish information relating to their business or transactions. Under these rules, MCC/MSTC currently receives FOCUS reports from broker-dealer participants.

³ The questionnaire solicits information relating to: (1) "Background Information," e.g., form of organization; date business started; names of officers, counsel and outside accountants; numbers of registered representatives and operational personnel; and banking, service bureau, and clearing arrangements; (2) "Type of Business Conducted," e.g., whether the firm is (a) a stock lender or borrower; (b) a municipal securities broker or dealer; (c) a market maker or underwriter; (d) a commodity futures or commodity options broker; or (e) other designated type of business; (3) Business mix changes, e.g., changing from primarily a government securities to an options business; (4) account structure; (5) market making activities; (6) underwriting activities; (7) "Bonding," i.e. its fidelity bond coverage; and (8) "Pending Investigations and/or Litigations," i.e. whether the firm is subject to any pending regulatory action or civil or criminal litigation. The proposed questionnaire is almost identical to National Securities Clearing Corporation's ("NSCC") questionnaire. The Commission approved NSCC's questionnaire in Securities Exchange Act Release No. 21146 (July 16, 1984), 49 FR 29500 (July 20, 1984).

activity is adversely affected. MCC/MSTC believes that the proposals would allow it to make more fully informed decisions regarding membership admission and would help MCC/MSTC learn in a more timely manner of changes participants' in business mix and financial activities outside MCC/MSTC that could expose MCC/MSTC and its membership to greater financial risk.

To assist the Commission in determining whether to approve the proposed rule changes or institute proceedings to determine whether the proposed rule changes should be disapproved, comments may be submitted within 21 days after the date of publication in the *Federal Register*. Six copies of comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File Nos. SR-MCC-84-9 and SR-MSTC-84-8.

Copies of all documents relating to the proposals, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and MCC/MSTC's principal offices.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31130 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21511; File No. SR-PSDTC-84-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change of Pacific Securities Depository Trust Co.

November 21, 1984

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 25, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission the rule change described below. The Commission is publicizing this notice to solicit comments on the rule change.

The proposed rule change would amend PSDTC's fee schedule by authorizing a charge for deposits for safekeeping of bearer securities which are convertible to registered form. The amount of the proposed new fee would be \$5.00 per deposit plus \$.04 per \$1,000

of face value in excess of \$50,000. The proposed new fee would recover for PSDTC the processing costs associated with conversion of securities from bearer to registered form.

PSDTC believes that the proposed new fee is consistent with Section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among PSDTC's participants.

The rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the *Federal Register*. That notice is expected to be published during the week of November 19, 1984. Please refer to File No. SR-PSDTC-84-14, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. § 552, is available at the Commission's Public Reference Room and at the principal office of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31125 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21504; File No. SR-PSE-84-21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Pacific Stock Exchange, Inc.

November 20, 1984.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 5, 1984, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE proposes to amend Rule VII, Section 7, of the Rules of its Board of Governors to provide that a member

organization must file with the Exchange answers to financial questionnaires, reports of income and expenses, and any additional financial information prescribed by the Exchange unless that member organization is a member of and has as its designated examining authority another national securities exchange or registered national securities association.

In addition, under the proposed rule change each member organization must file with the Exchange a Report of Financial Condition on SEC Form X-17A-5, as required by Rule 17a-10 under the Act. Any member who fails to do so in a timely manner shall be subject to late filing charges of \$100 if late by 1 to 30 days, \$200 if late by 31 to 60 days, and \$400 if late by 61 to 90 days. Repeated or aggravated failure to file the report for more than 90 days will be referred to the Ethics and Business Conduct Committee for appropriate disciplinary action.

According to the PSE since the problems it has experienced in obtaining FOCUS reports from members have increased over the last several years, the Exchange believes it necessary to provide additional incentives to those few PSE members who fail to make timely filings. The PSE views the proposed rule change as consistent with Section 6(b)(6) of the Act in that it provides for the appropriate discipline of Exchange members for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-84-21.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31132 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21505; SR-Amex-84-22]

Self-Regulatory Organizations; The American Stock Exchange, Inc.; Order Approving Proposed Rule Change

November 20, 1984.

The American Stock Exchange, Inc. ("Amex") 86 Trinity place, New York, New York 10006, submitted on August 13, 1984, 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 amend Rule 481 ("Advertising, Market Letters, Sales Literature, Research Reports and Writing Activities") and to delete commentary paragraphs 9495 ("Advertising, Market Letters, Sales Literature, Research Reports, Radio, Television and Market Letters") and 9496 ("Outside Writing, Speaking, Teaching Activities") to update and consolidate Exchange requirements and standards governing member organizations' communications with the public.¹ The amendments to Rule 481, and deletions of commentary paragraphs consolidate all Exchange requirements for member organizations' communications with the public into one rule (Rule 472), and, provide for the elimination of certain provisions, including, among other things (1) the replacement of specific definitions of such terms as "advertisements," "market letters," "research reports," and "sales literature," with the general term "communications"; (2) a provision permitting the same supervisory analyst to both prepare and approve research reports, in lieu of the current requirement that, if a supervisory

analyst has prepared a report, a member or allied member must also approve such reports; and (3) a provision that, where a supervisory analyst does not have technical expertise in a particular product area, the basic analysis contained in such report may be co-approved by a product specialist designated by the organization.

In addition, the Amex is also deleting Rule 425 ("Long Sales") which specifies the conditions under which a customer is deemed to be "long" and eligible to effect a long sale of a security.² The Exchange has stated in its filing that the Amex rule was adopted in 1968 to specifically address the problem of failures to deliver resulting from customer delays in making prompt deposits of securities sold. With the establishment of securities depositories and automated clearance and settlement procedures as well as the adoption of SEC Rule 15c3-3(m), the Amex believes that a specific Exchange rule addressing this problem is no longer necessary.³

The Exchange is also amending Rule 323 to eliminate the requirement that updated copies of the Amex Guide be kept in all member and member organizations' branch offices. In lieu of the current rule, the Exchange has amended Rule 323 to require that each member and member organization keep and maintain only one current copy of the Guide.

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. 21317 September 13, 1984) and by publication in the Federal Register (49 FR 36719, September 19, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31138 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange

November 21, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

First Federal Savings and Loan Association of Arizona
Common Stock, \$.01 Par Value, File No. 7-8155
Avial Inc.
Common Stock, \$.01 Par Value, File No. 7-8156
Ultimate Corp.
Common Stock, No Par Value, File No. 7-8157

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 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.

¹ Rule 481(a) will provide that any communication which is generally distributed or made available by a member or member organization to customers or the public shall be approved in advance by a member, allied member, supervisory analyst or person designated under the provisions of Rule 320(c)(1). Rule 481(b) will provide that research reports shall be prepared or approved by a supervisory analyst acceptable to the Exchange under the provisions of Rule 343.

² Under the rule, if the customer does not comply with the specified conditions and fails to deliver the stock sold to the selling member organization within a "reasonable" period of time, the firm is required to close the transaction by purchasing securities of like kind and quantity.

³ The Amex has noted in its filing that the amendments to Rule 481, and commentary paragraphs 9495 and 9496 are based on similar amendments to comparable New York Stock Exchange Rules 472, 474A, 474B, which was approved by the Commission Exchange Act Release No. 56876 (December 15, 1983); 48 FR 43752 (December 26, 1983). The amendments to Rule 425 ("Long Sales") are based on similar amendments to comparable New York Stock Exchange Rule 433 which was approved by the Commission on September 8, 1983. See Securities Exchange Act Release No. 20160 (September 8, 1983); 48 FR 41282 (September 14, 1983).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31129 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21506; SR-MSE-84-6]

**Self-Regulatory Organizations;
Midwest Stock Exchange, Inc., Order
Approving Proposed Rule Change**

November 20, 1984.

The Midwest Stock Exchange, Inc. ("MSE") 120 South LaSalle Street, Chicago, IL 60603, submitted on August 27, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSE Article VIII, Rule 24 ("Uniform Code of Arbitration") by enabling parties under section 27 of the Rule to amend their pleadings as of right after having filed and before an arbitration panel is appointed, and, following appointment of a panel, to file new or different pleadings with the panel's consent.¹ In addition, the MSE proposes to encourage the filing of more specific answers under section 13 by (1) requiring the respondent to plead the relevant facts underlying his defenses, and (2) expressly granting arbitrators discretion to bar presentation of defenses and facts not pleaded, upon objection by an adversary party. Further, the MSE proposes to amend section 10 to allow unlimited challenges for cause to arbitration panel appointees, while extending parties' rights of peremptory challenges to proposed appointees to all hearings. In addition, the MSE proposes to amend section 4 to specify that applicable time limitations will not apply to a dispute referred to a court of competent jurisdiction, and to provide that such time limitations will be tolled by the claimant (rather than all parties) filing a duly executed Submission Agreement.

The MSE also proposes to increase from \$2,500 to \$5,000 the maximum amount in dispute which would qualify for simplified arbitration procedures under section 2 of Rule 24. In addition, the Exchange proposes to modify two of its section 31 fee schedules by increasing both the deposit required upon filing a claim and the forum fee, allocated on a par session basis, both of

which are on a sliding scale depending on the amount in controversy. In addition, under this section, arbitrators would be permitted to assess forum fees and costs for matters settled or withdrawn prior to the commencement of the first session.

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. 21303, September 10, 1984) and by publication in the *Federal Register* (49 FR 36585, September 18, 1984). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act and the rules and the regulations thereunder.

It is therefore, ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31137 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing; Pacific Stock Exchange**

November 21, 1984

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Humana, Inc.

Common Stock, \$1.6 2/3 Par Value, File No. 7-8148

Interfirst Corp.

Common Stock, \$5.00 Par Value, File No. 7-8149

Kaneb Services, Inc.

Common Stock, No Par Value, File No. 7-8150

Pulte Home Corp.

Common Stock, \$1.00 Par Value, File No. 7-8151

Paradyne Corp.

Common Stock, \$10 Par Value, File No. 7-8152

Great Atlantic & Pacific Tea Co.

Common Stock, \$1.00 Par Value, File No. 7-8153

Freeport MacMoran

Common Stock, \$1.00 Par Value, File No. 7-8154

This security is listed and registered on one or more other national securities exchanges and is reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 13, 1984, written data, views and arguments concerning the above-referenced application. 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 application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is 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.

Shirley E. Hollis,
Acting Secretary

[FR Doc. 84-31128 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21513; SR-Phlx-84-19]

**Self-Regulatory Organizations;
Philadelphia Stock Exchange, Inc.;
Order Approving Proposed Rule
Change**

November 21, 1984.

The Philadelphia Stock Exchange, Inc. ("Phlx"), 1900 Market Street, Philadelphia, PA, 19103, submitted on September 27, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to trade options on the Value Line Average Stock Index ("VLA").

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. 21362, October 10, 1984) and by publication in the *Federal Register* (49 FR 40987, October 18, 1984). No comments were received with respect to the proposed rule change.

The VLA is an unweighted index composed of 1,693 stocks. Approximately 87% of the stocks in the index are listed on the New York Stock Exchange, Inc. of the American Stock

¹ On October 30, 1984, the MSE submitted Amendment No. 1 which indicated that the proposed rule change was approved by the MSE Executive Committee of the Board of Governors on October 25, 1984.

Exchange, Inc.; one of the stocks in the index is listed on the Phlx; approximately 13% of the stocks in the index are over-the-counter, national market system securities; and three of the stocks in the index are listed on the Toronto Stock Exchange.¹ The VLA is based on the geometric average of relative price changes of the stocks in the index. The value of the VLA is determined by dividing the current price of each of the issues comprising the index by the price of the issue at the time of the preceding value computation, and then multiplying that figure by the VLA "base value" of 100.² The resulting "indexed" price changes are geometrically averaged for all issues in the index.³ The geometric average of changes in indexed prices is then multiplied by the value of the index at the preceding computation to arrive at the latest value.⁴

The Phlx proposed to apply its existing broad-based (or "market") index options rules to trading in options on the VLA. Phlx also intends to update index values every minute during the trading day,⁵ and to disseminate index values by means of the Consolidated Last Sale Reporting System and the facilities of the Options Price Reporting Authority. In addition, daily closing index values will be published in the *Wall Street Journal* and other financial publications.

Because the VLA represents the geometric average of percentage changes in the prices of the stocks in the index, rather than the arithmetic average of either the prices of the stocks themselves or of the market value of these stocks, no one stock or group of stocks will exert a dominating influence on the total index value by virtue simply of price per share or total capitalization.

¹ The presence of unlisted stocks in this index does not offend section 12(a) of the Act. These stocks constitute only 13% of the total number of the stocks in the index, and no one or small group of these stocks exerts a significant influence on the overall index value. See Securities Exchange Act Release No. 20423, November 29, 1983; 49 FR 55060.

² This "base value" is the value of the index as of an arbitrarily picked date (June 30, 1961), and its mathematical function as described above is literally to "index" the daily percentage change in prices of the stocks in the index in order to facilitate comparisons of the value of the index through time.

³ A geometric average is defined as the n th root of the product of " n " items. In the case of the Value Line Average Stock Index, the geometric average is the 1693rd root of the product of the 1693 indexed price changes of the stocks in the index.

⁴ The Phlx has obtained the rights to use the VLA for purposes of options trading from Value Line and the Kansas City Board of Trade ("KCBT"). The KCBT is the designated contract market for futures on the VLA.

⁵ The actual computation of index values will be performed by an independent entity engaged by the Phlx for this purpose.

Rather, the stocks that will have the greatest influence on the overall index value will be those that exhibit the greatest percentage change over the periods for which the index value is calculated. Because the index contains so many issues, it is unlikely that any one stock or small group of stocks will exhibit such great percentage changes in price over the periods of index calculation as to dominate the total index value. In addition, the index contains stocks representing a diversity of business sectors.⁶ For these reasons, the Commission finds that the Phlx's proposed designation of the index as broad-based is appropriate.⁷

The Commission also finds that the composition and calculation of the VLA raise no regulatory issues that the Commission has not discussed and addressed in its previous orders approving broad-based index options. The VLA differs from the indices on which the Commission previously has approved options trading chiefly in that the VLA uses geometric rather than arithmetic averaging. Geometric averaging is simply a different mathematical method of averaging the relative price changes of the stocks in the index, and is employed in an attempt to obtain a different picture of the increases and decreases in these price changes than is obtained by use of an arithmetic average.⁸ The use of geometric averaging does not by itself raise regulatory or surveillance issues.

The Commission notes that while it previously has not approved a broad-based index option for the Phlx, it has approved the Phlx rules that will govern trading in broad-based index options.⁹ As a broad-based index option, the VLA will be subject to these approved rules, which are in all material respects identical to the rules that govern the trading of broad-based index options on other exchanges. In addition, the Commission finds that the Phlx has submitted to the Commission an adequate plan for the surveillance of options on the VLA.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the

Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31124 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21512; SR-Phlx-84-21]

Philadelphia Stock Exchange, Inc., Order Approving Proposed Rule Change

November 21, 1984.

The Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA, 19103, submitted on September 31, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to permit the listing of series of foreign currency options that expire in twelve months. Phlx currently employs quarterly expiration cycles for foreign currency options, meaning that series of foreign currency options expire in three month intervals. Because the maximum number of expiration months allowed at any one time is three, the maximum time to expiration of a foreign currency option series is nine months. Under the proposed rule change, the Phlx would retain quarterly expiration cycles for foreign currency options, but would increase from three to four the number of expiration months allowed to exist at any one time. The new fourth expiration month, being a part of the existing quarterly expiration cycle, would be twelve months away from expiration at the time of listing.

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. 21391, October 10, 1984) and by publication in the *Federal Register* (49 FR 40986, October 18, 1984). No comments were received with respect to the proposed rule filing.

In its filing, Phlx states that the lack of foreign currency options with twelve months to expiration places the Phlx at a competitive disadvantage to both the

⁶ The Phlx states that 1,502 of the stocks in the index are industrial, 177 utilities, and 14 are rail stocks.

⁷ For a more detailed discussion of the differences between broad and narrow-based indices, see Securities Exchange Act Release No. 21032, June 8, 1984, 49 FR 24964.

⁸ An index based on geometric averaging will increase more slowly and decrease more rapidly than an index based on the arithmetic mean. See J. Lorie and M. Hamilton, *The Stock Market: Theory and Evidence*, p. 58 (1973).

⁹ Securities Exchange Act Release No. 20437, December 2, 1983, 48 FR 55229.

foreign currency forward contract markets and the over-the-counter ("OTC") foreign currency options markets. The Phlx states that those seeking to hedge foreign currency positions desire a twelve month contract, and that its inability to offer a twelve month foreign currency options contract has acted and will continue to act as a disincentive to use of Phlx's foreign currency options by multinational corporations.

As a general matter, the Commission believes that the determination of expiration cycles and the number of expiration months for an option contract is a matter properly left to the business judgment of the exchange trading the contract. As the Commission previously has noted, however, proposals to introduce additional expiration months may raise regulatory concerns, principally the increased market fragmentation and decreased liquidity that might result from increasing the number of series outstanding due to the addition of the new expiration month(s).¹ Accordingly, a balance must be sought between ensuring that market participants are provided an array of expiration months and ensuring that the number of expiration months does not cause an excessive dispersion of interest and, as a consequence, excessive dilution of liquidity in open options series.²

The Phlx proposal, because it limits the total number of expiration months to four, will not result in a substantially increased potential for proliferation of foreign currency option series. Furthermore, the Phlx represents that demand exists for foreign currency options with twelve months to expiration, and that consequently trading in the new twelve month series should be active. Phlx has also represented that much of the trading in the new twelve month series should come from firms that are now using the foreign currency forward market or the OTC foreign currency options markets. Thus, the addition of this new expiration month, rather than reducing volume and liquidity in the existing three expiration months by drawing that volume away to the new twelve months series, may instead result in attracting trading interest that does not now exist at the Phlx.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above/mentioned proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31123 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 21515; SR-Phlx-84-20]

**Philadelphia Stock Exchange, Inc.;
Order Approving Proposed Rule
Change**

November 21, 1984.

The Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA, 19103, submitted on September 21, 1984, 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, concerning cabinet trading that would permit specialists, market makers and customers to enter opening orders, at a limit price of one dollar per contract, against closing cabinet bids or offers in cases where there is no matching closing cabinet bid or offer.

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. 21390, October 10, 1984) and by publication in the *Federal Register* (49 FR 40752, October 17, 1984). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,
Acting Secretary.

[FR Doc. 84-31139 Filed 11-27-84; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0332]

**Advent Industrial Capital Co.; Limited
Partnership; Issuance of a Small
Business Investment Company
License**

On August 21, 1984, a notice was published in the *Federal Register* (49 FR 33191) stating that an application has been filed by Advent Industrial Capital Company Limited Partnership, 45 Milk Street, Boston, Massachusetts 02109 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1984)) for a license as a small business investment company.

Interested parties were given until close of business September 20, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0332 on November 9, 1984, to Advent Industrial Capital Company Limited Partnership to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 20, 1984.

Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

[FR Doc. 84-31193 Filed 11-27-84; 8:45 am]
BILLING CODE 8025-01-M

[License No. 05/05-5198]

**The Wisconsin MESBIC, Inc.; Issuance
of a Small Business Investment
Company License**

On August 20, 1984, a notice was published in the *Federal Register* (49 FR 33075) stating that an application has been filed by The Wisconsin MESBIC, Inc., 622 Water Street, Suite 500, Milwaukee, Wisconsin, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing

¹ See Securities Exchange Act Release No. 20201 (September 20, 1983), 48 FR 43747 (approving an Amex proposal to have four consecutive expiration months for broad-based index options rather than three expiration months with three-month intervals).

² See Securities Exchange Act Release No. 17238 (October 22, 1980), 45 FR 71453.

small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business September 20, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-5198 on November 9, 1984, to The Wisconsin MESBIC, Inc., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 20, 1984.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 84-31194 Filed 11-27-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-084]

Changes to Inland Navigation Rules

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: On October 30, 1984 the President signed Pub. L. 98-557 which promulgated certain changes to Rule 14 and Rule 24(i) of the Inland Navigation Rules Act of 1980 (33 U.S.C. 2001 et seq.) The Coast Guard publishes the full text of the International and Inland Rules in "Navigation Rules, International-Inland" (COMDTINST M16872.2A) which will be revised at the next scheduled publication. To facilitate ready access to the revised rules in the interim, this notice sets forth the modified text of Rule 14 and Rule 24(i). Affected parties are urged to note the changes and update personal copies of the Navigation Rules booklet.

EFFECTIVE DATE: October 30, 1984.

FOR FURTHER INFORMATION CONTACT:
LCDR Charles Bell, Office of Navigation,
U.S. Coast Guard, (G-NSR-3) 2100
Second Street, SW, Washington DC,
20593. Telephone (202) 245-0108.

SUPPLEMENTARY INFORMATION: 1. Rule 14 (33 U.S.C. 2014) of the Inland Navigation Rules Act of 1980 (33 U.S.C. 2001 et seq.) has been revised to read as follows:

Section 2014. Head-on situation (Rule 14).

(a) Course alterations to starboard; port side passage.

Unless otherwise agreed, when two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.

(b) Existence of head-on situation.

Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line or both sidelights and by day she observes the corresponding aspect of the other vessel.

(c) Assumption that head-on situation exists in case of doubt.

When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.

(d) Notwithstanding paragraph (a) of this rule, a power-driven vessel operating on the Great Lakes, Western Rivers, or waters specified by the Secretary, and proceeding downbound with a following current shall have the right-of-way over an upbound vessel, shall propose the manner of passage, and shall initiate the maneuvering signals prescribed by Rule 34(a)(i), as appropriate.

2. Rule 24(i) [33 U.S.C. 2024(i)] of the Inland Navigation Rules Act of 1980 has been revised to read as follows:

(i) Western Rivers or other specified waters.

Notwithstanding paragraph (c), on the Western Rivers (except below the Huey P. Long Bridge on the Mississippi River) and on waters specified by the Secretary, a power-driven vessel when pushing ahead or towing alongside, except as paragraph (b) applies, shall exhibit:

- (i) sidelights; and
- (ii) two towing lights in a vertical line.

Dated: November 20, 1984.

H.H. Kothe,
Captain, U.S. Coast Guard, Acting Chief,
Office of Navigation.

[FR Doc. 84-31004 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Flight Standards Field Unit at Wilmington, DE; Closing

Notice is hereby given that on or about January 7, 1985, the Flight Standards Field Unit at Wilmington, Delaware, will be closed. Services to the general aviation public of Delaware, formerly provided by this office, will be provided by the Flight Standards

District Office in Philadelphia, Pennsylvania. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in New York, NY, on November 14, 1984.

Joseph M. Del Balzo,
Director, Eastern Region.

[FR Doc. 84-31098 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

Flight Standards Field Unit at North Philadelphia, PA; Closing

Notice is hereby given that on or about January 7, 1985, the Flight Standards Field Unit at North Philadelphia, Pennsylvania, will be closed. Services to the general aviation public of North Philadelphia, formerly provided by this office, will be provided by the Flight Standards District Office in Philadelphia, Pennsylvania. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in New York, NY on November 14, 1984.

Joseph M. Del Balzo,
Director, Eastern Region.

[FR Doc. 84-31097 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-84-23]

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: December 18, 1984.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 20, 1984.

John H. Cassady,
Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
21960	Florida Aircraft Leasing Corp.	14 CFR 91.31(a)	Extension of Exemption 3458A to allow petitioner to continue to operate certain DC-6 aircraft at a 5 percent increased zero fuel and landing weight in all-cargo operations under Part 125 of the FAR. To amend certain aircraft serial number listed in the Exemption.
24098	Alaska Helicopters	14 CFR 135.225(d) 121.652(a)	To amend Exemption 4109 which allows petitioner to operate BV-234 helicopters, with a passenger seating configuration of more than 30 seats and a payload capacity of more than 7,500 pounds, under Part 135, subject to certain conditions and limitations. It would allow petitioner to comply with § 135.225(d) instead of § 121.652(a).
24274	Republic Airlines	14 CFR 121.579(a)	To allow petitioner to engage the autopilot after takeoff on the MD-80 aircraft at an altitude lower than 500 feet. This would be consistent with the approved Airplane Flight Manual supplement which allows autopilot engagement at 200 feet.
24163	Helicopter Association International	14 CFR 135.167(a), (2)(vi)	To allow petitioner to operate extended overwater flights carrying a 2-day supply of food rations supplying at least 500 calories for each four persons instead of 1,000 calories per day for each person.
21145	Air Transport Assoc.	14 CFR 121.424	To allow petitioner's members to eliminate the requirement that at least one takeoff and one landing during training must be accomplished at night by pilots undergoing upgrading training from second in command (SIC) to pilot in command in the same airplane type and by SIC's who are transitioning to other airplane types as SIC's.
24285	Southern Natural Gas	14 CFR 21.181	To allow petitioner to operate Falcon 20C aircraft utilizing the provisions of a minimum equipment list.
24308	Skystar International Inc.	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane in noncompliance with the operating noise limits until "hush kits" are installed.
24282	Commonwealth of Pennsylvania	14 CFR 21.181	To allow petitioner to operate PA Piper Navajo and King Air 1390 aircraft utilizing the provisions of minimum equipment lists.
24283	American Flyers	14 CFR 141.65	To allow petitioner to develop and administer certain written tests for airmen certification.
24284	American Airlines	14 CFR 121.411(a)(6)	To allow petitioner to use previously qualified check airmen who do not presently hold Class III medical certificates in flight simulator training programs.
24144	Air Atlanta	14 CFR 63.37	To allow petitioner to substitute training in a simulator for the required 5 hours of flight training in the duties of a flight engineer.
24279	Ketchikan Air Service	14 CFR 135.203(a)(1)	To allow the following operators to conduct overwater flights below 500 feet above the surface: Alaska Island Air, Inc.; Ketchikan Air Service, Inc.; Revilla Flying Service, Inc.; Temco Helicopters, Inc.; Westflight Aviation, Inc.; Tye Airlines; Taquan Air, Inc.; Totem Air.
24294	Regent Air Corp.	14 CFR 121.163 & 121.291	To allow petitioner to begin service without conducting the required 50 hours of proving runs and full emergency evacuation demonstration.
24236	Hawaiian Airlines	14 CFR 91.303	To allow petitioner to operate one Stage 1 DC-8 airplane in noncompliance with the operating noise limits until it is hush-kitted.
24335	Stewart International Airport	14 CFR 91.303	To permit the continued operation of Stage 1 aircraft at Stewart International Airport.
24327	Sobelair	14 CFR 91.303	To allow petitioner to operate one round trip charter flight to various U.S. airports with a Boeing 707 that does not comply with the operating noise limits.
24333	Zas Airline of Egypt	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane to Stewart International Airport in New York in noncompliance with the operating noise limits until hush kits are installed.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought and disposition
24100	Minerve Company	14 CFR 61.77(d)(1), (vi)	To permit an employee of petitioner, age 62, to obtain a special purpose pilot certificate (SPPC). <i>Denied 10/30/84.</i>
21099	Heli-Trade Corp.	14 CFR 47.9(b)	Reconsideration of a Denial of Exemption to permit petitioner to report flight hours annually instead of every 6 months for the purpose of determining whether its aircraft are based and primarily used in the United States. <i>Denied 10/26/84.</i>
24161	Joseph D. Zwick	14 CFR 65.91(c)(1)	To allow petitioner to apply for an Inspection Authorization without having held a Mechanic's Certificate with both Airframe and Powerplant ratings for the 3-year period immediately before the application date. <i>Denied 11/7/84.</i>
24212	David M. Hendrick	14 CFR 65.91(c)(1)	To allow petitioner to apply for an Inspection Authorization even though his mechanic certificate has not been continuously in effect for 3 years. <i>Denied 11/7/84.</i>
24129	Larry Leverett Lupton	14 CFR 65.91(c)(1)	To allow petitioner to apply for an Inspection Authorization without having held a Mechanic's Certificate with Airframe and Powerplant ratings for 3 uninterrupted years immediately before application. <i>Denied 11/7/84.</i>
24083	Amautical, Inc.	14 CFR 63.37(a)	To allow flight engineer students who have completed the approved flight engineer course to substitute the 10 hours of flight training received in an airplane simulator for the 5 hours of flight time required in an airplane. <i>Denied 11/5/84.</i>

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought and disposition
8429	Northern Air Cargo, Inc.	14 CFR 91.39(b) & 121.157	To reconsider denial of Exemption 770N issued to petitioner on December 27, 1983. The exemption denied petitioner an amendment to an extension of Exemption 770M which granted relief until it terminated on December 31, 1983. <i>Partial grant 10/18/84.</i>
24172	Air Panama	14 CFR 21.181	To amend Exemption 4125 to add one DC-10-40 aircraft and reflect the revised registration number of the aircraft now covered under the exemption. The exemption permits petitioner to operate using a minimum equipment list. <i>Granted 10/30/84.</i>
23939	Kellogg Co.	14 CFR Portions of Parts 21 & 91	To allow petitioner to operate Falcon 20 and Falcon 50 aircraft utilizing the provisions of minimum equipment list. The exemption permits petitioner to operate using a minimum equipment list. <i>Granted 11/5/84.</i>
24195	Mid Pacific Airlines	14 CFR 121.371(a) 121.378	The exemption would permit petitioner to contract with Air New Zealand for the inspection, repair, and overhaul of Rolls Royce Dart 542-10 engines. <i>Granted 10/31/84.</i>
19475	FlightSafety Int'l	14 CFR 61.157(e)(1) Appendix H of Part 121	To permit the inflight requirements of Appendix A of Part 61 of the FAR to be accomplished in an approved simulator; and to the extent necessary to permit petitioner to use instructors or check airmen who have not been employed by petitioner for at least 1 year in the capacity of an instructor, check airman, pilot in command, or second in command of an airplane of the same group in which they are instructing or checking without its instructors or check airmen participating in an approved line flying program or approved line observation program. <i>Granted 10/31/84.</i>
24208	Steelcase, Inc.	14 CFR Portions of Parts 21 & 91	To allow petitioner to operate Falcon 20 and Cessna Citation III aircraft utilizing the provisions of minimum equipment lists. <i>Granted 11/5/84.</i>
24290	Air Ontario, Ltd.	14 CFR Portions of Parts 21 & 91	To allow petitioner to operate leased CV-580 aircraft utilizing the provisions of a minimum equipment list. <i>Granted 11/8/84.</i>
23925	Gulfstream Aerospace Corp.	14 CFR 23.49(b)(1)	To permit type certification of the Gulfstream Aerospace Model 1500 airplane, with a stall speed, V_{SO} , in excess of 61 knots, but not exceeding 75 knots. The Model 1500 is a single-engine, pressurized, turboprop-powered airplane to be certificated to Part 23 of the FAR. <i>Granted 11/9/84.</i>
23716	World Balloon Corp.	14 CFR 47.15(b)	To allow petitioner to obtain special registration marks for its new balloon. <i>Denied 10/26/84.</i>
23880	Fritz Air Systems Transport, Inc.	14 CFR 121.3(e)	To allow petitioner to operate as an air carrier conducting all-cargo operations under the supplemental air carrier rules of Part 121 of the FAR without holding an air carrier operating certificate issued in accordance with Special Federal Aviation Regulation (SFAR) 38. <i>Denied 11/13/84.</i>

[FR Doc. 84-31093 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Federal Acquisition Regulation (FAR)
"Rule of Two"; Requirements for
Setting Aside Acquisitions for Small
Business

AGENCY: Office of Management and Budget.

ACTION: Extension of comment period.

SUMMARY: The purpose of this notice is to extend the comment period on the "rule of two" in Part 19 of the Federal Acquisition Regulation (FAR).

DATE: Comments are due on or before December 31, 1984.

FOR FURTHER INFORMATION CONTACT: William Maraist, Office of Federal Procurement Policy, OMB (202-395-3300).

SUPPLEMENTARY INFORMATION: On October 12, 1984, the Office of Federal Procurement Policy published a notice for comment in the Federal Register (49 FR 40135) on the issue of the most appropriate standard for determining competitiveness in making a small business set-aside determination (e.g. rule of two, sufficient number, or other standard). The comment period is

extended from November 30 to December 31, 1984.

Comments

Comments should be forwarded to William Maraist, Office of Federal Procurement Policy, OMB, 726 Jackson Place, Washington, DC 20503 on or before December 31, 1984. Mr. Maraist may be contacted by phone on 202-395-3300.

Dated: November 27, 1984.

Donald E. Sowle,
Administrator.

[FR Doc. 84-31361 Filed 11-27-84; 11:34 am]

BILLING CODE 3110-01-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 230

Wednesday, November 28, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:30 a.m. on Monday, December 3, 1984, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.
Application for consent to purchase assets and assume liabilities and establish one branch:

Citizens State Bank, Virginia, Nebraska, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in The Lewiston Co-operative Credit Association, Lewiston, Nebraska, and to establish the sole office of The Lewiston Co-operative Credit Association as a branch of Citizens State Bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as a receiver, liquidator, or liquidating agent of those assets.

Case No. 46,144-SR, Mineral Bank of Nevada, Las Vegas, Nevada.

Case No. 46,147-NR, Union National Bank of Chicago, Chicago, Illinois.

Memorandum and Resolution re:
Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation

pursuant to authority delegated by the Board of Directors.
Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda: No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: November 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-31311 Filed 11-26-84; 3:52 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Monday, December 3, 1984, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii)

of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: November 26, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-31312 Filed 11-26-84; 3:52 pm]

BILLING CODE 6714-01-M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 49, No. 223, Page No. 45522, Date published—November 23, 1984.

PLACE: In the board room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Gravlee (202-377-6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the open portion of the bank board meeting scheduled Friday, November 30, 1984, at 2:00 p.m.

Limitations on Direct Investment by Insured Institutions

No. 103, November 26, 1984.

J.J. Finn,
Secretary.

[FR Doc. 84-31250 Filed 11-26-84; 10:52 am]

BILLING CODE 6720-01-M

4

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: November 30, 1984,
10:00 a.m.

PLACE: 1776 G Street, NW., Washington, D.C., Conference Room C, Eighth floor.
STATUS: Closed.

CONTACT PERSON FOR MORE

INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, D.C. 20013 (202) 789-4763.

MATTERS TO BE CONSIDERED:

Closed: Minutes of October 26, 1984, Board of Directors' Meeting.
Closed: President's Report.
Closed: 1985 Plan and Budget.
Closed: Financial Report.

Date sent to Federal Register: November 26, 1984.

Maud Mater,
Secretary.

[FR Doc. 84-31309 Filed 11-26-84; 3:43 pm]

BILLING CODE 6720-01-M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE-84-56]

TIME AND DATE: 10:00 a.m., Thursday,
December 6, 1984.

PLACE: Room 117, 701 E Street, NW., Washington D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:
 - a. Certain fifty position "D" pin electrical connectors (Docket No. 1117).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason,
Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.

[FR Doc. 84-31215 Filed 11-23-84; 4:31 pm]

BILLING CODE 7020-02-M

6

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS MEETING

TIME AND DATE: It will commence at 1:30 p.m. and continue until all official

business is completed; Wednesday,
December 5, 1984.

PLACE: Hotel Washington (Washington Room), 515 15th Street, NW., Washington, D.C.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, criminal, litigation, and investigatory matters under 45 CFR 1622.5 (a), (d), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda
2. Introduction of Board Members
3. Approval of Closing a Portion of Meeting
4. Approval of Minutes—October 1, 1984
5. Selection of Chairman and Vice-Chairman of the Board
6. Consideration of Board Committees' Membership
7. Report by Corporation President
8. Report by Office of Comptroller
 - FY 1984 Audit Report
 - Allocation of FY 1984 Carry Over
 - FY 1986 Budget Mark
9. Report by Office of Field Services
10. Report by Office of Information Management

CONTACT PERSON FOR MORE

INFORMATION: Thomas J. Opsut,
Executive Office, (202) 272-4040.

Donald P. Bogard,
President.

[FR Doc. 84-31307 Filed 11-26-84; 3:26 pm]

BILLING CODE 6820-35-M

14 CFR Part 23

Wednesday
November 28, 1984

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

**Airworthiness Standards; Normal, Utility
and Acrobatic Category Airplanes; Final
Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 23826; Amdt. 23-31]

Airworthiness Standards; Normal, Utility and Acrobatic Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the airworthiness standards for single-engine, turbopropeller-powered airplanes to include whirl mode instability analysis and test as one of the dynamic evaluations associated with freedom from flutter, control reversal, and divergence. Single-engine, turbopropeller-powered airplanes are now being manufactured, and such dynamic evaluations are necessary in the interest of safety. This amendment establishes a level of safety for powerplant installations in single-engine, turbopropeller-powered airplanes consistent with that established for multiengine, turbopropeller-powered airplanes.

EFFECTIVE DATE: December 28, 1984.

FOR FURTHER INFORMATION CONTACT:

William L. Olson, Regulations and Policy Office, (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Background

Propeller whirl flutter is an aeroelastic instability that can occur in an airplane with a flexible engine installation.

Turbopropeller installations are becoming increasingly common on single-engine airplanes, and a turbopropeller, wherever installed on an airplane, can exhibit unstable oscillatory motion resulting from combined aerodynamic, inertial, and gyroscopic modes. Special conditions have been issued to cover these requirements for single-engine airplanes with turbopropeller engines. This amendment adopts the dynamic stability evaluation now required for multiengine small airplanes to include single-engine, turbopropeller-powered airplanes.

Because of their unique characteristics, turbopropeller engine installations require special consideration. If damping and aerodynamic forces are not considered,

and the structure allows angular deflections, the spinning propeller could behave like a gyroscopic pendulum. For example, if the system were released from an initial pitch deflection, the resulting angular velocity as the system springs back would induce a gyroscopic moment about the yaw axis. This moment would, in turn, cause the system to yaw, including a pitching moment, and so on. Significantly, in a flexible system, gyroscopic action of the rotating propeller couples with natural pitch and yaw modes causing a precession motion about the axis of the undisturbed system. This gyroscopic action by itself cannot lead to a divergent type whirl mode instability because the net energy input to the system is zero. However, when the resultant air stream is misaligned from the propeller rotation axis due to an angular displacement or a transverse liner velocity of the propeller axis, certain forces and moments are generated. For example, if the axis is deflected in pitch, a vertical lift force together with a yawing moment is developed by the propeller, which, for small deflections, is proportional to the pitch angle.

On a typical conversion from reciprocating to turbopropeller propulsion in a single-engine airplane, the lighter weight powerplant is usually moved forward to maintain the center of gravity between established limits. While the new longer engine mount could meet requirements for engine support, thrust, and torque loads, it could be more flexible than the structure it replaced, to the point where propeller whirl flutter could occur.

In like manner, the fuselage of a new single-engine, tractor, turbopropeller airplane could be slimmed in profile to accommodate a smaller frontal area engine, lightened in structure to support less engine weight, and made rigid enough to absorb engine thrust and torque loads. At the same time, the fuselage could be too flexible to prevent propeller whirl mode flutter.

Another area in which flutter evaluation is of concern to the FAA is the empennage of single-engine, pusher, turbopropeller-powered airplanes. Several new airplanes of this type are now under development, and in this configuration, empennage motion may be influenced by loads from the propeller as significantly as wing motion is influenced in multiengine, turbopropeller airplanes.

The wording of § 23.629(e)(2) of the FAR, "Engine-propeller nacelle stiffness" placed undue emphasis on engine mount and propeller hub flexibility with regard to the whirl mode analysis. In actuality, the airplane

normal modes include airplane flexibility as well as flexibilities associated with the powerplant installation. Also, the word "nacelle" in § 23.629(e)(2) implied stiffness in an engine enclosure whose main purpose is reducing drag. Accordingly, amended § 23.629(e)(2) resolves this ambiguity by referring to propeller, engine, engine mount and airplane structure stiffness for the required dynamic evaluation.

Section 23.629(e) limited whirl mode requirements to multiengine, turbopropeller-powered airplanes. Accordingly, amended § 23.629(e) includes all turbopropeller-powered airplanes.

Discussion of Comments

The FAA received three public comments in response to Notice No. 84-2 (49 FR 10622; March 21, 1984), and all concurred with the proposal.

Economic Evaluation

In compliance with Executive Order 12291 (46 FR 13193, February 19, 1981), the FAA has determined that this amendment will not be a major rule having an annual effect on the economy of \$100 million or more. The last applicant who complied with the whirl mode Special Conditions reported that the cost was less than 10,000 dollars. This is a one time cost for an engine installation approval. The amendment will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This final rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In addition to the reasons discussed earlier, the regulatory impact of showing compliance with this requirement is minimal in that the whirl mode evaluation only has to be conducted once for a specific airplane model, and the expected cost is less than that considered significant on an annual basis. In addition, the amendment is not expected to have subsequent secondary or incidental effects on a substantial number of small entities. Since this amendment will not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis has not been prepared.

Conclusion

The FAA has determined that this amendment is not a major rule under the provisions of Executive Order 12291, and is not significant under the provisions of the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed earlier, the FAA certifies that the amendment will not have a significant economic impact on a substantial number of small entities under provisions of the Regulatory Flexibility Act. In addition, this amendment will have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States. The draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may

be obtained by contacting the person under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Air transportation, Safety, Tires.

Adoption of the Amendment

Accordingly, Part 23 of the Federal Aviation Regulations (14 CFR Part 23) is amended, as follows:

**PART 23—AIRWORTHINESS
STANDARDS: NORMAL, UTILITY, AND
ACROBATIC CATEGORY AIRPLANES**

1. By amending § 23.629 by revising the introductory text of paragraph (e) and the text of paragraph (e)(2) to read as follows:

§ 23.629 Flutter.

* * * * *

(e) For turbopropeller-powered airplanes, the dynamic evaluation must include—

(1) * * *

(2) Propeller, engine, engine mount, and airplane structure stiffness and damping variations appropriate to the particular configuration.

* * * * *

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); and 49 U.S.C. 106(g) (Revised Public L. 97-449, January 12, 1983))

Issued in Washington, D.C., on November 2, 1984.

Donald D. Engen,
Administrator.

[FR Doc. 84-31087 Filed 11-27-84; 8:45 am]

BILLING CODE 4910-13-M

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Federal Register

Vol. 49, No. 230

Wednesday, November 28, 1984

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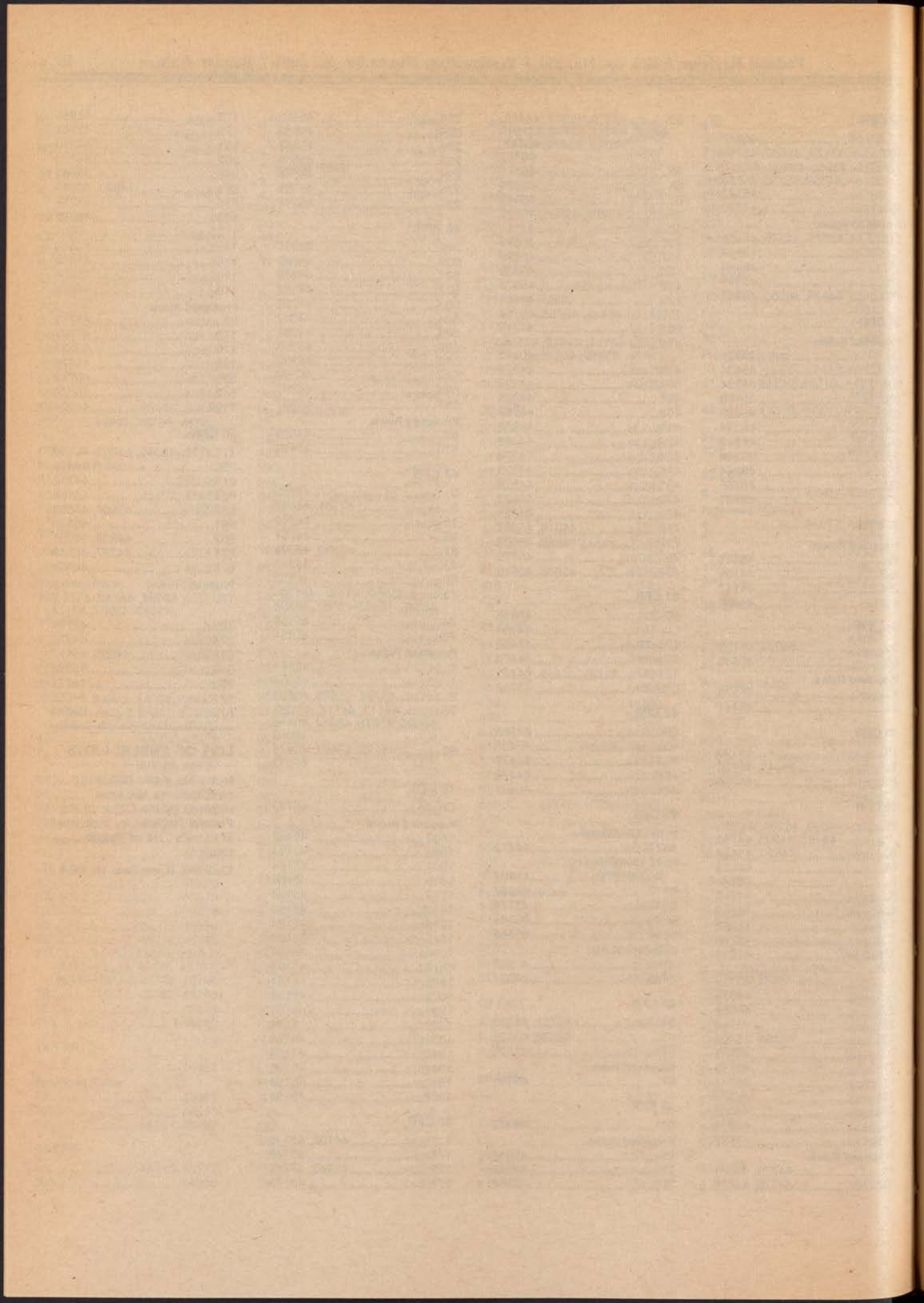
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