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Test Report

Friday
March 16, 1984

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Patent and Trademark Office

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Civil Aeronautics Board

Air Pollution Control

Environmental Protection Agency

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Cultural Exchange Programs

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Fisheries

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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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Agricultural Marketing Service

Product Safety

Administrative Conference of United States

Reporting and Recordkeeping Requirements

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Federal Register

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 455; Lemon Regulation 454, Amendment 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 265,000 cartons during the period March 18-24, 1984, and increases the quantity of lemons that may be shipped to 275,000 cartons during the period March 11-17, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the periods specified due to the marketing situation confronting the lemon industry.

DATES: The regulation becomes effective March 18, 1984, and the amendment is effective for the period March 11-17, 1984.

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

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona.

The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on March 13, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date 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 regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an opening meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.755 is added as follows:

§ 910.755 Lemon Regulation 455.

The quantity of lemons grown in California and Arizona which may be handled during the period March 18, 1984, through March 24, 1984, is established at 265,000 cartons.

2. Section 910.754 Lemon Regulation 454 (49 FR 8906) is revised to read as follows:

§ 910.754 Lemon Regulation 454.

The quantity of lemons grown in California and Arizona which may be handled during the period March 11, 1984, through March 17, 1984 is established at 275,000 cartons.

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

Dated: March 14, 1984.

Russell L. Hawes,

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

[FR Doc. 84-7304 Filed 3-15-84; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 605

Information Security

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: As required in Executive Order 12356 and Information Security Oversight Office Directive No. 1, the Farm Credit Administration is publishing a revision to Part 605 regarding the handling and use of classified documents. Since this part reflects only Agency policy, procedure, and practices concerning national security information in the possession of the Farm Credit Administration, it is found that notice of proposed rulemaking is not required nor necessary to the public interest.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry L. Barringer, Office of the Governor, Farm Credit Administration, 490 L'Enfant Plaza, East, SW., Washington, DC 20578, (202) 755-6738.

SUPPLEMENTARY INFORMATION:

List of Subjects in 12 CFR Part 605

Classified information.

Chapter VI of Title 12 of the Code of Federal Regulations is amended by revising Part 605 to read as follows:

PART 605—INFORMATION

Sec.

605.500 Policy.

605.501 Information Security Officer.

605.502 Program and Procedures.

Authority: Sec. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2243, 2246 and 2252).

§ 605.500 Policy.

It is the policy of the Farm Credit Administration to act in matters relating to national security information in accordance with Executive Order 12356 and directives issued thereunder by the Information Security Oversight Office (ISOO).

§ 605.501 Information Security Officer.

(a) The Information Security Officer of the Farm Credit Administration shall be responsible for implementation and oversight of the information security program and procedures adopted by the Agency pursuant to the Executive order. This officer shall be the recipient of questions, suggestions, and complaints regarding all elements of this program and shall be solely responsible for changes to it and for the assurance that it is at all times consistent with the Executive order and ISOO directive.

(b) The Information Security Officer shall be the Farm Credit Administration's official contact for requests for declassification of materials submitted under the Executive order, regardless of the point of origin of such requests, and shall assure that such requests for records in the Farm Credit Administration's possession that were originated by another agency shall be forwarded to the originating agency. The Farm Credit Administration shall include a copy of the records requested together with its recommendation for action. Upon receipt, the originating agency shall process the request in accordance with 32 CFR 2001.32(a)(2)(i). Upon request, the originating agency shall communicate its declassification determination to the Farm Credit Administration. The Farm Credit Administration shall inform the requester of the determination within 1 year from the date of receipt, except in unusual circumstances. If an appeal is made on a denial of a mandatory declassification review request, the originating agency's appellate authority shall normally make a determination within 30 working days following the receipt of an appeal. If additional time is required to make a determination, the originating appellate authority shall notify the requester of the additional time needed and provide the requester with the reason for extension. The originating agency's appellate authority shall notify the requester in writing of the final determination and of the reasons for any denial. Such officer shall also assure that requests for declassification submitted under the Freedom of Information Act are handled in accordance with that Act.

§ 605.502 Program and Procedures.

(a) The Farm Credit Administration has no authority for the original classification of information for national security purposes. Only those agencies described in the Executive order may so classify information.

(b) **Derivative Classification.** "Derivative Classification" means a determination that information is in substance the same information that is currently classified under a designated level of classification. Derivative application of classification markings shall be the responsibility of the Information Security Officer who shall assure that the use of this authority is in accordance with ISOO directives.

(c) **Mandatory Review.** All requests for review under the mandatory review provisions of the Executive order shall be handled by the Information Security Officer or his/her designee. Under no circumstances shall such official refuse to confirm the existence or nonexistence of a document requested under the Executive order or the Freedom of Information Act unless the fact of its existence or nonexistence would itself be classified under the Executive order.

(d) **Handling of Classified Documents.** All documents bearing the terms "Top Secret", "Secret", and "Confidential" shall be delivered to the Information Security Officer or his/her designee immediately upon receipt. As necessary, all potential recipients of such documents shall be advised of updated information and the names of such designees. In the event that the Information Security Officer or his/her designee is not available to receive such documents, they shall be turned over to the Personnel Security Officer, Human Resources Division, Office of Administration, FCA, and secured, unopened, in the combination safe located in the Human Resources Division until the Information Security Officer is available. Should the Personnel Security Officer not be available, the document shall be delivered to the Director of the Administrative Division, Office of Administration, FCA, for deposition in the combination safe located in the Budget and Accounts Section. All materials not immediately deliverable to the Director of the Administrative Division shall be redelivered to the Agency at the earliest opportunity. Under no circumstances shall classified materials that cannot be delivered to the alternate designees be stored other than in the two designated safes.

(e) **Reproduction.** Reproduction of classified materials shall take place only in accordance with section 4.1(b) of the

Executive order and any limitations imposed by the originator. Should copies be made, they shall be subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained by the Information Security Officer or his/her designee, and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of Mandatory Review.

(f) **Storage.** In accordance with 32 CFR 2001.43, all classified documents shall be stored in combination safes located at the primary headquarters of the Farm Credit Administration. The combination shall be changed as required by directives issued by the ISOO. The combination shall be known only to the Information Security Officer and his/her designees who have appropriate security clearances.

(g) **Employee Education.** All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction, and storage procedures and shall be required to review the Executive order and appropriate ISOO directives.

(h) **Agency Terminology.** No official of the Farm Credit Administration shall use the terms "Top Secret", "Secret", or "Confidential" except in relation to materials classified for national security purposes. As a Federal regulatory agency, the Farm Credit Administration maintains certain internal documents that relate to its examination and supervision of the institutions of the Farm Credit System. Such documents are limited in use and distribution. Material that is of a sensitive nature to the Farm Credit Administration may be designated "Executive Document."

(i) **Nondisclosure Agreement.** In accordance with 32 CFR 2003.20, the Farm Credit Administration requires that any person whose position requires access to classified information must execute a nondisclosure agreement on Standard Form 189—Classified Information Nondisclosure Agreement. Persons not executing such nondisclosure agreements are subject to sanctions of Executive Order 12356. It is the policy of the Farm Credit Administration that any employee authorized access to classified information holds a personal responsibility for safeguarding against unlawful disclosures, and such employees are prohibited from disclosure without consent of the FCA Information Security Officer. Any such unauthorized disclosure will be reported

to the Information Security Oversight Office, the Department of Justice, the Department of State, the Federal Emergency Management Agency, and to any other Federal agency for which the Farm Credit Administration has access to classified information, as such reportings are subject to interpretation as required by statute and Executive order. Any employee who knowingly disclosed classified information or who refuses to cooperate with an investigation may be subject to mandatory administrative sanctions, including as a minimum, denial of further access to classified information. Further sanctions could include demotion or dismissal depending on the circumstances of a particular case.

(j) Freedom of Information Request. All inquiries regarding requests for classified information under the Freedom of Information Act (5 U.S.C. 552), including those from the news media, shall be referred to the FCA FOI Officer, Congressional and Public Affairs Division, Office of Administration of the Farm Credit Administration, and shall be handled in accordance with provisions of that statute and applicable regulations.

Donald E. Wilkinson,
Governor.

[FR Doc. 84-7041 Filed 3-15-84; 8:45 am]

BILLING CODE 6705-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 201

[Economic Regulations Amdt. No. 9; Docket 40964; Regulation ER-1376]

Applications for Certificates of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB adopts a rule prohibiting sales or advertising of air transportation by applicants for new or amended certificates of public convenience and necessity until the application is approved but allowing advertising and accepting reservations after that time. Actual sales are prohibited until the certificate is effective or until the Board issues a notice authorizing sales. The Board's action is taken to ensure that applicants are able to operate safely and to prevent misuse of passenger's money or disruption of their travel plans.

DATES: Adopted: February 28, 1984.

Effective: April 16, 1984.

FOR FURTHER INFORMATION CONTACT: John Craig Weller, Office of the General

Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION: By EDR-447, 47 FR 41759, September 22, 1982, the Board proposed several alternative rule changes to deal with the problem of advertising and sales of air transportation by persons who have not yet been found fit to be granted air carrier certificates. The Federal Aviation Act forbids any person to engage in air transportation without an effective certificate from the Board or an exemption from the certificate requirement. In addition, for foreign air transportation, section 403 of the Act requires that tariffs be filed with the Board before air transportation is sold to the public.

In addition to the legal problems of pre-certification sales, the Board foresaw serious policy problems. Advance ticket sales may be used to provide start-up money for a fledgling airline, with the risk of loss of that money if certification is denied or delayed significantly. Money paid for pre-certification sales may be seized by a new airline's creditors if financial difficulties arise. Potential passengers may also be misled about the certainty of their travel plans and their trips may be delayed or cancelled at the last moment. Furthermore, large numbers of pre-certification sales may be seen as pressuring the Board or the Federal Aviation Administration to act favorably on a pending application. These factors have been present in incidents of pre-certification sales occurring during the past year.

The six options proposed were:

(1) Complete prohibition. This option would ban all sales or advertising until a certificate was approved by the Board.

(2) Partial prohibition. This option would permit advertising but not sales before certification or, alternatively, would permit advertising and sales at some pre-determined point during the certification procedure.

(3) Escrow. This option would permit pre-certification sales but would require that all receipts be placed in a trust account similar to that required of charter operators under the Board's Public Charter rules. See, 14 CFR 380.34(b)(2).

(4) Notice. This option would permit pre-certification sales but would require notice to potential passengers that the airline had not yet received the authority necessary to actually operate.

(5) *Ad hoc* procedure. Under this option, the Board would deal with each applicant on an individual basis.

(6) No restriction. This option would provide a general exemption to all to allow pre-certification sales activity.

No commenter supported the complete elimination of restrictions on pre-certification sales. The Department of Transportation of the State of New Jersey supported a partial prohibition which would allow all sales activity except the actual collection of passenger funds. The New York State Department of Transportation favored a combination of Options (3) and (4), providing both for notice and the deposit of funds in an escrow account. The Minnesota Department of Transportation and Delta Airlines urged prohibition of all pre-certification sales efforts. Transamerica urged that any restrictions apply only to new applicants for authority, not to already-certificated carriers that may be seeking additional authority.

After consideration of the comments received in this docket and continuing experience with pre-certification sales since this proceeding began, the Board has decided an applicant should be permitted to advertise, list proposed schedules in the Official Airline Guide or computer reservations systems, and accept reservations after its certificate application has been approved but that sales should not begin until after an applicant has both Board and Federal Aviation Administration authority.

This means that an applicant cannot advertise or accept reservations for its proposed service until after the Board has examined its qualifications and found it to be fit. After such a determination, there should be little risk to the public in allowing this activity. In addition, all advertising and schedule listings must prominently state "This service is subject to receipt of government operating authority." However, because an applicant cannot actually provide transportation until it has both Board and FAA approval, actual sales should not begin until then.

By the Airline Deregulation Act of 1978, Congress eased many of the restrictions on domestic entry and operations in the airline industry. It chose, however, to continue the Board's role in screening new applicants to ensure the protection of the public. To allow an untested new applicant to collect money before the completion of this process would seriously undermine the protection of the traveling public afforded by the statutory licensing scheme.

There seems to be no ready way to devise a formula suitable for all new applicants that could be used to trigger the beginning of sales activity. Each applicant is different and there seems to

be no way to determine the point in each application process where pre-certification sales would present no significant danger to the public.

The Board's certification process is sufficiently streamlined that the time required for the licensing review process is not of unreasonable length. The Board has adopted innovative procedures for processing applications that present no unusual issues. Subpart Q of Part 302 of the Board's Procedural Regulations, 14 CFR 302.1701-1790, provides for decisions on certificate applications in appropriate cases solely on the basis of written submissions, without the necessity of an oral evidentiary hearing.

In the Board's judgment, use of funds acquired from the pre-certification sales of tickets as seed capital is clearly unwarranted. Passengers who purchase airline tickets are unlikely to be willing to be the source of venture capital for a new entrant.

It is also questionable whether a prohibition on pre-certification sales will be a real impediment to the start-up of new carriers. The Board has licensed numerous new airlines since the beginning of deregulation; only a handful have attempted pre-certification sales.

The Board's experience with pre-certification sales since the beginning of this proceeding indicates that escrowing of funds from pre-certification sales does not provide adequate protection. While the bonding and escrow rules for charter operators have worked relatively well, there are important differences there from pre-certification sales. Escrow systems, whereby all receipts are required to be deposited into a restricted bank account, inherently depend on the cooperation of the sellers of the transportation. Charters are typically sold by retail agents and other intermediaries who are ongoing travel businesses, familiar with the requirements of the escrow rules and with little incentive to ignore them. On the other hand, scheduled service by new entrants is unlikely to be handled by such intermediaries. It is largely sold by direct contact with an air carrier, which thus has the potential for avoidance of the escrow system. The Board's enforcement staff recently obtained a Federal court order restricting pre-certification sales by a new applicant because of concern about the safety of passenger payments. Moreover, an escrow system would generate more regulatory activity and paperwork for both the Board and the applicant.

Finally, the Board is concerned about the expectations that pre-certification sales may produce in potential

passengers. The progress of a certificate application can be difficult to predict, especially in its early stages.

Communicating such uncertainty to a potential passenger would be difficult at best. Thus, it is doubtful that meaningful notice could be provided. Mere advice that approval is "pending" is insufficient in a situation where approval may well not be granted at all. Moreover, a large number of pre-certification sales generate expectations exerting pressure on the Board to complete the application process in time to meet the applicant's advertised schedule.

All of these reasons have convinced the Board that sales by applicants for authority before the completion of the Board's review process will have potential adverse consequences for the public that are not outweighed by possible impediments to new entry. As long as the statutory licensing process remains a requirement for new airlines, the benefits to the public of that process should not be circumvented by sales before the Board's review has been completed.

For applicants for certificates authorizing interstate or overseas air transportation, advertising or sales will be prohibited until the Board approves the application. (This approval, like other Board actions, is effective when posted in the Board's Docket Section.) A typical new applicant for domestic authority receives a Board certificate before receiving an air carrier operating certificate and operations specifications from the FAA, but the Board certificate does not become effective until after these FAA approvals are received. Between the time the application is approved and when the certificate actually becomes effective, an applicant may advertise, publish its proposed schedules, and accept reservations. Actual sales (i.e., the acceptance of payment or the issuance of tickets), however, may not begin until FAA approval is received and the certificate is effective.

For applicants for new or amended certificates to perform foreign air transportation (unlike domestic markets, foreign routes must still be applied for, approved by the Board, and added to certificates), the Board has decided on a slightly different procedure. When the Board approves a certificate to engage in foreign air transportation, section 801(a) of the Act requires that it be sent to the President for review. The President may then disapprove the Board's action only for foreign policy or national security reasons within 60 days. The certificate is not made effective until this review period is over or until the President notifies the Board

that its action will not be disapproved, whichever is earlier. As with domestic certificates, a favorable FAA report is also required.

Like applicants for domestic authority, applicants for international routes will be allowed to advertise and accept reservations as soon as the Board approves the application. The Board then sends it to the President for review. The Board has also decided that an applicant that already has appropriate FAA authority, or obtains it during the Presidential review period, should be allowed to begin sales as well. The Board will issue a notice at that time advising the applicant that sales may begin. The Board's mandate to consider the applicant's fitness and ability to operate safely has been fulfilled at this point and there should be little risk to the public if sales begin, even though the applicant cannot actually begin operations until after the Presidential review is complete. Moreover, because the duration of the Presidential review period is fixed, there is less uncertainty about the timing of the start of operations.

For applicants that already have the FAA authority necessary to operate the route covered by the pending application, the Board will issue a notice announcing that its decision has been sent to the President for review and authorizing advertising or sales. This notice will normally be issued 5 days after the Board's decision is sent to the President. Advertising or sales may then begin. Subsequently, when the Presidential review period ends or the President notifies the Board that its action will not be disapproved, the Board's decision will issue with an effective certificate attached.

Applicants who do not have the necessary FAA authority at the beginning of the Presidential review period may advertise and accept reservations but may not sell. However, if needed FAA approval is obtained during the review period, an applicant may have the FAA submit copies to the Board and be authorized to begin sales. The Board will review the carrier's operating certificate and operations specifications and, if that review is satisfactory, will issue a notice authorizing sales. The carrier may then begin selling tickets. As in the previous case, when the Presidential review is completed, the Board will issue its decision with an effective certificate attached.

Finally, some applicants may not obtain FAA authority until after the Presidential review is completed. In such cases, the Board will issue a notice

announcing that it has sent its decision to the President for review. The applicant may then begin advertising and accepting reservations. When the Presidential review is completed, the Board will issue its decision. However, as with domestic carriers, the applicant's certificate will not become effective until 5 days after its air carrier operating certificate and operations specifications are received by the Board from the FAA. These carriers may not begin sales until the certificate is actually effective.

In its comments in this proceeding, Transamerica Airlines questioned whether the prohibition applied to pre-certification sales in new foreign markets applied for by current holders of certificate authority. The answer is that it does. While it is true that the fitness of current certificate holders is usually not as great a concern as for new applicants, several other concerns remain. There is still no ready way to predict the time necessary to process an application and thus no way to avoid possible disruption of passengers' travel plans and the resulting pressure on the Board to rush its review. Indeed, the likelihood of passenger disappointment may be greatest when several certificated carriers are competing for new authority. If all are free to sell prior to award of the authority, it is certain that some customers—those of the unsuccessful applicants—will not be accommodated. A prohibition on pre-certification sales does not impose a severe economic burden on an established carrier. The procedure provided, to allow established carriers to begin sales activity after a favorable decision by the Board, should provide sufficient time for these carriers to mount an effective sales campaign for new service.

The prohibition on pre-certification sales will apply, when effective, to the activities of those carriers that currently have certificate applications pending. For those few carriers that are currently holding money collected while their certification proceedings are pending, the Board's Enforcement Division (202-673-6060) will advise of the proper course of action.

The Board's action in this proceeding with respect to applicants for new or amended certificate authority is not intended, of course, to restrict the sales activities of those carriers holding valid exemption authority granted under section 416 of the Act.

Morales, Member Concurring and Dissenting

I concur with the decision to finalize rules limiting pre-certification sales by applicants for certificate authority. However, I do not

agree with those provisions of this rule which would allow advertising and reservation taking before a certificate is effective.

The reasons supporting a ban on ticket sales prior to certificate effectiveness apply with equal force to the advertising and reservations areas. The majority, in describing this final rule, notes that "To allow an untested new applicant to collect their money before the completion of this process would seriously undermine the protection of the traveling public afforded by the statutory licensing scheme." (P. 3 Order) The purposes of advertising and accepting reservations are to solicit customers and assure the sale of seats on flights. I agree that the Board's certification process is sufficiently streamlined so as not to be an unreasonable and certainly not unnecessary barrier to new entrants. The expectations that advertising and the taking of reservations may produce in potential passengers are of little discernible difference from those expectations created by the taking of money. While it can be argued that at least a potential passenger will not be out of funds, opportunities to make other arrangements and reservations will certainly be lost if a hopeful traveler relies on advertisements of and reservations on an applicant which does not ultimately have an effective certificate.

The timing of the effectiveness of a certificate after the Board has approved the application is largely within the applicant's control. Effectiveness occurs when an applicant also obtains operational authority from the Federal Aviation Administration. That authority is essential to begin actual carrier operation. Some applicants, and most who wish to begin operations immediately, pursue both CAB and FAA authorization vigorously and simultaneously. I cannot imagine any case where, if the FAA did not grant operational authority, I would favor allowing that applicant to advertise, take reservations or accept funds, regardless of what the Board's own judgment on an applicant's fitness may have been.

I would therefore include advertising and reservation taking in the pre-certification ban.

Diane K. Morales.

Final Regulatory Flexibility Analysis

The discussion above is the Board's final regulatory flexibility analysis of this rule, pursuant to 5 U.S.C. 604. Copies of this document can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428; 202-673-5432, by referring to the "ER" number at the top of this document.

List of Subjects in 14 CFR Part 201

Advertising, Air carriers, Consumer protection.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 201, *Applications for Certificates of Public Convenience and Necessity*, as follows:

1. The authority for Part 201 is revised to read:

Authority: Secs. 234 401, 402, 403, 411, 416, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 757, 758, 769, 771; 49 U.S.C. 1324, 1371, 1372, 1373, 1381, 1386.

2. A new § 201.6 is added to read:

§ 201.6 Advertising and sales by applicants.

(a) An applicant for a new or amended certificate of public convenience and necessity to engage in air transportation shall not:

(1) Advertise, list schedules, or accept reservations for the air transportation covered by its application until the application has been approved by the Board; or

(2) Accept payment or issue tickets for the air transportation covered by its application until the certificate or amended certificate has become effective or the Board issues a notice authorizing sales.

(b) An applicant for a new or amended certificate of public convenience and necessity may advertise or publish schedule listings for the air transportation covered by its application after the application has been approved by the Board only if such advertising or schedule listings prominently state: "This service is subject to receipt of government operating authority."

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-7083 Filed 3-15-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 301

[Docket No. RM81-41-000, Order No. 337]

Sales of Electric Power to Bonneville Power Administration, Methodology and Filing Requirements; Extension of Time for Parties to File Requests for Further Consideration on Pending Average System Cost Dockets

March 9, 1984.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule; notice of extension of time.

SUMMARY: On October 6, 1983, the Commission issued a Final Rule involving the sales of electric power to Bonneville Power Administration, methodology and filing requirements (48 FR 46971, October 17, 1983). The period

for parties to file requests for further consideration of dockets submitted under the interim rule, is being extended at the request of the direct service industrial customers of the Bonneville Power Administration.

DATE: Requests must be submitted on or before April 11, 1984.

ADDRESS: Submit requests to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357-8400.

Kenneth F. Plumb,
Secretary.

On March 7, 1984, the direct service industrial customers (DSIs) of the Bonneville Power Administration (BPA) filed a motion for an extension of time to file requests for further consideration of Average System Cost (ASC) dockets as provided for in the Commission's Notice of Final Rule issued October 6, 1983, in the above-docketed proceeding. In their motion, the DSIs request that an extension be granted in order to facilitate the settlement of the Average System Cost (ASC) dockets which were submitted under the Interim Rule in this proceeding. The DSIs' motion further states that Pacific Power and Light Company and BPA support this motion and Washington Water Power Company and CP National Corporation do not oppose this request. On March 8, 1984 and March 9, 1984, Puget Sound Power and Light Company and Portland General Electric Company filed in opposition to this extension request.

Upon consideration, notice is hereby given that an extension of time for the filing of requests for further consideration is granted to and including April 11, 1984.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-7019 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

regulations for delegations of authority regarding the approval of new drug applications (NDA's) by redelegating to Office of Drugs officials the authority to approve NDA's for drugs with a 5C classification.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: Section 5.80(c) (21 CFR 5.80(c)) is being amended to redelegate to the Associate Director and Deputy Associate Director for Drug Monographs and the Director and Deputy Director, Division of Generic Drug Monographs (DGD), Office of Drugs, National Center for Drugs and Biologics (NCDB), the authority to approve NDA's for drugs with a 5C classification whose clinical safety and efficacy may be supported by appropriate literature citations in lieu of submission of data from original proprietary studies.

The drugs subject to this delegation will be identified in a list entitled "Paper NDA's to be reviewed by DGD." The list will be prepared and continuously updated by the Product Coordination Staff, NCDB. Additional information about the handling of these applications is contained in a staff manual guide entitled "Procedures and Practices . . . Applicable to Review and Processing of New Drug Applications with a 5C Drug Classification Whose Clinical Safety and Effectiveness May be Supported by Appropriate Literature Citations in Lieu of Submission of Data from Original Proprietary Studies." Both of these publications are publicly available.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

PART 5—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a) 52 Stat. 1055 (21 U.S.C. 371(a))) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended by revising § 5.80(c) to read as follows:

§ 5.80 Approval of new drug applications and their supplements.

(c) The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs with regard to approval of abbreviated new drug applications and supplements thereto for drugs for human use that have been submitted under §§ 314.2 and 314.8 of this chapter, and new drug applications for drugs with a 5C classification whose clinical safety and efficacy may be supported by appropriate literature citations in lieu of submission of data from original proprietary studies except those that are biological products subject to the licensing provisions of section 351 of the Public Health Service Act:

(1) The Associate Director and Deputy Associate Director for Drug Monographs, Office of Drugs, NCDB.

(2) The Director and Deputy Director, Division of Generic Drug Monographs, Office of Drugs, NCDB.

Effective date. This regulation shall become effective March 16, 1984.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: March 12, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-7034 Filed 3-15-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 211

[Docket No. 79P-0199]

Current Good Manufacturing Practice in Manufacture, Processing, Packing or Holding; Exemption From Recording Lot or Control Numbers on Distribution Records for Compressed Medical Gas Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the current good manufacturing practice (CGMP) regulations for human and veterinary drug products to exempt compressed medical gas (CMG) products from the requirement that lot or control numbers of the drug product be recorded on distribution records. This action is being taken because packaging and distribution for CMG products differ substantially from other classes of drug products.

EFFECTIVE DATE: Effective April 16, 1984.

FOR FURTHER INFORMATION CONTACT: Clifford G. Broker (HFN-323), 301-443-5307, or Robert J. Meyer (HFN-7), 301-443-5220, National Center for Drugs and

Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: Section 211.196 of the CGMP regulations (21 CFR 211.196) requires that distribution records for a drug product contain the name and strength of the product and a description of the dosage form, name and address of the consignee, date and quantity shipped, and lot or control number. These requirements are intended to assure that a manufacturer has adequate information to determine the distribution of each lot of a drug product in the event of a drug product recall.

In the *Federal Register* of March 25, 1983 (48 FR 12552), FDA proposed to amend the CGMP regulations to exempt CMG products from the requirement that distribution records contain the lot or control number of the drug product. The proposal was based upon the CMG industry's distribution mechanisms and recall system which ensures prompt and effective recalls of these products, if necessary, without the need for distribution records containing lot or control numbers. The preamble to the proposal noted several unique factors that have contributed to the success of CMG product recalls monitored by the agency during the last several years; for example, a limited number of consignees over a small geographic area for each CMG supplier and a strong economic incentive for each CMG supplier to monitor the consignee's receipt of the expensive and reusable CMG cylinders. The preamble also noted the agency's determination that these unique factors and other applicable CMG requirements were adequate to ensure the continued success of CMG product recalls without the availability of lot or control numbers on distribution records.

The agency received comments from two suppliers of CMG products. Both suppliers supported the proposal.

The agency has considered the economic consequences of this rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the final rule amends the CGMP regulations for human and veterinary drug products to exempt CMG products from the requirement that lot or control numbers of the drug product be recorded on distribution records. The exemption relieves a regulatory burden on the industry and eliminates the cost associated with the requirements for the manufacturers of

these drugs. Therefore, the agency concludes that the final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 21 CFR Part 211

Drugs, manufacturing, Labeling, Laboratories, Packaging and containers, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 502, 512, 701, 52 Stat. 1049-1051 as amended, 1055-1056 as amended, 82 Stat. 343-351 (21 U.S.C. 351, 352, 360b, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 211 is amended by revising § 211.196 to read as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

§ 211.196 Distribution records.

Distribution records shall contain the name and strength of the product and description of the dosage form, name and address of the consignee, date and quantity shipped, and lot or control number of the drug product. For compressed medical gas products, distribution records are not required to contain lot or control numbers.

(The information collection requirement in this section has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910-0139.)

Effective date: April 16, 1984.

(Secs. 501, 502, 512, 701, 52 Stat. 1049-1051 as amended, 1055-1056 as amended, 82 Stat. 343-351 (21 U.S.C. 351, 352, 360b, 371))

Dated: February 28, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

(FR Doc. 84-7033 Filed 3-15-84; 8:45 am)

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Solar Energy and Energy Conservation Bank

24 CFR Part 1800

[Docket No. R-84-1053; FR-1700]

Financial Assistance Program of the Solar Energy and Energy Conservation Bank

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Final rule.

SUMMARY: The Solar Energy and Energy Conservation Bank (the Bank) was established by Title V of the Energy Security Act of 1980. This rule sets forth the requirements for implementation of the Bank's program. Participating States will operate programs to provide financial assistance for eligible energy conservation measures and solar energy systems in any residential buildings and in commercial and agricultural buildings with nonprofit owners or tenants.

EFFECTIVE DATE: April 26, 1984.

FOR FURTHER INFORMATION CONTACT:

Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Room 7110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: 202-755-7166. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Summary of Act

Subtitle A of Title V of the Energy Security Act of 1980, 12 U.S.C. 3601 *et seq.*, established the Bank within the Department of Housing and Urban Development (HUD). The purpose of the Bank is to encourage energy conservation and the use of solar energy, and thereby reduce the nation's dependence on foreign sources of energy supplies. The Bank is governed by a Board of Directors, consisting of the Secretaries of HUD (Chairperson), Energy, Treasury, Agriculture, and Commerce.

Section 509 of the Act (12 U.S.C. 3607) provides that, subject to other statutory provisions, the Bank may make payments to financial institutions for the purpose of providing financial assistance: (a) To owners of and tenants in one- to four-family and multifamily (more than four units) residential buildings completed prior to 1980 for the purchase and installation of residential energy conserving improvements; (b) to owners who occupy and tenants in commercial and agricultural buildings completed prior to 1980 for the purchase and installation of commercial energy conserving improvements; (c) to owners of existing one- to four-family and multifamily residential, commercial and agricultural buildings for the purchase and installation of solar energy systems; (d) to builders of newly constructed or substantially rehabilitated one- to four-family residential buildings for the purchase and installation of solar energy systems; and (e) to purchasers of newly constructed or substantially rehabilitated one- to four-family and multifamily residential, commercial and

agricultural buildings containing solar energy systems. The financial assistance for residential or commercial energy conserving improvements (collectively referred to as "energy conservation measures" in this rule) or solar energy systems may be in the form of a reduction in the principal obligation of a loan or the qualifying portion of a loan provided by one or more types of financial institutions, or a prepayment of the interest otherwise due on such loan or portion of such loan. In the case of an owner of a one- to four-family residential building or a tenant in a one- to four-family or multifamily residential building completed prior to 1980 who meet certain income requirements, the assistance for energy conservation measures may also be in the form of grants.

Section 463 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. No. 98-181) amended some provisions of the Act, as discussed in following sections.

The Bank's enabling statute provides for a wide range of possible forms and objectives of financial assistance to be delivered through one or more types of financial institutions. This rule has been approved by the Board of Directors of the Bank in order to specify both the permissible uses of financial assistance and the system of delivering financial assistance.

The Interim Rule

An interim rule containing the requirements of the financial assistance program of the Bank was published on May 31, 1983 (48 FR 24254-24270, and was effective upon publication. The Bank immediately proceeded to implement its program through cooperative agreements with States which had been selected from proposals solicited through a Notice of Funding Availability (see 47 FR 37960). The Bank now has executed 48 cooperative agreements obligating all available FY 1982 funds, \$21,817,153, and \$8,267,847 of the \$20,000,000 in FY 1983 funds.

The interim rule provided that the Bank program would be implemented through States. Each participating State would be allocated a specific amount of funds. A State would select the participating financial institutions within a State, and the State would request funds from the Bank to pay to financial institutions which had provided financial assistance in accordance with Bank requirements. States were permitted to use up to 2 percent of their funds for administrative costs (if matched by the State) and up to 1 percent of their funds for promotion.

Certain measures eligible for funding under the statute were not eligible under

the interim rule. No active solar energy systems were eligible. The following additional measures were to be eligible for funding only if stated in a subsequent Federal Register notice: energy conservation measures or solar energy systems of any kind in agricultural or commercial buildings, solar energy systems of any kind in multifamily residential buildings, and solar energy systems (except passive domestic solar hot water systems) in existing one- to four-family residential buildings. No assistance was provided directly to builders.

The other major limitation on assistance which the interim rule added to the statutory limitations was a requirement that all assisted energy conservation measures and solar energy systems be cost-effective as determined by an energy audit or energy design analysis. Solar space heating and cooling systems would be considered cost-effective if the cost would be paid back through the energy savings over the life of the system; other solar energy systems and energy conservation measures would be considered cost-effective if the cost would be paid back in no more than seven years.

In order to avoid duplication of other Federal assistance, the interim rule barred the use of Bank assistance in combination with funds derived from tax-exempt borrowings. Funds were also not available to persons with outstanding commitments or applications for assistance under certain Federal housing and energy programs. These requirements complemented the statutory prohibition against energy tax credits for energy conservation measures or solar energy systems paid for with Bank assistance.

Except as mentioned above, the interim rule was generally designed to preserve the flexibility inherent in the Act for participating States. States were intentionally left with substantial leeway to adapt the Bank program to their particular conditions and ongoing energy programs.

Changes to the Interim Rule

A. General

While the Bank began to implement its program immediately upon publication of the interim rule, it also sought public comments for its consideration in drafting this final rule. We specifically encouraged comments on the following: Whether applications for future Bank funding, if any, should be invited from applicants other than States and, if so, under what circumstances? Should other categories of applicants compete in the same

funding rounds with States or in separate rounds? What eligibility or priority criteria should be applied in the case of such different categories of applicants? The Bank received written comments from 32 commenters in response to the interim rule, primarily from State and local agencies, with some comments also from trade associations and producers of energy conservation materials, and one set of comments on behalf of a number of organizations.

The topic which drew the most comments (18) was the question of which energy conservation measures and solar energy systems should be eligible for assistance. Seven commenters requested that active solar energy systems be made eligible; other commenters recommended a wide variety of additions to the lists of items eligible for subsidy, or clarification of items currently listed. The final rule makes active solar water and space heating systems eligible and adds some new energy conservation measures. The second largest group of comments (12) recommended changes to the requirement of a seven-year simple payback period as a determinant of cost-effectiveness for energy conservation measures and passive solar domestic hot water systems. The final rule does not contain a seven-year payback period to determine cost-effectiveness. The third largest group of comments (11) questioned the interim rule's limits on use of funds for State administrative and promotional expenses. The final rule retains the current limits on promotional expenses, but significantly increases the limit on administrative expenses.

Other large groups of comments concerned the requirements for energy audits or energy design analyses (7), the method for computing assistance for passive solar energy space heating systems (7), applicant eligibility requirements (7), whether the Bank should disburse funds only through States (7), and the prohibitions against assistance for some kinds of buildings included in the Act (6). In addition, many other topics were the subject of at least one comment.

After the Bank staff had prepared a draft final rule for circulation within HUD, but before Board consideration of that draft, Congress enacted the Housing and Urban-Rural Recovery Act of 1983. Section 463 of that Act required some redrafting of the final rule before Board consideration. Changes made in response to § 463 (which will be referred to as the "1983 amendment to the Act") are discussed together with the public

comments on related issues. Where appropriate, the discussion will indicate which position would have been recommended to the Board on an issue in the absence of the new legislation.

In addition to changes made in response to comments and the new legislation, the Bank has included some other changes in the final rule. These are mainly either clarification of provisions in the interim rule which experience (including contact with participating States) has shown to be ambiguous or confusing, interpretations of rule provisions developed by the Bank and its legal counsel following publication of the interim rule, or technical changes required by other changes in the final rule.

The comments and the new legislation have caused the Bank to make many refinements to the interim rule. Much of the basic program structure and direction have been retained. In the opinion of the Bank, however, the new legislation has impaired the Bank's ability to focus appropriately on the most cost-effective expenditures. The Bank emphasizes that the rule revisions were designed to permit State programs now in operation to continue in their present manner without the need for extensive changes, to the extent legally possible. The revisions will permit many program adjustments which the States have sought.

B. Subpart A—Introduction

Section 1800.3: Definitions. 1. *Active solar energy systems.* A new definition of "active solar energy systems" was added, since the 1983 amendment to the Act mandates eligibility for these systems. This issue is discussed further under § 1800.45.

2. *Annual income.* A commenter stated that "annual income" for applicants should be determined on the basis of the preceding year, rather than prospectively as required by the definition in the interim rule. The definition has been retained unchanged in the final rule, except that there is a more specific reference to the HUD regulations detailing the method of calculation. The Bank is aware of the difficulty of verification of prospective income for States with programs requiring verification. However, it is necessary for the Bank to rely on median area income data developed for other HUD programs such as the Section 8 programs and the Bank must also rely on the methodology used for these programs for income calculation, in order that income of an applicant may be compared to the median income of the area where the applicant's building is located.

3. *Cogeneration system.* A new definition for "cogeneration system" was added (discussed further under § 1800.65).

4. *Commercial building.* The definition of "commercial building" was expanded to provide that a building is "primarily" used to carry on a business if at least 50 percent of its floor space is devoted to the business. The definition also adopts a statement in the Conference Report for the Act to the effect that government-owned buildings may also be "commercial buildings" if not used for the conduct of government. (This definition has new relevance since funding is now being made available for some commercial buildings, as discussed under § 1800.37.)

5. *Contractor.* The term "contractor" has been redefined slightly. One commenter had objected to calling a builder (which could include a company performing rehabilitation) a "contractor". This is necessary in order to apply certain provisions to the purchase of substantially rehabilitated and newly constructed buildings. The final rule does clarify that a subcontractor could provide the required contractor's warranty. A subcontractor may also meet the listing requirement in § 1800.77. The interim rule had recognized that a recipient performing self-installation should not be subject to various provisions applicable to contractors; the definition in the final rule clarifies that the result is the same where the installation is performed for the recipient by a non-commercial installer free of charge.

6. *Cost-effective.* The definition of "cost-effective" has been rewritten to consolidate provisions formerly located in §§ 1800.3, 1800.47(b) and 1800.65(c). A comment suggesting that cost-effectiveness be measured by the payback period for all assisted measures considered together as well as separately was not incorporated since a determination of payback period is no longer required (see following discussion).

In the interim rule, § 1800.65(c) required that all energy conservation measures be cost-effective, defined as a simple payback period of seven years or less. The final rule as adopted by the Board of Directors deletes all direct reference to a seven-year payback standard for cost-effectiveness for energy conservation measures. This was done solely because of section 463(d) of the 1983 amendment to the Act, which reads:

The Board may not limit the amount of financial assistance that may be provided under this subtitle for the purchase or installation of residential or commercial

energy conserving improvements on the basis of the projected amount of energy conserved as a result of such improvements.

The Board has concluded that Congress intended to prohibit the Bank from using a seven-year payback test for energy conservation measures or any other test which relates assistance levels to a payback period shorter than the life of a measure. The legislative history makes this clear (H.R. Rep. No. 123, 98th Cong., 1st Sess. (1983) at pages 79-80) and also makes it clear that a requirement for payback within the life of a measure is proper.

Many commenters had objected to the use of a seven-year payback test for cost-effectiveness for energy conservation measures and solar water heating. They felt that the circumstances which led to the use of a seven-year payback test in the Residential Conservation Service (RCS) rule (47 FR 27752) are inapplicable to the Bank program.

Because of the nationwide scope of the RCS program and because low-cost RCS audits are the major readily available test for measuring for cost-effectiveness, the seven-year payback period functions as a national standard. There is no widely-accepted alternative for use by the Bank.

The revised definition of "cost-effective" provides that in most cases cost-effectiveness is measured by expected savings over the life of the assisted energy conservation measure or solar energy system, as determined by an energy audit or energy design analysis.

While the revised definition of "cost-effective" eliminates all direct reference to the seven-year payback period, it still incorporates that standard indirectly by adopting the "program measures" concept of the RCS program as one available means of determining cost-effectiveness in certain circumstances where the Bank cannot, because of the 1983 amendment to the Act, require that cost-effectiveness be demonstrated by an audit. (An audit is permitted but not required by the final rule in those circumstances; see § 1800.35.) The Bank concludes that this approach is legally acceptable because it is unlikely that Congress intended to require the Bank to fund measures which are not cost-effective under any test when it barred an audit requirement in certain circumstances where no low-cost audits were available. Use of the RCS "program measures" list as an alternative to an audit where no low-cost audits were available was suggested in a letter dated December 16, 1982 to HUD Secretary Pierce from the

Chairman and Ranking Minority Member of the House of Representatives Committee on Banking, Finance and Urban Affairs. The final rule adopts the suggestion of these Congressmen.

In jurisdictions which are completely outside of the RCS program and without any applicable "program measures" list (such as the Northern Mariana Islands), any eligible solar energy system or energy conservation measure listed in the rule may be considered cost-effective. The Bank prefers that cost-effectiveness be demonstrated by an audit but it is not a requirement.

7. *Energy Design Analysis.* The modified definition of "energy design analysis" is discussed in § 1800.35.

8. *Family.* The references in this definition to other provisions in another HUD regulation were modified.

9. *Financial institution.* The "financial institution" definition contains some technical refinements to conform to lender requirements under HUD's mortgage insurance programs. We have also added as eligible some categories of financial institutions to clarify that they do not require specific Bank approval: Public Housing Agencies receiving grants on behalf of tenants, Neighborhood Housing Services corporations, and any State, unit of general local government or Indian tribe providing grants only.

10. *Furnace.* A new definition for "furnace" has been added in response to certain comments on the list of eligible energy conservation measures (discussed under § 1800.65).

11. *Gross annual sales.* A new definition for "gross annual sales" has been added for use in determining the eligibility of an owner or tenant in a commercial or agricultural building (see § 1800.63(d)).

12. *Improvement cost.* This term (used to determine levels of assistance except in the cases of solar space heating and cooling) has an expanded definition in the final rule which includes the Bank's response to certain comments. The definition now includes incidental cost necessary to ensure the quality of an eligible energy conservation measure (such as the cost of ventilation needed in connection with attic insulation, which is the example given by the commenter who suggested this provision). The cost of energy audits (exceeding \$15) is now incorporated in this definition. This placement reflects the fact that audit cost is a cost generally followed by subsequent measures rather than an independent energy conservation measure. Through the revised definition, the Bank has extended eligibility of audit costs to audits for commercial and agricultural

buildings and for solar domestic hot water systems.

The Bank did not include the cost of an energy design analysis (which must be used instead of an energy audit in the case of some newly constructed and substantially rehabilitated buildings). It is not appropriate for a subsidy because such cost is usually difficult to segregate from the total design activity and would normally be reflected in the total costs of the newly constructed or substantially rehabilitated building in any event. The cost of an energy design analysis should be relatively inconsequential for hot water systems only.

The definition also specifically states that all costs must be reasonable. This was implicit in the interim rule, but the Bank has included an explicit provision in the final rule in order to give fair notice that assistance amounts cannot be based on clearly unreasonable costs. An installation certificate reporting clearly unreasonable costs could be considered knowing misrepresentation of a material fact, subject to penalties under § 1800.121.

13. *Indian tribe.* This is a new definition. "Indian tribe" has been broadly defined in a manner which includes any tribe (including Alaskan Native Villages) included under HUD's regulations for Indian Housing and Community Development Block Grants, DOE's Weatherization Assistance Program regulations, and HHS's Low-Income Heating Energy Assistance Program regulations.

14. *Non-profit owner or tenant.* This is a new definition. "Non-profit owner or tenant" is defined as an owner or tenant of a commercial or agricultural building organized as a non-profit entity, including a public body.

15. *Passive solar energy system.* The definition of "passive solar energy system" was modified as follows. Previous references to "home" and "living areas" were changed to "building" and "conditioned areas". A sentence was added to clarify the required elements of an eligible solar space cooling system (the interim rule gave almost no guidance), and the final sentence in the definition was added to emphasize the requirement (inherent in various provisions of the interim rule) that buildings with eligible passive solar energy systems must achieve energy savings over comparable non-solar buildings. One commenter appeared to interpret the definition of "passive solar energy system" as requiring written Bank approval of a system even if it contained the five recognition factors set forth in the definition. The rule clearly states that written approval is required

only as an alternative to the five recognition factors.

16. *Person.* Since this term is used in contexts which could include governmental entities, the previous reference to "nongovernmental" entities was deleted.

17. *Solar domestic hot water system.* This is a new definition. Both active and passive solar energy systems are included. Systems which heat water only for industrial process heat applications are excluded.

18. *Subsidy.* "Subsidy" has been defined, since that term is used occasionally in the rule or its appendices. It means either financial assistance or the amount of financial assistance, depending on the context.

19. *Substantial rehabilitation.* In response to comments, this definition has been revised to include work by or for an owner or tenant, as well as by a builder.

20. *Supplier.* In response to one comment, the definition of "supplier" was modified to clarify that only retail suppliers are covered by the provisions of § 1800.29 (debarment) and § 1800.77 (use of RCS list for grants). Wholesale suppliers as well are subject to the supplier warranty requirements in §§ 1800.49 and 1800.69, and in the case of energy conservation warranties only, manufacturers selling directly to consumers are also considered suppliers.

21. *Unit of general local government.* This term is now defined and is similar to the definition in Community Development Block Grant regulations.

C. Subpart B—Financial Assistance—General

1. *Section 1800.17: Prepayment of interest.* One comment requested alternative procedures regarding prepayment of interest (interest reduction). No change is needed since § 1800.17(b)(3) clearly permits alternative procedures.

2. *Section 1800.19: Grants.* The introduction to this section was modified to permit a financial institution to accept evidence other than an applicant's certification of the existence of "matching" funds for the grant. Although the Act, read literally, requires an applicant certification, this would be superfluous under many common arrangements under State programs (for example, where the financial institution is providing the "matching" funds itself). The Bank has concluded that statutory intent will be satisfied as long as grant funds are not committed without evidence of ability to pay the full cost of the energy conserving measures.

3. *Section 1800.21: Repayment of loans.* Two comments were received pertaining to loan repayment terms. The Act is specific on required loan repayment terms, permitting assistance only for energy conservation loans for terms of 5-15 years, and solar energy loans for 5-30 years (one- to four-family residential buildings) or 5-40 years (other buildings). Shorter terms are allowable only "at the request of the borrower". There is no allowance for longer terms even by mutual agreement of lender and borrower. The Bank therefore has no discretion to adopt the one-year minimum term suggested in one comment, or to allow 20-30 year loans for energy conservation measures as part of general rehabilitation as suggested in another comment. (The Bank made one minor change to conform the final rule to the Act, by now permitting multifamily solar loans up to 40 years rather than 30 years as in the interim rule.)

Also, a new paragraph (d) was added to pre-empt any State or local requirement setting maximum terms for loans which are shorter than the minimum five-year term allowed by the Act. Under the new paragraph (d), a financial institution could establish any loan term consistent with the final rule, regardless of any conflicting State or local requirements, as long as the loan was assisted. If financial assistance were sought but not granted, then the financial institution could reduce the loan to the maximum term consistent with State and local requirements.

4. *Section 1800.25: Limitations on Retroactive Assistance.* One commenter suggested that § 1800.25 be modified to permit assistance of measures installed up to 120 days before application for assistance under the Bank program, in order to permit coordination with an existing rebate program providing assistance through utility company rebates for installations performed before a specified date. The Bank sees no necessary relationship between a rebate-type program (which is approved for a number of States) and the current rule on retroactive assistance and has not modified § 1800.25.

5. *Section 1800.29: Debarred contractors, suppliers and financial institutions.* Paragraph (a) in § 1800.29 was revised slightly to allow means other than contractor self-certification to enforce the bar against use of debarred contractors. The revised Section also does not cover suppliers to contractors; the usual HUD debarment procedures would not apply such to suppliers. Suppliers are still covered when installation is not by a contractor.

6. *Section 1800.31: Limitations on proceeds of tax-exempt borrowings.* Five commenters opposed § 1800.31 of the interim rule, which disallowed use of Bank funds to subsidize tax-exempt financing. The Bank finds no convincing evidence that program viability would be adversely impacted by this provision, which is designed to preclude excessive and duplicative Federal subsidies. The Bank maintains that prudent management of public funds supports this provision consistent with a long-standing policy against Federal assistance in conjunction with tax-exempt obligations. Nevertheless, the amended Act requires deletion of this provision from the final rule, and it has been deleted.

As a result, §§ 1800.43(d) and 1800.63(i) are the only provisions in the final rule which limit a State's discretion to allow the use of other Federal subsidies (including tax-exempt financing) in connection with Bank assistance. The Bank prefers that States limit Bank subsidies to cases where no other Federal subsidy is involved. This will contribute to a principal Bank objective of encouraging cost-effective energy conservation and/or solar energy programs which can be continued without regard to the availability of future Federal funding. Also, the effective use of available Federal funds in a manner which benefits the maximum number of eligible recipients is of primary importance. Consequently, the extent to which other Federal subsidies are used will be taken into account when funds are allocated among States as described in § 1800.95(c). If a State does permit the use of other Federal subsidies, the Bank urges States to make appropriate use of their discretion under § 1800.105 by limiting the level of Bank subsidy so that total Federal subsidies do not exceed the maximum Bank subsidy allowed under this final rule.

7. *Section 1800.33: Installation certificate.* This section, which requires a recipient of assistance to submit an "installation certificate" following installation, was rewritten extensively in the final rule to improve its clarity. In particular, the rewritten rule requires the installation certificate (in all cases except for solar space heating or cooling systems) to include the actual improvement cost, or a statement that the improvement cost equals or exceeds either the loan amount or a cost estimate used to calculate the amount of financial assistance. (The definition of "improvement cost" in the interim rule had required that it be certified in the

installation certificate, but there had been no cross-reference in § 1800.33.)

8. *Section 1800.35: Energy audit or energy design analysis required.* Section § 1800.35 of the interim rule required an energy audit or energy design analysis as a prerequisite to any Bank subsidy. Seven commenters addressed this and related provisions. Four of the commenters supported the use of a self-audit for a generic list of energy conservation measures which would usually be cost-effective. Another comment stated the energy audits should be required only if an RCS (or equivalent) Class A audit is available for \$15 within three months, while another stated that contractors should be able to perform audits for passive solar water heating systems.

The Bank is convinced that in most circumstances an energy audit is essential, and that this is an appropriate requirement as long as low-cost energy audits are available in most areas of the country under the RCS program. The Bank is aware that RCS audits (which cost no more than \$15) are not available in some parts of the country, for several reasons. Areas covered by small utilities never will be part of the RCS program, under the current law. As well, there is no RCS plan in some States and approved plans in other States have not been implemented. However, as a result of the recent DOE final rule concerning Federal Standby Plans (48 FR 44146), RCS coverage should expand beyond presently existing coverage. Over 90 percent of utility customers in one- to four-family residential buildings should be covered. As well, the recent DOE final rule implementing the Commercial and Apartment Conservation Service (CACS) program (48 FR 49622) should lead to greater availability of audits for apartment buildings over five units and small commercial buildings. The Bank recognizes that its audit prerequisite could deter some potential recipients of assistance. On balance, however, it is the Bank's position that affordable audits will be widely enough available to justify them as the basic program tool assuring both the Bank and consumers that assistance is given only to cost-effective measures. The Bank will subsidize any audit costs over the initial \$15 per dwelling unit (or per building, for commercial and agricultural buildings).

The final rule adopted by the Board contains an exception to the audit prerequisite to comply with the 1983 amendment to the Act. Audits are not required for one- to four-family residential buildings located in areas where audits are not available under the RCS or CACS programs. The Bank

strongly encourages use of any other available audits in such circumstances.

The Act still permits an audit prerequisite for assistance in most cases, and requires it for all energy conservation measures in commercial and agricultural buildings. The Bank concludes that Congress shares the Bank's view that audits are valuable tools which assist both applicant and financial institution in determining which investments are desirable.

There is merit in the "generic list" self-audit suggestion, and the Bank has adopted it as a second exception for one- to four-family residential buildings. Commenters had suggested duct and attic insulation, caulking, weatherstripping, water heater insulation and low-flow showerheads as appropriate "generic" measures for which a self-audit could suffice. In addition to these items, the Bank has added certain devices for modifying flue openings, furnace ignition systems and clock thermostats or timers, to enhance the likelihood that the minimum allowable \$250 threshold for grant participation (§ 1800.75) could be reached with only "generic" items.

The Bank notes that § 1800.79 requiring that an applicant be informed of the availability of energy audits (including non-RCS audits) will still apply for all energy conservation measures in one- to four-family and multifamily residential buildings, as required by the Act, even if an audit is not required.

The Bank has retained the interim rule's definition of energy audit in § 1800.3, which is derived from the statutory definition, and does not consider it necessary to provide specially for a contractor audit. In response to three comments, the Bank wishes to clarify that energy audits which use a fuel cost escalation factor are acceptable. Two commenters objected to the requirement that an energy design analysis be performed by a qualified licensed engineer or architect only and felt that any qualified energy auditor should be permitted to perform an energy design analysis. The Bank agrees and the definition of energy design analysis in § 1800.3 was modified accordingly. Finally, § 1800.35 was revised to clarify that either energy audits or energy design analyses would be acceptable for substantially-rehabilitated buildings and for newly constructed buildings where the only solar energy systems were for water heating.

9. *Section 1800.37: Financial assistance not available until notice.* The interim rule included some kinds of buildings for which funding was not

immediately available. Section 1800.37 listed those kinds of buildings which would not be funded unless a notice was published in the *Federal Register*. Six commenters suggested changes to this restriction. The comments included: allow funding for commercial and agricultural buildings, allow funding for passive space heating in existing residential buildings, and allow States to decide which buildings should be funded.

Under the current scope of the program, the Bank continues to believe that it is prudent to direct its funds to individuals in residential buildings and to continue to restrict the use of funds for some purposes. However, the revised § 1800.37 permits funding for non-profit owners or tenants of commercial and agricultural buildings in response to report language of the House of Representatives Committee on Appropriations regarding Fiscal Year 1984 appropriations for the Bank. (This requires certain other conforming changes to the rule.) There is no restriction on the use of prior year funds for this purpose. To avoid certain distinctions between multifamily residential buildings and the nonresidential kinds of buildings which would result without any technical justifications, the revised § 1800.37 also permits funding for passive solar space heating and solar domestic water heating in newly constructed or existing multifamily residential buildings.

Because of the 1983 amendment to the Act, the Bank also amended § 1800.37 to provide funding for active solar energy heating systems and to provide funding for passive solar energy heating systems in the same cases. Hence, passive space heating in existing one- to four-family residential buildings is also now eligible for funding. The issues regarding active systems are discussed under § 1800.45. As amended, the Section still restricts funding for passive solar space cooling to newly constructed one- to four-family residential buildings, and bars assistance to for-profit owners or tenants of commercial and agricultural buildings.

D. Subpart C—Solar Energy Assistance

1. *Section 1800.43: Eligible recipients.* Discussion of this section is combined with the discussion under § 1800.63 (eligible recipients for energy conservation assistance).

2. *Section 1800.45: Eligible Solar Energy Systems.* The Bank received seven comments which recommended allowing active solar energy systems. As explained in the following discussion, active systems are made eligible in the final rule only because of the 1983

amendment to the Act. Two comments recommended allowing assistance for installation of passive solar energy systems in existing buildings beyond the water heating allowed in the interim rule. These comments have been accepted.

Of the seven commenters who objected to the total exclusion of active solar energy systems from the interim rule, two addressed active hot water systems only. The other comments made three points: a provision restricting assistance to cost-effective solar energy systems (using a seven-year simple payback test or some other definition) would be sufficient to exclude systems which should not be assisted, program participants and not the Federal Government should determine whether active systems are desirable, and not all individuals can use the tax credit for active solar energy systems. No commenters disputed the Bank's position that active systems are, on the whole, generally less reliable, more trouble-prone and need more maintenance than passive systems. This consideration would not be addressed by reliance on a cost-effectiveness test taking into account only the initial system cost. Also, the calculations for the DOE RCS program demonstrate that active space heating would be cost-effective (using seven-year simple payback periods) in only a few areas. Elsewhere, even if the Bank chose some other cost-effectiveness criterion, audits performed under the RCS program would not ordinarily consider or recommend active systems. Active systems are excluded from DOE's CACS program (audits for larger buildings).

The Bank feels that its original objections to funding active systems are valid. The Bank did not intend to recommend funding for active systems to the Board of Directors. As stated in the preamble to the interim rule, the Bank's objections are that active solar systems are much less cost-effective than general conservation measures and passive solar energy systems, and that the active systems are less reliable than passive ones with complicated maintenance requirements not experienced with passive systems. There is no strong evidence that program viability would be adversely affected by the limitation of assistance to passive systems, with the possible exception of Hawaii (which several commenters noted as a particularly good candidate for active solar water heating system assistance, with residential energy needs heavily focused on water heating and with little need for conventional energy conservation

measures). However, the 1983 amendment to the Act mandates eligibility for active solar energy systems for space and water heating in new and existing one- to four-family residential and multifamily residential buildings, and the final rule complies with this mandate. It also extends eligibility to active solar space and water heating in commercial and agricultural buildings, since there is no technical justification for distinguishing these buildings from multifamily residential buildings.

One commenter stated that new superinsulated homes should be considered passive solar homes eligible for assistance. Such homes require little conventional fuel for space heating and cooling, according to the commenter, but builders are reluctant to build such homes because of their higher initial costs. The Act clearly classifies insulation in the energy conservation category rather than the solar energy category, and limits energy conservation assistance to pre-1980 homes. Therefore, this comment cannot be adopted. Superinsulated homes which contain all of the required five recognition factors for a passive solar energy system would be eligible. Written Bank approval could be requested for other superinsulated homes with some passive features.

Another commenter requested that up to a quarter of the assistance amount allowed for passive solar homes be available for energy conservation measures. This is not permitted by the Act if solar energy assistance only is provided. For a pre-1980 home, additional assistance could be sought for the energy conservation measures as part of the same loan under § 1800.23, as long as all applicable requirements for energy conservation measures are met. For newer homes, it is expected that the insulation needed for an energy-efficient home would be installed at the applicant's expense; this is reflected in § 1800.55 which is partially based on a statutory requirement.

3. *Section 1800.47: Levels of assistance.* One commenter felt that financial assistance should exceed 40 percent of the cost of a solar energy system. The bank does have statutory discretion to exceed the 40 percent solar maximum in some cases: applicants with an income of 80-160 percent of median area income could receive up to 50 percent of cost, applicants with an income of 80 percent or less or median area income could receive up to 60 percent of cost, and owners or purchasers of low- or moderate-income multifamily residential buildings could receive up to 60 percent of cost.

However, the Bank does not want to unnecessarily complicate the solar assistance program by varying assistance according to income. Unlike the conservation program, the Bank finds no basis for concluding that allowing the highest possible amount of assistance will substantially increase participation by persons of low- and moderate-income. The 40 percent figure is equivalent to the residential energy tax credit (principally used for active solar energy systems).

Section 1800.47 was amended so that the maximum amount of assistance for solar domestic hot water systems in multifamily residential, commercial or agricultural buildings is now the lesser of \$12,500 or 40 percent of cost. (No assistance was previously allowed for such systems.) The maximum amount of assistance for a passive solar space cooling system is now \$5,000, up from \$1,000.

The final rule also provides that the aggregate assistance to more than one applicant for a system or measure serving more than one unit cannot exceed the assistance amounts shown for one applicant, in § 1800.47(a)(5). Two commenters thought that the interim rule classified mobile homes as multifamily residential buildings, with their lower level of assistance. The Bank intended that mobile homes (or manufactured homes, as they are called in HUD programs) be considered one-family residential buildings even if located on a rented space in a manufactured home park. This is indicated in § 1800.47(a)(4)(ii) and § 1800.67(a)(2)(ii). The only exception would be if the manufactured home shared a common space conditioning system with other dwelling units.

Seven commenters addressed the method prescribed in the interim rule for varying the amount of solar energy assistance on the basis of energy savings. Such variance is a statutory requirement applicable to all passive and (since January 1, 1983) active solar energy systems, except where it is not practicable. The interim rule only required energy savings to be used to vary the assistance amount for passive solar space heating (representing the Bank's tentative determination that such variance was not practicable for passive solar space cooling or passive domestic hot water systems, where assistance amounts were calculated as a portion of cost). Under the final rule energy savings rather than cost are also to be taken into account when calculating the assistance amount for passive solar space cooling.

Section 1800.47(b) of the interim rule prescribed the method for varying assistance for passive solar space heating systems in one- to four-family residential buildings. One commenter read the statement that assistance "may" be reduced as an indication that the method was advisory only. "May" in that context referred to the fact that the method would not necessarily result in a reduction and did not indicate that the method was other than mandatory.

Other comments included: delete the energy savings provision (not legally possible unless the Bank believes that variance of assistance amount on the basis of energy savings is impracticable in all cases, which it does not), permit the use of computer analysis to determine energy savings, clarify or simplify the calculation method, permit States to decide how to determine and apply energy savings, and make the method specific for particular States or climatic regions. In response to these comments, the major change in the final rule is to allow use of any method other than the Bank method to determine annual energy savings for active and passive space heating, based on millions of Btu's (British thermal units), with assistance provided on the basis of \$200 per million Btu's in annual energy savings up to the statutory maximum. If they adopt this approach, States are encouraged to establish some minimum threshold annual energy savings level for system eligibility, to preclude the administrative burden associated with very small energy savings/subsidy levels. The \$200 subsidy rate per million Btu's annual energy savings is not analytically derived but represents a lump-sum value based on a nominal \$10 cost per million Btu's saved annually aggregated over a 20-year time period. This is considered a reasonable limit for a Federal subsidy considering current energy costs in the range of about \$5 to \$20 per million Btu's. States would be able to prescribe any method for determining annual energy savings in their programs, or they could choose to permit only the Bank method.

Some commenters felt that the Bank method was defective as a means of varying assistance for energy savings. The Bank method for determining passive solar space heating system subsidies in one- to four-family residential buildings, employing climatic and performance limiting factors, was intended to be a simple, direct, and easily verifiable concept that provided a built-in correlation between annual energy savings and subsidy level. The factors were analytically developed using extensive data prepared by HUD

in 1980 on estimated energy savings from passive space heating as a function of system type, size and geographic location. The Bank concluded that the only other feasible alternatives would be to use a rather sophisticated computer analysis or some other comprehensive energy analysis technique that could be overly burdensome as a requirement. Such an alternative approach is acceptable under the final rule, however, with the establishment of some specific subsidy to energy savings relationship, and is the only approach considered feasible for all other building categories.

One commenter asked that cooling degree days rather than cooling hours be used in Appendix I (used to determine "climatic factor"). The revised Appendix I permits use of either days or hours.

4. *Section 1800.49: Warranties.* The requirement for solar warranties is discussed together with energy conservation warranties under § 1800.69.

5. *Section 1800.55: Standards.* One commenter objected to the Bank's use of the HUD Minimum Property Standards (MPS) as the statutorily required building insulation standards to be met by purchasers of newly constructed or substantially rehabilitated one- to four-family or multifamily residential buildings with solar energy systems (§ 1800.55). The commenter felt that the MPS is based on erroneous data from the National Bureau of Standards and is deficient for linking insulation levels to the kind of fuel source, and recommended use of ASHRAE standard 90A-1980. The Bank is given limited discretion in the relevant section of the Act; its standards must be ones established by the HUD Secretary and in effect on June 30, 1980, as such standards may be revised by the Secretary after consultation with designated officials and bodies including the National Bureau of Standards. In the Conference Report for the Act, Congress specifically mentioned the MPS as an appropriate standard for use by the Bank, and the Bank is not aware of another appropriate standard which would comply with statutory requirements.

In connection with its allowance of funding for certain commercial and agricultural buildings in the final rule, the Bank has adopted ASHRAE Standard 90A-1980 as the insulation standards for purchasers of newly constructed buildings. (There is no available standard which would be applicable for upgrading existing buildings. Hence, existing buildings are eligible with no insulation requirements.) There are no statutory

limitations applicable to standards for these buildings.

E. Subpart D—Energy Conservation Assistance

1. Section 1800.63: Eligible recipients. (This discussion also covers § 1800.43.)

Seven commenters addressed the provisions on eligibility of applicants/recipients. The greatest number of comments was on the provisions prohibiting Bank assistance to persons with "outstanding commitments" under listed HUD, DOE or Farmers Home Administration programs (§§ 1800.43(d) and 1800.63(i)). Many comments suggested that this provision, if retained, should only prohibit Bank assistance for particular measures also assisted under those programs, but that assistance under different Federal programs should be available for different measures. The final rule incorporates this suggestion. It also deletes the HUD Indian Housing program from the list of programs which cannot be combined with solar energy assistance from the Bank, since the Bank is not aware of any assistance being provided under the Indian Housing program for solar energy systems.

Another comment suggested use of median area income as the threshold for energy conservation grant eligibility rather than 80 percent of median area income as required in § 1800.63(b). The Bank has no discretion to raise the 80 percent limit contained in the Act. Another commenter suggested that non-occupant owners of agricultural or commercial buildings be eligible to receive assistance. The provision regarding owner-occupant eligibility (§ 1800.63(e)) is also required by the Act. The 1983 amendment to the Act was apparently intended to remove some income limits on owners and tenants, although the amendment contains a technical error discussed below. Under the amended Act, landlords of residential property of any size are not subject to an income limit; the only owner still subject to a statutory income limit is an owner-occupant of a one-family residential building. The revised § 1800.63(c) conforms to this change. The amended Act also removes statutory income limits from most tenants in one- to four-family residential buildings, while retaining them for tenants in multifamily residential buildings. Section 1800.63(c) was not revised to take advantage of this change. Instead, the Bank has exercised its administrative discretion to retain an income limit for all tenants, since it perceives no reason for distinguishing among tenants in different sizes of buildings on the basis of income. In an

apparent technical error, the 1983 amendment to the Act established relevant levels of assistance for the owners and tenants previously subject to an income limit, by amending section 511(a) of the Act, but failed to expressly amend section 514(b)(7) of the Act which contains the income limits. The Bank has concluded that an amendment to section 514(b)(7) corresponding to the section 511(a) amendment was intended by Congress and has inferred a section 514(b)(7) amendment as necessary for the section 511(a) amendment to have any effect.

Two commenters also questioned the rule's treatment of applicants from cooperatives and condominiums. Some special treatment is necessary regarding eligibility of dwelling unit and building owners in such situations, since the statutory reference to "owners of buildings" is not simply applied to these non-fee simple ownership situations. Sections 1800.43(e) and 1800.63(k) have been added to clarify the Bank's approach, which was only implicit in the interim rule, and § 1800.63(c) was revised. Unit owners/shareholders in condos/coops are treated as single-unit building owners; condominium associations and housing cooperative corporations are treated as owners of a building consisting of all the condo/coop units. When a condominium association or housing cooperative corporation is the applicant, all resident unit owners must meet the relevant income limitations in the case of one- to four-family residential buildings. When the associations/corporations are applying for condos/coops with five or more units, the income of the actual unit owners is no longer used (unlike the interim rule) because of the difficulty in ascertaining income for all units in a larger building; the final rule has adopted the suggestion of one commenter and provides that the median income of the census tract for the building shall not exceed 150 percent of median area income test for multifamily condominium association/cooperative corporation applicants. The Act does not require any income test for multifamily owners but the Bank feels that this distinction between multifamily coops/condos and multifamily rental buildings is appropriate to preclude funding which benefits luxury non-rental units (which the Act generally restricts by applying a 150 percent median area income test to occupant-owners of one-family buildings).

Two comments were also received concerning the eligibility of Public Housing Agencies (PHA's) for assistance. The Bank wishes to facilitate

participation by PHA's (including Indian Housing Authorities) in the Bank program. In the Bank's view, one effective manner of PHA participation would be as a coordinator seeking grants on behalf of tenants which have given written consent. A new § 1800.63(j) has been added to specifically permit this, although in the Bank's view this arrangement was implicitly permitted by the interim rule. The new provision refers to another provision, § 1800.63(g), which generally permits eligible applicants to permit third parties to act on their behalf during the assistance process. In response to a comment, § 1800.63(g) and the corresponding § 1800.43(f) have been generalized from the interim rule to specifically apply them to tenants as well as owners, and to all buildings.

Section 1800.63(h) in the interim rule limited assistance to tenants in multifamily residential buildings to cases where the tenant's space heating and cooling costs would be measured by an individual meter following installation of all energy conservation measures. The Bank has concluded that there is no reason to exempt tenants in smaller residential buildings from this requirement, and the final rule eliminates that exemption.

The provisions concerning joint applications of tenants for assistance, § 1800.43(c) and 1800.63(f)(3), were expanded. The final rule also provides that the aggregate assistance to more than one applicant for a system or measure serving more than one unit cannot exceed the assistance amounts shown for one applicant, in § 1800.47(a)(5) and 1800.67(a)(3). A new paragraph (g) was added to § 1800.43, to implement a statutory provision barring solar energy assistance for loans made after 1985 to owners of one- to four-family residential buildings.

2. Section 1800.65: Eligible energy conservation measures. The changes suggested for eligible energy conservation measures were diverse but fall into three categories: numerous recommended new eligible measures, need for clarification of existing eligibility, and deletion of currently eligible measures.

Two commenters suggested that cogeneration systems should be eligible energy conservation measures. The Bank recognizes that the Act specifically lists cogeneration in its definition of "commercial energy conserving improvements," and agrees that it should be added as an eligible measure for commercial and agricultural buildings. (Cogeneration systems were not included in the interim rule because the Bank did not then expect to

subsidize energy conservation measures in commercial and agricultural buildings.) In the interim rule the Bank made multifamily residential buildings eligible for the same measures as nonresidential buildings. However, we do not think cogeneration would ordinarily be feasible for multifamily residential buildings and therefore have limited its eligibility to commercial and agricultural buildings. A definition of "cogeneration systems" has been added to § 1800.3. As recommended by one commenter, the definition is based on the one used in the Public Utility Regulatory Policies Act of 1978 (PURPA), with some modification to ensure that the annual energy consumption of the building is reduced. Energy produced by the cogeneration system may also be applied to uses outside the building which contains the system.

Two other commenters supported assistance for low-flow showerheads and minor structural repairs. The Bank recognizes that low-flow showerheads and other water flow controllers can be a cost-effective measure of widespread applicability, and has made them eligible for assistance in all kinds of buildings. Minor structural repairs of \$100-200 can certainly have energy saving benefits, e.g., repair of a broken window. However, the Bank has concluded that since this program provides only partial financing in any event, an applicant should bear the burden of basic homeowner/tenant responsibilities. The Bank differentiates between repairs and the incidental costs associated with eligible measures which are included in the definition of "improvement costs".

Heat pumps were recommended for subsidies by two commenters and another commenter asked for clarification that "replacement air conditioners" excludes heat pumps. As indicated in the preamble to the interim rule (48 FR 24255), the Bank did not intend to include heat pumps among the "replacement furnaces" made eligible in the interim rule. This differs from DOE's RCS program rule which does consider heat pumps as furnaces in its definition of "furnace efficiency modifications" in 10 CFR 456.105. In the Bank's view, a heat pump is neither a furnace nor an air conditioner. To allow a heat pump to replace any combination of furnace, irrespective of fuel source, and air conditioner makes the cost-effectiveness subject to fuel rates which could change in the future, one relative to another. Thus, what may be cost-effective today may not be sometime in the near future, causing an applicant to regret making any change in the first place and

possibly reverting to the original situation. However, the price of electricity has been shown to be relatively stable with very gradual change. Since heat pumps are electrically driven, it would be practical to allow either replacement heat pumps or a heat pump replacing an electric resistance heating and air conditioner combination. Hence, the final rule allows replacement heat pumps and heat pumps replacing electric resistance heating and air conditioning combinations, and specifically excludes heat pumps from the air conditioner and furnace categories.

The interim rule made replacement air conditioners eligible in one- to four-family residential buildings, subject to a seven-year simple payback test for cost-effectiveness. The original Act had not included air conditioners as an eligible measure, but the Board chose to exercise its statutory authority to add them to the eligible list. By the 1983 amendment to the Act, however, air conditioning systems have been added to the Act as an eligible measure for all building categories if the systems have "better than average energy efficiency ratings." In response, the final rule now permits financial assistance for new air conditioning systems in all buildings, provided that the energy efficiency rating exceeds a level which the Bank will define and revise as needed. The level will be provided to the States. (In the case of one- to four-family residential buildings, new systems are restricted to areas where the average number of annual cooling degree days is at least 1,000 or areas which meet an acceptable State-defined test.) Replacement systems are also now eligible in all buildings. In response to one comment on the interim rule and in recognition of the Congressional concern for energy efficiency in air conditioning systems, the final rule requires that a replacement air conditioning system be at least 20 percent more energy efficient than the existing system. This requirement is particularly needed since the former seven-year payback requirement has been deleted.

Two commenters also recommended eligibility for heat pump water heaters. Heat pump water heaters operate like heat pumps for space heating and cooling. The difference is that heat pumps use ambient outdoor air as the energy source whereas heat pump water heaters usually operate indoors. Thus, indoor air is the energy source and energy extracted to heat the water cools the indoor air. The location of the water heater is therefore an important factor.

The relative fuel cost concern discussed above for heat pumps also applies. The Bank feels that the cooling effect of a heat pump water heater can be beneficial in the warm weather but a disadvantage in the heating season as energy use for space heating may increase. Located in a basement, garage or closed-off utility area, the benefits clearly exceed the possible increase in space heating, noise level aside, based on available literature. Therefore, the final rule makes heat pump water heaters eligible in one- to four-family residential buildings, but only in replacement of or in combination with existing electric resistance domestic water heaters.

A commenter recommended that the Bank permit assistance for all energy conservation measures contained in a State RCS plan. Under DOE's RCS regulation, States are permitted to add measures in their State plans as eligible for energy audit purposes beyond those identified in the regulation. To do the same for the Bank program could result in assistance for measures not specifically allowed by the Bank's Board of Directors. Only measures approved by the Board should be eligible, so that this comment was not adopted. However, a State may elect to restrict the list of eligible measures as may be appropriate for that State (for example, a commenter noted that storm doors and windows might not be cost effective in some areas) and a sentence was added to § 1800.105 to make this clear.

Items such as passive window box heaters, shading devices and fans were recommended in one comment. The nature of these items is such that they are subject to aesthetic valuation and be easily removed or simply not used. Assistance should be limited to the more conventional, basic weatherization measures. This comment was not adopted.

Two comments concern the interim rule provision which includes energy audit costs over \$15 per dwelling unit as an eligible measure if followed by installation of another measure. One commenter suggested allowing audit cost over \$15 per dwelling unit for low-income applicants even if no other measure is installed. The interim rule followed the original language of the statute in linking eligibility of audit costs with other measures. By law, the low-income applicant's expenditures must exceed \$250 for grant eligibility and energy audits should not cost that much. Loans for such a small amount are unlikely to be available. The suggestion was therefore not feasible in the opinion of the Bank. However, the

Act was amended to remove the former statutory link between eligibility of audit costs and other measures. The Board has concluded that a similar change in the final rule is expected by Congress. Hence, this change is made in the final rule.

Another comment opposed eligibility for audit cost over \$15 in areas where a low-cost RCS audit is required. The RCS program is not yet fully implemented and \$15 (or less) energy audits are not yet available in all areas where they will be required. The Bank will not distinguish between individuals on the eligibility of assistance for audit costs based on the RCS program status in different areas. The RCS program status is changing over time and the Bank's policy is based on full implementation of the RCS program. (Audit costs are also discussed under § 1800.3, definition of "improvement cost".)

One comment recommended eligibility for wood burning devices, flue lining, pipe insulation and clock timers. The Bank intended that pipe insulation and clock timers would be eligible in the interim rule and clarifying language has been added in the final rule. A wood burning device is an auxiliary heating source, not eligible as a replacement furnace, subject to aesthetic valuation and may simply not be used. (The Act also treats such devices as solar energy systems rather than as energy conservation measures.) Flue lining would be an incidental cost with a wood burner installation but is a safety measure rather than an energy conserving measure by itself. These items are not eligible in the final rule.

Attic venting (when attic insulation is installed) was recommended for eligibility in one comment. Proper ventilation is essential with many forms of insulation material to prevent moisture condensation which can degrade insulation quality.

There are a number of such incidental cost items associated with eligible measures that may be included as part of the installation costs. The Bank has addressed this question in the expanded definition of "improvement cost" (§ 1800.3) which states that incidental cost items may be treated as part of the cost of an eligible energy conservation measure.

One comment recommended funding for modular heating systems. The Bank considers a modular heating system eligible as a replacement furnace, but only where a furnace meets the total heating capacity requirement of the building or zone as applicable. Therefore, a new definition of "furnace" is added to § 1800.3 which defines

furnace accordingly but excludes heat pumps and any portable heating unit. Sections 1800.65 (a)(2) and (b)(6) were modified to clarify that eligible furnaces must be replacement furnaces, as requested by one commenter. They were also modified to specify that the increase in efficiency over the old furnace must be at least 20 percent, now that the seven-year payback requirement is deleted.

One commenter recommended that certain utility improvements in projects owned by Public Housing Agencies be made eligible. Most of the improvements are now clearly eligible or are discussed elsewhere. In response to this comment, the eligibility of heat absorbing/reflecting films on windows is clarified in the final rule.

Another commenter wanted refrigerators, freezers and lights to be eligible. Residential conservation is targeted at the building shell and heating/cooling systems for sustaining comfort levels. Appliances and lights in individual dwelling units are beyond the primary focus of the program. This comment was not adopted.

An explanation of "energy recovery system" has been added to § 1800.65(b)(8). "Including dimmers" was added to § 1800.65(b)(7), regarding eligible lighting modifications.

Finally, a commenter requested a statement in the rule that the Board will consider future expansions of eligible measures. The Bank does not consider it necessary to adopt a specific procedure for possible expansion (or contraction) but notes that the Board retains the power to engage in rulemaking at any time for modification of the eligibility list or for any other purposes. The Act only permits the Board to approve new energy conservation measures "by rule." Through § 1800.135, the Bank has adopted HUD's rulemaking procedures which permit any interested person to petition for rulemaking (24 CFR 10.20).

Since the interim rule was drafted, a Consumer Products Safety Commission (CPSC) ban on installation of urea-foam formaldehyde insulation (UFFI) in residences was overturned by a Federal court (*Gulf South Insulation v. U.S. Consumer Products Safety Commission*, 701 F. 2d 1137 (5th Cir. 1983)), so that there is no current Federal legal prohibition on use of Bank funds to purchase and install UFFI. (The court action did not affect State or local restrictions on UFFI, which are not preempted by this final rule.) The Bank is aware of the serious health questions associated with the use of UFFI in residences and will attempt to monitor developments in this area. However, no

provision is included in this rule specifically on UFFI because: (1) The Bank had given no indication that it might include such a provision nor specifically sought comments on such a provision and none of the commenters on the interim rule questioned its applicability to UFFI, (2) it is not appropriate for the Bank to take the lead in the Federal Government on UFFI issues and we will await any further action of the CPSC, DOE or other agencies, and (3) the Bank does not possess the scientific knowledge or expertise to justify rulemaking on the UFFI issue. We note that the CPSC is continuing to study UFFI through a Chronic Hazard Advisory Panel established in response to the court opinion.

3. Section 1800.67: Levels of assistance. One commenter felt that financial assistance should exceed 50 percent of cost for energy conservation measures. The 50 percent maximum (available only for applicants with a family income at 80 percent or less of the median area income) is set in the Act and the Bank has no discretion to increase it. However, the chart showing the maximum levels of assistance appearing in § 1800.67(a) of the interim rule was revised in various other ways. The chart was taken from the Conference Report for the Act. However, it contained certain errors which are corrected in the final rule; for example, the income bracket qualifying for assistance for 50 percent of costs is now "80 percent or less" of median area income, as in the Act, rather than "less than 80 percent" as in the interim rule. Also, the \$5,000 maximum for commercial and agricultural buildings is per applicant, not per building as indicated in the interim rule.

In accordance with the 1983 amendment to the Act discussed under § 1800.83, a new line was added to the chart. The chart now permits assistance to owners of two- to four-family residential buildings and rental one-family residential buildings who have family incomes exceeding 150 percent of the median area income. Such assistance may not exceed 20 percent of the improvement cost or \$400 per dwelling unit, whichever is less, which is equivalent to the assistance available for multifamily residential buildings. Owners-occupants in one-family residential buildings with incomes over 150 percent of the median area income are still barred from financial assistance by the Act and the final rule.

Also, additions to § 1800.67 similar to those discussed under § 1800.47 were

made with respect to multiple applicants and manufactured homes.

4. Section 1800.69: Warranties. (This discussion also covers § 1800.49.) Under the amended Act, manufacturer's warranties are no longer required for energy conservation measures and supplier's warranties are required for energy conservation measures only when installation is not performed by a contractor. Corresponding changes have been made to the final rule.

One commenter stated that a contractor should be able to "pass through" a manufacturers' warranty to the recipient to satisfy the requirement for a contractor's warranty against a defect in materials, manufacture or design, to be supplemented by the contractor's own warranty on the installation. The Bank did not intend to prohibit this arrangement in the interim rule. The warranty provisions have been reorganized to clarify this and other points which have led to confusion among some State participants. The final rule deletes the former § 1800.49(f), which permitted any warranty in compliance with the RCS program requirements to be accepted as a warranty for solar energy systems assisted by the Solar Bank. This provision was legally impermissible since certain solar warranty matters must cover three years under the Bank program rather than the uniform one year under the RCS program.

The final rule also adds a new § 1800.69(f), which permits exemptions from the supplier's warranty requirements for certain energy conservation measures (caulking, weatherstripping, etc.) upon State determination that warranties are not generally available for such measures and that warranties are not necessary for quality assurance. (Contractor's warranties will still be required in all cases where installation is by a contractor.) This section was added in response to indications from some State participants that warranties for certain items might not be available from manufacturers or suppliers. The Bank has concluded that the Act does not require a supplier's warranty for every energy conservation measure assisted by the Bank and not installed by a contractor, regardless of whether the measure is of a nature appropriate for a warranty. The Act does not appear to ever require a warranty for energy audits and meter conversion, which are defined as energy conservation measures; the Bank feels that other minor exceptions may be inferred from the Act without transgressing Congressional intent. A similar

approach was taken in the interim rule (and continued in the final rule in § 1800.49) whereby warranties are not required for components of solar energy systems which are ordinary building products in general construction use.

The revised §§ 1800.49 and 1800.69 clarify when a recipient's certification can serve as acceptable evidence that the warranty requirement can be satisfied. In general, the Bank feels that such a certification is insufficient because the typical recipient may not be able to determine whether all pertinent requirements of the rule are satisfied by a warranty. The 1983 amendments to the Act, however, specifically anticipate a recipient's certification for energy conservation measures not installed by a contractor. The final rule permits reliance by a financial institution on a recipient's certification only in that case.

5. Section 1800.77: Contractors and suppliers. The Act originally prohibited grants unless the supplier or contractor is included on a list provided under the RCS program and this restriction was repeated in § 1800.77 of the interim rule. Section 1800.77 extended that prohibition to loan subsidies as well, in those circumstances where a relevant list was in fact available (excluding areas of States without lists and multifamily buildings, which might be served by a different group of contractors/suppliers). The amended Act now has an exception for grants in areas of States without lists, which has been added to § 1800.77 in the final rule.

Four comments on § 1800.77 were received; two opposing the provision, one suggesting alternatives to the RCS list and one stating that wholesale suppliers should not be covered. The Bank agrees that wholesale suppliers were not intended to be covered by the Act and the definition of "supplier" in § 1800.3 has been revised to reflect this. Otherwise, the Bank has no discretion to modify the interim rule provision with respect to grants (except as noted). The Bank has reconsidered its extension of the statutory provisions to cover certain loans and the final rule applies to grants only. One commenter suggested that a State without an RCS list should be able to establish an equivalent contractor listing procedure in order to preserve the possibility of grants in the State. The Act does not permit such a procedure.

F. Subpart E—Program Operation

1. Sections 1800.91 and 1800.93: Cooperative agreements with states, and Program participants. Seven commenters responded to our request for comments regarding funding other than through States. One comment

supported the current policy of funding through States only; other comments supported funding through other entities in addition to States, such as large cities and Indian tribes, perhaps with some State-level coordination or only if the State chooses not to participate. No commenters supported a separate competition for funds among non-States.

The Bank agrees that some flexibility is desirable in those instances where a State does not wish to be primarily responsible for program administration within the State. On the other hand, the Bank has concluded that it must provide at least \$120,000 for each proposal which it decides to fund to ensure minimally adequate funding for a functional program and to comply with Treasury policy regarding letters of credit. This imposes a limit on the number of possible program participants. The Bank is also limited in its organizational ability to deal with a universe of participants substantially larger than the current 48 States with cooperative agreements.

The Bank considered three options in detail. One option called for a new Notice of Funding Availability; all available funds would be awarded on a competitive basis following review of program proposals from all interested States and metropolitan cities and urban counties under the CDBG program. This option would increase the opportunities for participation from urban areas located in States unable or unwilling to implement State-wide programs. However, it would lead either to exclusion of some current State participants (if some cities and counties were approved and an attempt were made not to increase the total number of entities the Bank deals with) or to a substantial increase in the number of program participants, requiring expansion of the Bank staff and complicating program operations. A second option considered was to limit participation exclusively to States by requiring that a State-level office retain all program implementation responsibility within a State. This would simplify matters for the Bank. However, we are aware that a number of current State participants desire to minimize State-level responsibilities to permit Bank funds to be used by operating local programs in a few areas within the State. In these instances where a program is not actually available on a State-wide basis, a Bank requirement for substantial State involvement in program implementation has the effect of creating an unnecessary bureaucratic layer between the Bank and the operating programs, causing excessive

administrative cost and complexity. The Bank also considered a third option, in which the Bank would only approve programs approved by a State but in which the State could elect to minimize its actual implementation responsibility in favor of local participants such as cities or counties. A State would only be required to retain responsibility for designating local participants, allocating funds within the State and approving local programs.

The Bank has concluded that the class of program participants with which it deals directly will continue to be limited to States, with an exception for Indians as discussed below. However, the third option discussed above was adopted and the final rule clarifies that a State may permit local participants to assume much of the responsibility of program implementation. (In some States this is now the actual manner of operation, with Bank approval.)

The former § 1800.93 regarding cooperative agreements has been combined with § 1800.91 in the final rule, and a new § 1800.93 has been added which explains in some detail how States and localities may participate in the Bank program. Paragraph (a) permits the current 48 State participants to continue on the basis of their current programs, or to seek approval for revised programs from the Bank. Paragraph (b) permits States which currently are non-participants to submit program proposals before any future allocation of unallocated funds. Paragraph (c) permits States to elect to permit local participants (which may be units of general local government, special purpose districts and multi-county districts as appropriate in each State, Indian tribes, and other entities such as utility companies and non-profit organizations if approved by the Bank) to assume responsibility for implementation of local programs within the State if the State continues to be responsible for designation of local participants, allocation of funds within the State, and requests for State program changes or other cooperative agreement changes. The Bank expects to clarify the respective responsibilities of State and local participants in the cooperative agreement with any State in which local participants are given substantial responsibilities.

The statutes establishing two other energy programs administered through States, the HHS Low-Income Heating Assistance Program and the DOE Weatherization Assistance Program, recognize that Indian tribes may get less than their fair share of assistance through States, and permit HHS and

DOE to deal directly with Indian tribes. The structure of the Bank program does not permit a direct relationship between the Bank and every Indian tribe which may wish to participate on the same basis as a State. However, the Bank has added a new § 1800.93(d) which authorizes funding of one entity to serve in a capacity equivalent to a State on behalf of all Indian tribes, to be selected initially on a competitive basis from proposals solicited through a Federal Register notice.

2. *Sections 1800.95 and 1800.97: Allocation of funds, and Recapture and reallocation of funds.* The interim rule provision preventing reallocation of funds which might be recaptured from a State drew four comments, three which supported the possibility of reallocation and one which requested clearer criteria for funds recapture. The Bank has also received some questions and objections concerning the subjective process used to allocate the initial funds among the States which were selected to participate.

Prior to presentation of a draft final rule for adoption by the Board of Directors, the Bank considered three options in detail. One option called for allocation exclusively on the basis of a formula patterned after the formula in use for DOE's Weatherization Assistance Program, which takes into account a State's energy consumption patterns as well as its amount of housing with low-income occupants. This option has the advantage of complete objectivity but fails to account for differences in actual program activity and effectiveness, and may require extensive readjustment of allocations to achieve expenditure of all funds. A second option would permit allocation exclusively based on program activity and effectiveness, based on the Bank's perception of a State's approved program and its ability to expend funds under that program. While this option could lead to the most rapid expenditure of funds and would permit the Bank to increase funds for effective programs, it is largely subjective, precludes effective State program planning, and does not account for actual needs of a State nor for particular circumstances, such as seasonal variations, which might lead to less rapid or regular funds expenditure without indicating program ineffectiveness. The third option considered combines features of the other two options: at least half of the funds would be allocated among States through use of an objective formula, but the remainder would be reserved for allocation by the Bank on the basis of program activity and effectiveness, to be

determined only after State programs had been in operation long enough to permit a valid evaluation.

Introduction of a formula for determining the allocation of at least half of the funds adds an element of predictability which can assist States in their planning, without entirely removing incentives to States to expend their funds expeditiously and efficiently. The Bank has concluded that the advantages of complete competition for funds do not outweigh its disruptive effects on current program participants, which include nearly all of the States. The third option was chosen by the Bank for recommendation to the Board of Directors.

After the third option was incorporated into the draft final rule, the Act was amended to require that the Bank's rule "establish criteria for the allocation of financial assistance . . . among eligible financial institutions". The third option did establish criteria for allocation among States, which would make the final allocations among eligible financial institutions according to their approved State programs. In the opinion of the Bank, this arrangement carried out the intent of Congress and no revision was required by the new statutory language.

Section 1800.95 has been completely revised in the final rule to explain the allocation procedure to be followed. Section 1800.95 in the final rule provides for funds available in a fiscal year (less reserved amounts) to be tentatively allocated among eligible States on the basis of a formula which takes into account number of households, household income, and household energy consumption. Funds reserved from the allocation by formula and allocated funds not obligated by a prescribed time would constitute a reserve fund. Amounts in this fund would be obligated to States based on several factors including whether Bank funds are leveraged with any funds derived from sources not involving some form of Federal subsidy, such as grants, subsidized loans or tax-exempt financing, and the rate of expenditure of Bank funds. Leveraging would be reported by States as part of their semi-annual reports required by § 1800.107.

Any newly participating State would receive a tentative allocation of at least \$120,000 per State. The \$120,000 is based on U.S. Treasury guidelines for the minimum annual funding level for use of the Letter of Credit-Treasury Financial Communication System.

The last sentence of § 1800.95 in the interim rule has been modified slightly and moved to § 1800.97 in the final rule. The previous general language of

§ 1800.97 regarding recapture of funds which have been included in a cooperative agreement has been replaced with two specific instances in which recapture will occur: failure of a State to obligate its funds for specific uses by a prescribed date (carried over from the old § 1800.95) and lack of compliance with program requirements. Under some circumstances (if recapture occurs because of violation of program requirements and the recaptured funds are from Fiscal Years for which the appropriation has not yet lapsed but is still available to the Bank), the Bank may be legally required to reobligate the funds to comply with the Impoundment Control Act of 1974. For this reason, the new § 1800.95(c) provides for some recaptured funds to be added to the reserve fund for reobligation, and the absolute prohibition against funds reallocation formerly contained in § 1800.97 has been deleted. The Bank emphasizes, however, that recaptured funds will be reobligated only when it is legally required, and that such funds will never be transferred directly from one State to another but will be treated the same as other reserved funds and obligated as provided in § 1800.95(c).

After the new § 1800.95(c) was drafted, the Act was amended to require reallocation of recaptured financial assistance. No further redrafting was required to comply with this provision. The appropriations Acts for Fiscal Years 1982, 1983 and 1984 state that funds appropriated in those Acts shall remain available for two Fiscal Years. Any funds recaptured after the two-year period could not be allocated by the Bank under the terms of those Acts. In the opinion of the Bank, the new statutory language was not an attempt to supersede this restriction, but is only intended to require that all funds recaptured within the two-year period (or any other period applicable to any future appropriations) shall be reallocated.

3. *Section 1800.99: Authorized expenditures.* Eleven commenters requested changes to § 1800.99 of the interim rule, which limited reimbursable promotional expenses of a State to one percent of funds which it receives and reimbursable administrative expenses to two percent of its funds. Administrative funds had to be matched by States. Many commenters noted that DOE's Weatherization Assistance Program and HHS's Low-Income Heating Energy Assistance Program both permit 10 percent of funds to be used for administrative expenses. Many also referred to the complexity of program and reporting requirement as a reason for high administrative expenses. The

current financial difficulties of many State governments were also mentioned. One commenter suggested a minimum allowance of \$15-\$25 thousand to help the States with lower funding which are most severely affected by the percentage limitation; another suggested a \$20,000 minimum.

In the Bank's view, once States are past their start-up period (as most now are) administrative expenses will decline and the amount of combined administrative and promotional expenses should not necessarily exceed 5 percent of the Bank funds (this includes the 2 percent State match for administrative funds, which the Bank considers a reasonable requirement to ensure a State commitment to an efficient program). The Bank originally expected the States to integrate the program with ongoing State energy-related programs and to utilize existing resources to the maximum extent possible rather than set up new program offices. The Bank feels this objective has been met to a very high degree. Several States have in fact requested less than the maximum allowed, including zero amounts, for administrative and promotional expenses. All funds diverted to fund administrative and promotional expenses reduce the amount of energy savings resulting from the Bank program.

Despite its preference, the Bank has amended § 1800.99, since the 1983 amendments to the Act do not permit the interim rule provision to be retained. Following those amendments, § 1800.99(b) has been completely revised to permit a State to use up to 12 percent of funds obligated to it or \$20,000, whichever is greater, for administrative expenses. If a State agency is not the sole administrative entity within the State, then no more than one-half of this amount may be used for the State and the remainder may be used for the administrative expenses of other entities within the State incurring administrative expenses, as permitted by the State. There is no longer any matching requirement. (These changes are not applicable to funds already obligated to States.)

A State is limited to half of its administrative funds until the first subsidies are made. Subsequently, the remaining administrative funds are to be drawn at a rate not exceeding the rate for funds drawn for subsidies. This limitation expires January 1, 1985. It is intended to encourage start-up of State programs without excessive front-end administrative expense.

Paragraph (c) regarding promotional expenses was also redrafted for clarity.

4. *Section 1800.101: Distribution of funds.* Two references to the cooperative agreement were added to emphasize that a State's use of funds is restricted by the terms of its cooperative agreement.

5. *Section 1800.105: State discretion.* A sentence was added to permit a State to restrict the list of eligible measures to those which may be appropriate for that State. This reflects actual practice under the interim rule.

6. *Section 1800.107: Reporting and recordkeeping requirements.* The requirements for semi-annual State reports to the Bank drew five comments. One commenter felt that the required content of the report should be more specific. Two commenters objected to the requirements for reports on estimated energy savings by income category of recipient, building and type of measure, and on program cost-effectiveness. One commenter felt that reporting should be limited to items needed to preclude fraud and abuse. Another felt that annual reports, with quarterly financial reports, would be sufficient. The final rule makes no change to § 1800.107, for two reasons. The Act requires the Bank to prepare an annual report to the Congress and the President on a number of specific matters, and the Bank considers the item covered in § 1800.107 to be necessary to enable the Bank to fulfill its reporting responsibility. Also, annual reporting would not be adequate to permit the Bank to responsibly monitor the program. The electronic funds transfer system used by the Bank, together with its data base management system, will give the Bank up-to-date information on some aspects of program activity. However, the amount of information which can be communicated through electronic funds transfer requests is limited and must be supplemented by the semi-annual reports.

While no change has been made in the final rule, the Bank notes that one required reporting item has increased significance for States under the final rule. Section 1800.107(a)(7) requires information on the "cost-effectiveness of the program in terms of . . . leveraging of funds . . ." Specifically, the Bank seeks information on whether the cost of the purchase and installation of eligible solar energy systems and energy conservation measures is paid by funds derived from sources not involving some form of Federal subsidy, such as Federal grants, Federally-subsidized loans or tax-exempt financing.

7. *Section 1800.109: Manner of payment.* The interim rule permitted States to request payment from the Bank for financial assistance only after it had

been provided. In practice, this has been interpreted as precluding disbursement by the Bank until installation of the energy conservation measures or solar energy system. This has proved to be unworkable for a number of State loan subsidy programs. Three commenters suggested that the Bank allow funds to be drawn upon loan closing. This is permitted by the final rule as long as installation follows within 60 days of closing. Funds for grants will still be disbursed only after installation (as required by § 1800.19, which was not changed).

Two commenters felt that funding should be provided in advance of loan closing. The Bank sees no need for such advance funding, since funds can be delivered within 24 hours of a proper request. Another commenter requested advance funding if transfers do not occur within 24 hours in actual practice. To date, the Bank has encountered no difficulties with the electronic funds transfer system, which is also used for other HUD programs. Funds disbursement requirements would be reconsidered if chronic problems develop.

G. Subpart F—Miscellaneous

1. *Section 1800.125: Audit.* A new paragraph (b) was added to state the requirement (already stated in each cooperative agreement) that States are subject to the audit requirements in Attachment P of OMB Circular A-102.

2. *Section 1800.133: Waiver of regulations.* Section 1800.133 provides for possible waiver by the Bank President of rule provisions not mandated in the Act, without any hearing. No appeal from the Bank President's decision is allowed. One commenter felt that appeal to the Board of Directors or the advisory committees should be allowed. The waiver provision is substantially the same as waiver provisions in the regulations for other HUD programs. Elaborate procedures are not necessary since no Constitutional or statutory rights are involved. Of course, the Bank President's discretion is limited by the standards of the Administrative Procedures Act.

3. *Section 1800.135: Applicability of general HUD regulations.* A commenter referred to § 1800.135(c) which permits the Bank President to subject the Bank to any future regulations of generally applicability to HUD (ones issued by the HUD Secretary, rather than the Bank's Board, for applicability to all HUD programs). This commenter requested that no additional regulations be allowed to affect the Bank program until participants could review the

regulations. The Bank recognizes that in some cases it may be appropriate for the Board to decide whether to adopt certain HUD regulations with the benefit of prior public comment, and that Bank participants might not have participated during the public comment period for the HUD regulation itself if the proposed regulation did not indicate its potential applicability to the Bank. The final rule does not necessarily preclude Board consideration or public comment. However, the Bank feels that it will often be cumbersome and unnecessary to conduct a second rulemaking process for the sole purpose of extending validly-adopted HUD regulations to the Bank, and the Board has chosen in this narrow circumstance to permit the Bank President to adopt rules on its behalf. The final rule does modify § 1800.135(b) to remove the former reference to "waiver" of rule provisions governing internal operations of the Bank, since the waiver concept implies a third-party request.

4. *Section 1800.137: Other Federal Requirements.* A new sentence added to § 1800.137(b) lists additional applicable nondiscrimination provisions including HUD's Title VI nondiscrimination regulations which were formerly referred to in § 1800.135.

The Bank has also amended § 1800.137(c) concerning historic preservation, to clarify the requirements of Federal law. The interim rule generally barred Bank assistance which would have an adverse effect on historic districts, sites, buildings, structures or objects. However, the Bank has learned that some participating States interpreted the interim rule as permitting States to make a "no adverse effect" determination. Section 106 of the Historic Preservation Act of 1966 (42 U.S.C. 460f) and the implementing regulations of the Advisory Council on Historic Preservation (ACHP) require that this determination be made by the Federal agency providing assistance, together with the ACHP. The Bank does not possess the resources nor the expertise to make such determinations and will not do so. The final rule does permit reliance on a determination of another Federal agency providing assistance or a grantee under Title I of the Housing and Community Development Act of 1974 (Community Development Block Grants and Urban Development Action Grants). It also anticipates possible ACHP agreement to a Programmatic Memorandum of Agreement or a program exemption, which would supersede § 1800.137(c) and which could permit assistance for historic buildings.

The Bank received a comment regarding restriction of financial assistance for loans for buildings in special flood hazard areas (§ 1800.137(e)). The commenter suggested that the restrictions should apply only to loans secured by a mortgage. The provision in the rule is needed to comply with the Flood Disaster Protection Act of 1973 and regulations of the Federal Emergency Management Agency. Hence, no change was legally possible. We changed the former references to floodplains in § 1800.137(d) to references to special flood hazard areas, which is the current customary terminology.

New § 1800.137(g) and (h) have been added to § 1800.137, to explain the applicability of OMB Circular A-102 to States participating in the program and to explain the prohibitions against lead-based paint in one- to four-family and multifamily residential buildings. (In the interim rule the subject of lead-based paint had been handled by the incorporation in § 1800.135 of part of the HUD regulations on the subject; that incorporation has been deleted.)

H. Other Comments

A commenter noted that there is no mention in the interim rule of the two advisory committees to the Bank, either in terms of how often they will meet or what specific functions they are to perform. Since the documents governing organization of the Bank are published elsewhere, the Bank considers it unnecessary to repeat their substance in a rule. Section 1800.5 of the final rule indicates that the Bank's bylaws are published as 24 CFR Part 1895. Article V of the bylaws concerns the advisory committees. The advisory committee charters were recently revised; the revisions are published at 48 FR 40787. A further revision will be made in response to a provision in the 1983 amendment to the Act.

The same commenter noted that the Act had required that at least 15 percent of funds appropriated under the original authorization for energy conservation funds and at least 5 percent of the funds appropriated under the original authorization for solar energy funds were to be available for low- and moderate-income families, and requested a corresponding rule provision. In the preamble to the interim rule the Bank explained that these separate authorizations were replaced by a single reduced, unsegregated authorization by the Omnibus Budget Reconciliation Act of 1981. (The 1983 amendment to the Act contains a similar unsegregated authorization for Fiscal Year 1985.) No rule provision is required

by law and the Bank prefers to ensure that a reasonable amount of funds go to low- and moderate-income families through review and approval of State proposals. The Bank notes that over 50 percent of the \$30,085,000 initially obligated is designated by the States for the less than 80 percent of median area income category, as reflected in the cooperative agreements.

One commenter stated that the Bank's rule should not contain restrictions more stringent than the Act, while another stated that the application process should be streamlined. The Act requires that implementing regulations be published; their principal purpose is to enable the Board to make decisions necessary for prudent program management within the limits of the Act. The final rule contains the minimum restrictions consistent with prudent management, and the application process is as streamlined as possible while ensuring compliance with the rule. States are reminded that a streamlined program can be designed for a particular state, e.g., a program only for energy conservation grants in one- to four-family residential buildings for the 80 percent or less of median area income category.

Another commenter regarded program implementation by interim rule as inappropriate. The circumstances of program start-up (explained in the preamble to the interim rule) required the Bank to act more expeditiously than permitted by a proposed rule/final rule procedure. The Bank has gained valuable experience during the implementation period under the interim rule and the final rule should not adversely affect the operation of State programs already implemented, with the possible exception of provisions required by the recent legislation. The same commenter observed that the rule may have an annual effect on the economy of \$100 million or more (which would require a Regulatory Impact Analysis) since the program may have a greater effect in future years. The Bank has no basis for predicting future impact on the economy. This commenter also requested that the Bank provide copies of all documents referenced in the regulations. All such documents are publicly available from their issuers. The Bank can assist participants in obtaining documents but will not act as distributor.

The Bank also received comments stating that standard forms should be provided by the Bank. Because each State has adapted the Bank program to its own circumstances including its ongoing energy programs at the State

level, State participants are best qualified to develop their own forms and procedures. The Bank staff does review a State's forms/procedures before initial funds are disbursed for financial assistance, and has noted a wide variety which could not be reconciled into one required or suggested set of forms without compromising the Bank objective of maximum State flexibility. The Bank encourages coordination among States in this regard and is willing to provide direct assistance on a case by case basis.

A commenter requested special mention of Indians in the regulations on the grounds that Indians are often overlooked in Federal programs which are implemented through States. Section 1800.93(d) regarding application for funds by an Indian Assistance Coordinator was added. As well, the final rule includes several mentions of Indian tribes in the definition of "financial institution," notes in this preamble that Indian Housing Authorities are included under the Public Housing Agency provisions, and mentions Indian tribes as possible local participants under § 1800.93(c). A definition of "Indian tribes" was added.

One commenter objected because the interim rule did not permit recycling of funds through a revolving fund loan concept which could be self-supporting. The Act restricts Bank subsidies to principal reduction, prepayment of interest (interest reduction) and grants, so that the Bank cannot capitalize revolving funds.

I. State Programs

The Bank has considered the effect of the new legislation on States. The Act does not establish a special role for States; rather it provides that the Bank shall make payments to financial institutions and the Bank has chosen to involve States in this process as a matter of administrative discretion. Thus, the State authority to operate programs was established by the Bank rather than Congress, and it could frustrate Congressional intent if States took actions specifically forbidden to the Bank.

As amended, the Act requires the Bank rule to provide that an energy audit "shall not be required" for energy conservation measures in one- to four-family residential buildings located where RCS and CACS audits are unavailable (as discussed under § 1800.35). A State program may not require an energy audit in such circumstances. The amended Act also states that "the Board" may not limit the amount of energy conservation

assistance "on the basis of the projected amount of energy conserved." This prevented a Bank rule which required a payback in less than the lifetime of a measure. State programs are also prohibited from requiring assistance to be limited in this manner. The Bank expects States to revise their current written operating procedures to reflect these statutory changes within 30 days after the final rule is legally effective and to submit a copy of any changes made to the Bank. Failure to submit operating procedures complying with this final rule may be cause for rejection of funding requests for loan subsidies or grants.

Financial institutions (including States when they are acting as financial institutions rather than as administrative entities) do have a specific statutory role and do not exercise powers granted to the Bank. Therefore, the new legislation does not limit the ability of financial institutions to use all reasonable means for concentrating on cost-effective investments, including appropriate use of audits and prioritizing based on payback periods.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The Bank's financial assistance program can be expected to concern a variety of small entities, including local lenders, energy auditors, and manufacturers, retailers, and installers of energy conservation and passive solar systems and components. The Bank, however, finds that there are no anticompetitive discriminatory aspects of the program with regard to small entities nor are there any unusual procedures that would need to be complied with in this rule by small entities.

Environmental Impacts

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title which implements Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact for this final rule is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

OMB Control Number

The reporting or recordkeeping provisions that are included in this

regulation (Sections 1800.107, 1800.123 and 1800.127(a)) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-111) and have been assigned OMB control number 2504-0001.

Regulatory Impact Analysis

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

Semiannual Agenda of Regulations

This rule was listed at 48 FR 47427 as Item S-5-82 under Current and Projected Rulemakings/Priority in the Department's Semiannual Agenda of Regulations published on October 17, 1983 pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Chapter Redesignation

By final rule published September 27, 1983 at 48 FR 44071 and effective December 13, 1983, the Department established a new Chapter in Title 24 and redesignated two existing Chapters. The changes were necessitated by the creation of the new position of Assistant Secretary for Public and Indian Housing. As part of this restructuring, Chapter X—Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899) was redesignated Chapter XI—Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development (Parts 1800-1899), and the existing Parts 1800 and 1895 were transferred to new Chapter XI. This final rule reflects this chapter redesignation; the part numbers have not been affected.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.550.

Lists of Subjects in 24 CFR Part 1800

Grant program: Energy conservation, Loan program, Solar energy, Energy

Conservation, Reporting and recordkeeping requirements.

Accordingly, 24 CFR Chapter XI is amended by revising Part 1800 reading as follows:

PART 1800—FINANCIAL ASSISTANCE PROGRAM OF THE SOLAR ENERGY AND ENERGY CONSERVATION BANK

Subpart A—Introduction

- Sec.
1800.1 Scope of authority and purpose.
1800.3 Definitions.
1800.5 Bank organization.

Subpart B—Financial Assistance—General

- 1800.11 General.
1800.13 Types of assistance.
1800.15 Reduction of principal.
1800.17 Prepayment of interest.
1800.19 Grants.
1800.21 Repayment of loans.
1800.23 Combined loan applications.
1800.25 Limitations on retroactive assistance.
1800.27 Terms and conditions of loans similar to unassisted loans.
1800.29 Debarrred contractors, suppliers and financial institutions.
1800.33 Installation certificate.
1800.35 Energy audit or energy design analysis required.
1800.37 Financial assistance not available until notice.

Subpart C—Solar Energy Assistance

- 1800.41 General.
1800.43 Eligible recipients.
1800.45 Eligible solar energy systems.
1800.47 Levels of assistance.
1800.49 Warranties.
1800.51 Limitations on financial assistance by utilities.
1800.53 Limitation on assistance to residents of housing cooperatives.
1800.55 Standards.

Subpart D—Energy Conservation Assistance

- 1800.61 General.
1800.63 Eligible recipients.
1800.65 Eligible energy conservation measures.
1800.67 Levels of assistance.
1800.69 Warranties.
1800.71 Limitation on assistance to tenants.
1800.73 Limitation on assistance to residents of housing cooperatives.
1800.75 Minimum expenditures for energy conservation measures.
1800.77 Contractors and suppliers.
1800.79 Residential energy audit information.

Subpart E—Program Operation

- 1800.91 Cooperative agreements with states.
1800.93 Program participants.
1800.95 Allocation of funds.
1800.97 Recapture and reallocation of funds.
1800.99 Authorized expenditures.
1800.101 Distribution of funds.
1800.103 Selection of financial institutions.
1800.105 State discretion.

- Sec.
1800.107 Reporting and recordkeeping requirements.
1800.109 Manner of payment.

Subpart F—Miscellaneous

- 1800.121 Penalties and remedies.
1800.123 Retention of records by financial institutions and recipients.
1800.125 Audit.
1800.127 Prohibition against tax credits and financial assistance for same expenditure.
1800.129 No gross income.
1800.131 No increase in basis.
1800.133 Waiver of regulations.
1800.135 Applicability of general HUD regulations.
1800.137 Other Federal requirements.

Authority: Secs. 506(e) and 520, Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3604(e) and 3618).

Subpart A—Introduction

§ 1800.1 Scope of authority and purpose.

The Solar Energy and Energy Conservation Bank was established in the Department of Housing and Urban Development by the Solar Energy and Energy Conservation Bank Act, Subtitle A, Title V of Pub. L. 96-294, 94 Stat. 611, 12 U.S.C. 3601 *et seq.*, enacted on June 30, 1980. The purpose of the Act is to encourage the use of solar energy and energy conservation, and thereby reduce the dependence of the United States on foreign sources of energy supplies.

§ 1800.3 Definitions.

"Act" means the Solar Energy and Energy Conservation Bank Act, 12 U.S.C. 3601 *et seq.*

"Active solar energy system" means equipment which is designed to absorb solar energy and provide auxiliary domestic water heating and/or space heating by use of mechanically forced thermal energy transfer devices, such as fans or pumps.

"Agricultural building" means any building used exclusively in connection with the production, harvesting, storage, or drying of agricultural commodities.

"Annual income" has the meaning used for the Section 8 Housing Assistance Payment Programs of HUD, and means the total annual income of a family from all sources for the 12-month period following the date of determination of income, computed in accordance with the section of this title which prescribes the method of computation (§ 889.104 of this title, until replaced by a new Part 813 of this title).

"Applicant" means any person applying for financial assistance.

"Bank" means the Solar Energy and Energy Conservation Bank established under the Act.

"Board" means the Board of Directors of the Bank.

"Cogeneration system" means any system used to produce electricity or mechanical work and any form of useful thermal energy (such as steam, hot water, or hot gases), or any combination thereof, that reduces the annual energy consumption of the building through the sequential use of energy. Use of such energy produced external to the building in which the cogeneration system is installed is permitted.

"Commercial building" means any building other than a one- to four-family residential or multifamily residential building which is used primarily to carry on a business (including any nonprofit business) and is not used primarily for the manufacture or production of raw material, products, or agricultural commodities. A building is used primarily to carry on a business if at least 50 percent of its floor space is devoted to the business. A building owned by a public body may be a commercial building unless it is used for general functions of government.

"Contractor" means a person or entity receiving payment, directly or indirectly, for installing a solar energy system or energy conservation measure. In the case of a solar energy system installed in a newly-constructed building, the builder shall be considered the contractor. If installation is performed by a subcontractor, then the subcontractor may fulfill requirements such as the warranty requirements in § 1800.49 and 1800.69 of this part and the listing of § 1800.77 of this part in lieu of the contractor.

"Cost-effective" means:

(a) In connection with a one- to four-family residential building in an area in which energy audits are not available under the provisions of Title II or Title VII of the National Energy Conservation Policy Act, 42 U.S.C. 8211 *et seq.* and 8281 *et seq.*, respectively, that a solar energy system or energy conservation measure is a "program measure" for the area under the regulations governing the RCS program (10 CFR Part 456), or

(b) In States for which there is no listing of "program measures" in the RCS regulations, that a solar energy system or energy conservation measure is listed in § 1800.45(a), 1800.65(a), or 1800.65(b) of this part, or

(c) That the solar energy system or energy conservation measure is expected to result in a dollar savings over the life of such system or measure that exceeds its costs over its useful life, as determined by an energy audit or energy design analysis without consideration of the financial assistance of the Bank.

"Covered product" means:

(a) If the manufacturer provides a complete solar energy system to the supplier for installation by the contractor, then the system.

(b) In all other cases, all components of a solar energy system which are designed for use in solar energy systems and which are not ordinary building materials generally used for construction purposes.

"Dwelling unit" means any building (including a manufactured home) or part of a building designed for year-round non-transient residential use by one family.

"Energy audit" means:

(a) An energy audit of a building or dwelling unit performed for purposes of Title II or Title VII of the National Energy Conservation Policy Act, 42 U.S.C. 8211 *et seq.* and 8281 *et seq.*, respectively, or

(b) In the case of a one- to four-family or multifamily residential building or a dwelling unit in any such building, an on-site inspection of the building or dwelling unit using procedures approved by a State or Federal government entity (or performed by an energy auditor who is determined to be qualified by a State or local governmental entity) which includes a determination of and provides information on:

(1) The type, quantity, and rate of energy consumption of such building or dwelling unit;

(2) Energy conserving maintenance and operating procedures which can be employed to significantly reduce the energy consumption of such building or dwelling unit;

(3) In the case of a one- to four-family residential building, a multifamily residential building which does not contain a central heating or cooling system, or a dwelling unit in such building, the cost of purchasing and installing appropriate energy conservation measures, a solar energy system, or both, and the savings in energy costs which are likely to result from the installation of such measures or system; and

(4) In the case of a multifamily residential building which contains a central heating or cooling system, or a dwelling unit in such building, the need, if any, for the purchase and installation of appropriate energy conservation measures, a solar energy system, or both; or

(c) in the case of a commercial or agricultural building, an on-site inspection of the building using procedures approved by a State or Federal governmental entity (or performed by an energy auditor who is determined to be qualified by a State or

local governmental entity) which includes a determination of and provides information on:

- (1) The type, quantity, and rate of energy consumption of such building;
- (2) Appropriate energy conserving maintenance and operating procedures which can be employed to significantly reduce the energy consumption of such building; and
- (3) The need if any, for the purchase and installation of energy conservation measures, a solar energy system, or both, in such building.

"Energy conservation measure" means a measure listed in § 1800.65.

"Energy design analysis" means a technical analysis performed on the design of a building to assess the cost-effectiveness of the energy conserving features and use of solar energy on an annual basis performed by a licensed engineer or architect qualified to conduct such an analysis, or by an energy auditor who is determined to be qualified by a State or local governmental entity.

"Family" has the meaning used for lower-income housing programs of HUD as set forth in Part 812 of this title, as it may be amended from time to time, or any replacement definition. It includes but is not limited to an elderly family, a single person, the remaining member of a tenant family, and a displaced person, as such terms are used in Part 812, but excludes certain aliens.

"Financial assistance" means the three forms of financial assistance described in § 1800.13 of this part.

"Financial institution" means:

(a) Any lender with a current contract of insurance under Section 2 of Title I of the National Housing Act, 12 U.S.C. 1703,

(b) Any utility providing financing for the purchase and installation of energy conservation measures or solar energy systems in accordance with the requirements of Title II of the National Energy Conservation Policy Act, 42 U.S.C. 8211 *et seq.*,

(c) Any unit of general local government or Indian tribe which receives a grant under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5301 *et seq.*, which includes lending activities to be undertaken by the unit of general local government or Indian tribe.

(d) Any public body for which a local loan approval agreement is in effect under the Section 312 Rehabilitation Loan program, 42 U.S.C. 1452(b),

(e) Any lender currently approved to participate in HUD mortgage insurance programs under Title II of the National Housing Act, 12 U.S.C. 1709(b)(1),

(f) Any Public Housing Agency which is acting on behalf of tenant-grantees pursuant to § 1800.63(j) of this part,

(g) Any Neighborhood Housing Services corporation which meets the requirements of § 4101.2(e) of this title,

(h) Any State, unit of general local government or Indian tribe which will provide financial assistance only in the form of grants,

(i) (1) Any chartered institution, permanent organization having succession, or trust in the following forms:

(i) Any member of the Federal Reserve System or a lender whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation or the National Credit Union Administration, or any depository institution which is subject to the inspection and supervision of a governmental agency which is required by law to make periodic examinations of its books and accounts and has and maintains a net worth of not less than \$100,000 in assets acceptable to the State; or

(ii) Any institution which has as its principal activity the lending or investment of funds in mortgages, consumer installment notes or similar advances of credit, or the purchase of consumer installment contracts, which is not included in paragraph (i)(1)(i) of this section; and meets the following requirements:

(A) It shall have and maintain a net worth of not less than \$100,000 in assets acceptable to the State,

(B) It shall have and maintain a reliable warehouse line of credit or other loan funding program acceptable to the State in an amount of not less than \$250,000 available for use in loan financing, and

(C) It shall within 75 days of the close of its fiscal year and at such other times as may be requested, file with the State an audit report (a financial statement in a form acceptable to the State consisting of a balance sheet, a statement of operations and retained earnings, and an analysis of the lender's net worth adjusted to reflect only assets acceptable to the State) based on an audit performed by a Certified Public Accountant, or by a qualified Independent Public Accountant (as defined by the Comptroller General of the United States) licensed by a State or other political subdivision of the United States, or

(iii) Any Federal or State governmental agency, unit of general local government or agency thereof, Indian tribe, Federal Reserve Bank, Federal Home Loan Bank, and National

Mortgage Association which is empowered to participate in a consumer installment lending operation.

(2) Any institution described in paragraphs (i)(1)(i), (ii) or (iii) of this section must also meet the following requirements:

(i) It agrees to notify the State of termination of its supervision by its supervising agency and all corporate changes (if a corporation), including, but not limited to mergers, terminations, name, location, control of ownership, and character of business,

(ii) It employs trained personnel competent to perform their assigned responsibilities in consumer lending activities and the State determines that it has adequate staff and facilities, and

(iii) It shall file a yearly report of its status and operations with the State and shall submit a copy of its latest financial statement or any other information upon request of the State, and

(j) Any other organization specifically approved by the Bank as a financial institution.

"Furnace" means any single heating unit or multiple-zoned heating unit either integral or modular, capable of meeting the heating capacity requirement of the building or zone as appropriate, but does not include a heat pump or a portable room heating unit.

"Gross annual sales" means the total revenues received over a 12 month period from selling goods or performing services before any deductions have been made for returns, allowances or discounts.

"HUD" means the Department of Housing and Urban Development.

"Improvement cost" means:

(a) The actual cost of an energy conservation measure (except an energy audit) or solar energy system,

(b) Any incidental cost necessary to ensure the quality of the energy conservation measure or solar energy system (for example, providing adequate ventilation in connection with attic insulation), but not including the cost of repairs,

(c) Cost of an energy audit (in excess of the first \$15 in cost for each dwelling unit covered by the audit for a one- to four-family or multifamily residential building or for a commercial or agricultural building), and

(d) The actual cost to the recipient of the labor involved in the installation by a contractor. If more than one person is responsible for the cost of an energy conservation measure or solar energy system, then the amount of financial assistance for a person shall be based on the person's share of the total improvement cost. All costs must be

certified in the installation certificate required by § 1800.33 of this part. All costs must be reasonable.

"Indian tribe" means any entity which is eligible to receive a grant under Part 571 of this title or under 10 CFR 440.11 or which is a "tribe" under § 805.102 of this title.

"Manufacturer" means:

(a) For the purposes of warranties for solar energy systems, the producer of any covered product, and

(b) For the purpose of warranties for energy conservation measures, the producer of any energy conservation measure.

"Median area income" means median annual income for an area as determined by the Bank based on the data used by HUD for establishing the median area income for use in the programs authorized under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

"Multifamily residential building" means any building used as a residence which contains five or more dwelling units and has at least one system for heating or cooling or both.

"Non-profit owner or tenant" means an owner or tenant of a commercial or agricultural building, which is organized under Federal, State or local law as a non-profit entity, and may include a public body.

"Passive solar energy system" means, with respect to a building, any component, addition, alteration or improvement which is designed to utilize solar energy for space or water heating or to provide space cooling based primarily on convective, conductive, or radiant energy transfer (or some combination of these types) to reduce the energy requirements of the building. In addition, such a system for space heating shall either contain the "five recognition factors" or shall be approved in writing by the Bank. The "five recognition factors" are: (a) A solar collection area, (b) an absorber, (c) a storage mass, (d) a heat distribution method, and (e) a heat regulation device. A "solar collection area" is a large area of transparent or translucent material, such as glass, positioned so that the rays of the sun directly strike an absorber. The collector area must be facing within 30° of south. An "absorber" is a surface, such as a floor, that is exposed to the rays of the sun. The absorber changes solar radiation into heat, and then transfers the heat to a storage mass. A "storage mass" is material, such as masonry, that receives and holds heat from the absorber and later releases the heat to the inside of the building. The storage mass must be large enough to store and deliver enough solar heat for

the size of the building. Also, the storage mass must be located so that the stored heat is distributed directly to the conditioned areas of the building through a heat distribution method. A "heat distribution method" is a system that releases radiant or convective heating from the storage mass to the conditioned areas of the building. A "heat regulation device" is a shading or venting mechanism, such as awnings or insulated drapes, to control the amount of solar heat admitted through the solar collection areas, and nighttime insulation or its equivalent to control the amount of heat permitted to escape from the inside of the building. A building with a system for space cooling must be designed with a combination of inherent features that limit heat gain, control temperature by ambient/underground-cooled air ventilation, and provide a heat rejection capability during the cooler portion of the day-night temperature swing. Any passive solar energy space heating or cooling system must result in a reduction in annual energy consumption as determined by an energy design analysis versus a comparable building without such a system or systems having the same insulation levels except for such unique features as movable insulation.

"Person" means an individual or any corporation, partnership, joint venture or other entity.

"RCS" means the Residential Conservation Service program of the Department of Energy set forth in 42 U.S.C. 8211 *et seq.* and 10 CFR Part 456.

"Recipient" means a person receiving financial assistance under the Act.

"Solar domestic hot water system" means an active or passive solar energy system for heating potable water, and excludes any industrial process heat applications.

"Solar energy system" means a system listed in § 1800.45 of this part.

"Standard loan" means a loan having over its amortization period a fixed rate of interest and level monthly payments.

"State" means any State (which includes the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands) which has been selected to participate in the Bank program in the manner described in subpart E of this part.

"Subsidy" means financial assistance or the amount of financial assistance.

"Substantially rehabilitated" means that, with respect to an existing one- to four-family or multifamily residential building, a solar energy system has been installed and other improvements

(costing at least \$1,000 per dwelling unit) have been made.

"Supplier" means:

(a) For the purposes of warranties for solar energy systems, the supplier (other than the manufacturer) of any covered product,

(b) For the purposes of warranties for energy conservation measures, the supplier of any energy conservation measure, and

(c) For purposes of §§ 1800.29 and 1800.77 of this part, a person who supplies an energy conservation measure directly to the recipient.

"Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State, or a combination of such political subdivisions.

§ 1800.5 Bank Organization.

The organization of the Bank is described in the bylaws of the Bank, which are published as Part 1895 of this chapter. Amendments to the bylaws are effective when adopted by the Board and will be published in the *Federal Register* for information purposes.

Subpart B—Financial Assistance—General

§ 1800.11 General.

This subpart sets forth the conditions and requirements that are applicable to financial assistance for both solar energy systems and energy conservation measures.

§ 1800.13 Types of assistance.

(a) *General.* The Bank is authorized to make payments to financial institutions for use as financial assistance in the form of reductions of the principal obligations of loans or qualifying portions of loans, prepayments of the interest which would otherwise be due with respect to loans or qualifying portions of loans, and grants.

(b) *Forms of financial assistance for loans.* (1) Except as specified in paragraph (b)(2) of this section, financial assistance used in connection with loans may be in the form of either reduction of principal or prepayment of interest, at the discretion of the financial institution.

(2) Reduction of principal shall be the only form of financial assistance used in connection with loans other than standard loans.

§ 1800.15 Reduction of principal.

When financial assistance is in the form of reduction of principal, the amount of financial assistance shall be subtracted from the principal amount of

the loan and the recipient shall repay the difference between these amounts on the basis of a loan repayment schedule using the same interest rate as for comparable unassisted loans.

§ 1800.17 Prepayment of interest.

(a) *Form.* Prepayment of interest on a loan shall take the form of reduction of the interest rate which would otherwise have been charged.

(b) *Calculation.* (1) The amount of the interest rate reduction will be calculated by taking into account the compounded growth of the value of the assistance over the term of the loan where the projected annual percentage growth rate is less than the interest rate of the unassisted loan. The projected annual percentage growth rate will be determined by applying a discount rate (determined in accordance with paragraph (b)(2) of this section) to the interest rate prevailing for comparable loans on the day the assisted loan is made. The projected annual percentage growth rate will equal one minus the decimal discount rate, multiplied by the prevailing interest rate and then rounded up to the nearest 0.25 percentage increment available.

(2) The Bank will prescribe the discount rate to be used in calculating prepayment of interest. The Bank may make adjustments to the discount rate, from time to time, as it deems appropriate or necessary by increasing or decreasing the maximum allowable discount rate. All such adjustments will be announced by notice in the *Federal Register*. The initial discount rate for program implementation, and until revised, is 60 percent. A State may vary the discount rate below the 60 percent prescribed (or any subsequent maximum allowable discount rate) as market demand/response to programs implemented in the State may warrant.

(3) Appendix II to this part explains the calculation procedure for assistance in the form of prepayment of interest. Appendix III to this part presents examples of calculations for assistance in the form of prepayment of interest. States may adopt alternative procedures provided the subsidy amount determined from any alternative procedure does not exceed the subsidy determined by Appendix II.

(4) In the case of a loan for which only a portion qualifies for financial assistance, e.g., a home improvement loan of \$2,000 which includes \$1,000 for eligible conservation measures, the subsidy may be applied to reduce the interest rate of the entire loan when calculated in accordance with procedures contained in Appendix II.

§ 1800.19 Grants.

Before a grant is approved, the financial institution must receive written certification from the applicant (or other evidence acceptable to the financial institution) that financial resources are available to the applicant which, when added to the grant, will be sufficient to pay the full improvement cost of the energy conservation measures to be purchased and installed. After receipt of the installation certificate required by § 1800.33 of this part, the financial institution may pay the grant directly to the applicant, the contractor, or other person or entity performing the installation, or the supplier (if the applicant performs the installation), at the discretion of the financial institution, unless a State prescribes a particular grant delivery system.

§ 1800.21 Repayment of loans.

(a) *No prepayment penalty.* There shall be no penalty imposed on the borrower if the loan is repaid before the end of the term of repayment.

(b) *Term of repayment.* Unless financial institutions establish shorter terms (but no less than one year) at the request of the borrower, financial assistance may be provided in connection with loans for:

(1) The purchase and installation of energy conservation measures only if the term of repayment of the loan is not less than five and not more than fifteen years,

(2) The purchase and installation of solar energy systems in one- to four-family residential buildings, or the purchase of one- to four-family residential buildings with such systems, only if the terms of repayment of the loan is not less than five and not more than 30 years, or

(3) The purchase and installation of solar energy systems in multifamily residential, commercial or agricultural buildings, or the purchase of multifamily residential, commercial or agricultural buildings with such systems, only if the term of repayment of the loan is not less than five and not more than 40 years.

(c) *Repayment to Bank.* Subject to the qualifications set forth herein, financial institutions must repay to the Bank the portion of any prepaid interest which is in excess of the actual interest due on the loan at the time a recipient fails to meet his or her obligations on the loan. In calculating whether such excess interest exists, a financial institution shall determine the amount of interest it would normally have received on the loan at the prevailing interest rate to the time of default and subtract it from the sum of the actual interest received on the loan plus the amount of financial

assistance provided in connection with the loan. If this amount is more than \$100.00 and default occurs sooner than three years after the loan is made, the amount calculated is to be repaid by the financial institution to the State, which shall either repay the amount to the Bank or use the amount for other purposes permitted by its cooperative agreement with the Bank (described in § 1800.91 of this part).

(d) *Pre-emption of State or local maximum loan terms.* (1) Any State or local law, ordinance, regulation or similar requirement which establishes a legal maximum loan term of less than five years shall not apply to a loan if either the principal of such loan is reduced or the interest on such loan is prepaid in accordance with this part.

(2) A financial institution may require its borrower to agree that the term of a loan shall be reduced to the maximum term permitted by applicable law (if less than five years) if a loan with a term of five years or more was made in good-faith reliance on an application for financial assistance and the provisions of this paragraph, and financial assistance is never provided in accordance with this part.

§ 1800.23 Combined loan applications.

Recipients may receive financial assistance with respect to a single loan for a combination of eligible solar energy systems and/or energy conservation measures. The amount of financial assistance provided will be the sum of the amounts of financial assistance which would be available if all solar energy systems were financed by one loan and all energy conservation measures were financed by a separate loan.

§ 1800.25 Limitations on retroactive assistance.

(a) *Purchase and installation in existing buildings.* Financial assistance shall not be provided in connection with expenditures for purchase and installation of solar energy systems or energy conservation measures in existing buildings if the expenditures were made prior to the date of the application for financial assistance.

(b) *Purchase from builders.* Financial assistance shall not be provided in connection with a loan for the purchase of a building if permanent financing has been closed prior to the date of the application for financial assistance or if the expenditures were made by the applicant prior to May 31, 1983.

(c) *New construction by recipient.* Financial assistance shall not be provided in connection with

expenditures for the purchase and installation of solar energy systems in a building which is newly constructed by the recipient, if the recipient has closed permanent financing of the expenditures prior to the date of the application for financial assistance or if the expenditures were made prior to May 31, 1983.

§ 1800.27 Terms and conditions of loans similar to unassisted loans.

Except as otherwise required by this part, the terms and conditions of loans proposed to be assisted under this part must be comparable to similar unassisted loans at the prevailing market rates provided by the financial institution. Terms and conditions include the interest rate, maturity and any required fees, points or security provisions.

§ 1800.29 Debarred contractors, suppliers and financial institutions.

(a) *Contractors.* The financial institution must receive a written certification from the contractor (or other evidence acceptable to the financial institution) that the contractor is not on either of the following lists:

(1) The Consolidated List of debarred, suspended and ineligible contractors prepared by the General Services Administration pursuant to the temporary rule published at 47 FR 43692 and any successor rule;

(2) HUD's list of debarred, suspended and ineligible participants, available from HUD field offices (see Part 24 of this title).

If installation is not performed by a contractor, then the financial institution must receive a written certification from the supplier (or other evidence acceptable to the financial institution) that the supplier is not on either of the lists.

(b) *Financial institutions.* No financial institution may participate in the Bank's programs if it is on HUD's list of debarred, suspended and ineligible participants available from HUD field offices (see Part 24 of this title).

(c) *Alternative State procedures.* Paragraphs (a) and (b) of this section shall not apply for any State which has procedures for barring participation by contractors and financial institutions which the Bank has accepted as an alternative to the provisions of paragraphs (a) and (b).

§ 1800.33 Installation certificate.

(a) *Requirement for receiving Bank funds.* No financial institution may request any Bank funds in connection with a particular applicant's solar

energy system or energy conservation measure unless:

(1) The financial institution has received an installation certificate from the applicant, or

(2) The applicant has agreed to provide an installation certificate to the financial institution immediately upon completion of installation of such solar energy system or energy conservation measure (not applicable to grants).

(b) *Content of certificate.* An installation certificate must include the following:

(1) The applicant's signature,
(2) A statement that the grant or loan proceeds will be used immediately toward payment for eligible purposes under this part, or toward reimbursement for payments for eligible purposes under this part, and (in all cases except solar space heating or cooling systems),

(3)(i) The improvement cost,
(ii) A statement that the improvement cost equals or exceeds the cost estimate (which shall be stated) which was used to determine the amount of financial assistance, or

(iii) A statement that the improvement cost equals or exceeds the loan amount (which shall be stated).

(c) *Certificate provided to Bank.* An installation certificate shall be made available to the Bank by the financial institution upon request of the Bank.

§ 1800.35 Energy audit or energy design analysis required.

(a) *General.* An applicant for financial assistance for an existing building (other than a substantially rehabilitated building with a solar domestic hot water system only) must submit to the financial institution a copy of an energy audit performed for the building or dwelling unit for which financial assistance is requested (or an energy design analysis, in the case of a newly constructed or substantially rehabilitated building with solar space heating or cooling) before the financial assistance is provided. In the case of a substantially rehabilitated building or a newly constructed building with a solar domestic hot water system only, either an energy audit or an energy design analysis must be submitted.

(b) *Exceptions.* This section shall not apply if financial assistance is provided only for purchase and installation in a one- to four-family residential building of energy conservation measures listed in § 1800.65(c) of this part. This section shall also not apply in the case of one- to four-family residential buildings in areas in which energy audits are not available under the provisions of Title II or Title VII of the National Energy

Conservation Policy Act, 42 U.S.C. 8211 *et seq.* and 8281 *et seq.*, respectively.

§ 1800.37 Financial assistance not available until notice.

Unless the Bank has published a notice in the Federal Register stating that financial assistance may be provided for commercial and agricultural buildings to applicants who are not non-profit owners or tenants, or for passive solar space cooling systems in buildings other than newly constructed one- to four-family residential buildings, no financial assistance may be provided for such purposes, despite any contrary provisions in Subparts C and D of this part. This section is not subject to waiver on a case-by-case basis pursuant to § 1800.133 of this part.

Subpart C—Solar Energy Assistance

§ 1800.41 General.

This subpart sets forth the conditions and requirements that are applicable only to financial assistance for solar energy systems.

§ 1800.43 Eligible recipients.

(a) *Existing buildings.* An owner of an existing one- to four-family or multifamily residential, commercial or agricultural building who purchases and installs a solar energy system in such building with the proceeds of a loan shall be eligible to receive financial assistance in connection with such loan.

(b) *Newly constructed or substantially rehabilitated buildings.* A purchaser of a newly constructed or substantially rehabilitated one- to four-family or multifamily residential, commercial or agricultural building with a solar energy system shall be eligible to receive financial assistance in connection with a loan for the purchase of the building.

(c) *Joint applications.* A joint owner of a dwelling unit or of a building may apply for assistance individually, together with other joint owners in a single application, or with other joint owners by separate application. If separate applications are made by two or more joint owners with respect to the same building or dwelling unit, such applicants collectively may not receive assistance exceeding the maximum level of assistance established under § 1800.47 of this part. Members of the same family are not considered joint owners. Each applicant in a joint application must be eligible under this section.

(d) *Relationship to other Federal programs.* No owner or purchaser may receive financial assistance for a solar

energy system if the owner or purchaser has received, is seeking or has a current commitment for, assistance for the same solar energy system under any of the following Federal assistance programs:

(1) HUD.

(i) Section 235 Homeownership Assistance, 12 U.S.C. 1715z.

(ii) Section 8 Lower Income Rental Assistance for New Construction and Moderate and Substantial Rehabilitation, 42 U.S.C. 1437f.

(iii) Section 312 Rehabilitation Loans, 42 U.S.C. 1452b.

(2) Farmers Home Administration. Section 515 Direct Loans, 42 U.S.C. 1485.

(3) Department of Energy. Institutional Conservation (Schools and Hospitals) Program, 42 U.S.C. 6371 *et seq.*

(e) *Cooperatives and condominiums.* The provisions in § 1800.63(k) of this part apply to assistance for solar energy systems.

(f) *Assistance on behalf of others.* An organization may receive financial assistance on behalf of any owner or tenant who would be eligible to receive financial assistance, if such owner or tenant consents to the arrangement in writing. Such owner or tenant must comply with § 1800.127(b) of this part, and must be reported to the Internal Revenue Service pursuant to § 1800.127(a) of this part. The organization shall be responsible for compliance with all requirements of this part which would apply to the owner or tenant if he or she had received the financial assistance. The organization may receive the financial assistance in connection with a single loan in an amount equal to the sum of the amounts of financial assistance which each owner or tenant could have received.

(g) *Income limitation.* Financial assistance may not be provided in connection with a loan made to an owner of an existing one- to four-family residential building after December 31, 1985, if the owner's income exceeds 250 percent of the median area income.

§ 1800.45 Eligible solar energy systems.

(a) *Eligible systems.* The following shall be eligible solar energy systems, subject to paragraph (b) of this section:

(1) Passive solar energy systems, and

(2) Active solar energy systems.

(b) *Cost-effectiveness.* A solar energy system shall not be eligible for assistance unless it has been found to be cost-effective.

§ 1800.47 Levels of Assistance.

Financial assistance shall not exceed the least of any applicable amounts determined under paragraphs (a), (b), and (c) of this section.

(a) *Fixed amount.* (1) The maximum amount of assistance for solar space heating systems or any combination of space heating with passive space cooling and solar domestic hot water systems shall be as follows:

(i) \$5,000 for a one-family residential building;

(ii) \$7,500 for a two-family residential building;

(iii) \$10,000 for a three- or four-family residential building;

(iv) For multifamily residential buildings, \$2,500 multiplied by the number of dwelling units; and

(v) \$100,000 for commercial or agricultural buildings.

(2) The maximum amount of assistance for solar domestic hot water systems shall be \$1,000 per dwelling unit or 40 percent of the improvement cost, whichever is less, for one- to four-family residential buildings, and \$12,500 or 40 percent of the improvement cost, whichever is less, for multifamily residential, commercial, and agricultural buildings.

(3) The maximum amount of assistance for passive solar space cooling systems shall be \$5,000 for one- to four-family residential buildings.

(4) In the case of solar energy systems (except for solar domestic hot water systems and passive solar space cooling systems) which do not benefit all dwelling units within a building, the maximum dollar amounts listed above shall be reduced by the percentage of dwelling units in the building which do not benefit from the solar energy system. In order to determine the number of dwelling units in a building, the following principles shall be applied: (i) All dwelling units sharing a common living space conditioning system shall be considered part of the same building; and (ii) except in the case of a manufactured home park, all dwelling units located on or above land included in the most recent recorded deed shall be considered part of the same building, whether or not any space conditioning systems are shared.

(5) If more than one application for assistance is submitted by eligible applicants in connection with a solar energy system which benefits more than one dwelling unit, the aggregate financial assistance for those applicants may not exceed the maximum amount of financial assistance indicated in paragraphs (a) (1), (2), or (3) of this section, whichever is applicable.

(b) *Energy saved.* (1) For passive solar space heating systems in one- to four-family residential buildings, the maximum amount of assistance set forth in paragraph (a) of this section may be reduced on a relative energy savings

basis by use of (i) a climatic, or locational, factor and a design performance factor as described in (b)(2) of this section, or (ii) Btu's saved, as described in paragraph (b)(3) of this section.

(2) The climatic factor takes into consideration the positive effect of the passive system on heating degree days in the winter period as well as the negative effect on cooling (air conditioning) requirements in the summer period. The combination of those effects over a complete year of heating and cooling determines the total net energy savings of the system based on its geographic location. The climatic factor is obtained by using the chart which appears as Appendix I. The design performance factor is based on the relationship between the solar collection area of the passive system and the total gross heated living floor area. This performance factor is determined by establishing the ratio between the solar collection area in square feet (less a threshold effective collection size of 40 square feet per dwelling unit) and the gross heated living area floor space in square feet. A ratio of less than zero provides a zero performance factor; for a ratio between 0.0 and 0.1, the factor is 10 times the ratio; for a ratio between 0.1 and 0.3, the factor is 1.0; for a ratio between 0.3 and 0.4, the factor is 4 minus 10 times the ratio; for a ratio more than 0.4, the factor is again zero. The subsidy is determined by multiplying the maximum subsidy set forth in paragraph (a) of this section by both the climatic and performance factors.

(3) For passive solar space cooling systems in one- to four-family residential buildings, solar space heating systems in multifamily residential, commercial or agricultural buildings, and solar space heating systems in one- to four-family residential buildings if climatic and design performance factors are not used to determine the subsidy as described in paragraph (b)(2) of this section, the amount of financial assistance is \$200 for each one million Btu reduction in annual energy consumption as a result of the system.

(c) *Interest prepaid.* Where the assistance to be provided is in the form of prepayment of interest, the amount of assistance shall not exceed the amount of funds necessary to prepay all interest on any portion of the loan financing eligible solar energy costs.

§ 1800.49 Warranties.

(a) *Statutory requirements.* The Act requires that certain warranties be

provided in connection with solar energy systems purchased and installed with financial assistance. The Act provides that:

(1) The manufacturer of a solar energy system shall, in connection with such system, warrant in writing that the recipient, the contractor who installs the system and the supplier of the system shall (for those systems found within three years from the date of installation to be defective due to materials, manufacture, or design) at a minimum be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials;

(2) the supplier of such system shall, in connection with such system, provide, at a minimum, to the recipient, a warranty equivalent to that required under paragraph (a)(1) of this section; and

(3) the contractor for the installation of such system shall, in connection with such system, warrant in writing that, at a minimum, any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time.

(b) *Manner of compliance.* In all cases, a manufacturer's warranty for materials, manufacture and design and a contractor's warranty for installation must be provided. Suppliers or contractors may provide their own warranties for materials, manufacture and design in addition to, but not instead of, the manufacturer's warranty. However, suppliers and contractors are not required to provide separate warranties which duplicate the manufacturer's warranty covering defects in materials, manufacture or design, if they ensure that all rights under a manufacturer's warranty complying with paragraphs (a)(1) and (c) of this section have been fully assigned and are fully enforceable by the recipient. A contractor would still be required to provide a separate warranty as to installation. The financial institution must receive evidence acceptable to it that the warranty requirements of this section are satisfied. A contractor's or supplier's certification may be accepted as such evidence. A recipient's certification may not be accepted as such evidence by itself.

(c) *Warranty terms.* A warranty must comply with the applicable statutory requirements set forth in paragraph (a) of this section, but may be limited to "covered products" as defined in § 1800.3 of this part. A warranty may require that a recipient give notice of a

defect within a reasonable time (not less than 30 days) after discovery of such defect by the recipient. Any replacement parts or materials provided under any warranty must be provided at the site of installation without charge for transportation and (if a contractor installed the original parts or materials) must be installed without charge by the contractor.

(d) *Other law.* This section shall not be deemed to relieve a warrantor under this section from full compliance with Federal and State law applicable to warranties, except to the extent that such law is inconsistent with the requirements of this section.

§ 1800.51 Limitations on financial assistance by utilities.

No financial assistance shall be provided under this part by a utility for the purchase and installation of a solar energy system in a newly constructed building.

§ 1800.53 Limitation on assistance to residents of housing cooperatives.

Financial assistance may be provided to residents of housing cooperatives only if the cooperative corporation has given prior written consent to the resident for installation of a solar energy system.

§ 1800.55 Standards.

If financial assistance is in connection with a loan to a purchaser of a newly constructed or substantially rehabilitated one- to four-family or multifamily residential building with any solar energy system, the recipient must provide certification that the building meets or exceeds the standards contained in Paragraph 607-3, Building Insulation, of the HUD Minimum Property Standards for One and Two Family Dwellings, 4900.1, or Multifamily Housing, 4910.1, as appropriate. If the financial assistance is in connection with a loan to a purchaser of a newly constructed commercial or agricultural building with a solar energy space heating system, the purchaser must provide certification to the financial institution that the building meets the minimum insulation requirements of ASHRAE Standard 90A-1980 (Energy Conservation in New Building Design) or any replacement.

Subpart D—Energy Conservation Assistance

§ 1800.61 General.

This subpart sets forth the conditions and requirements that are applicable only to financial assistance for energy conservation measures.

§ 1800.63 Eligible recipients.

(a) *General.* Subject to the provisions of this section, an owner of, or a tenant in, a one- to four-family or multifamily residential, commercial or agricultural building who purchases and installs energy conservation measures in such building with the proceeds of a loan shall be eligible to receive financial assistance in connection with such loan. An owner of, or tenant in, a one- to four-family residential building and a tenant in a multifamily residential building who purchases and installs energy conservation measures in such building shall be eligible to receive financial assistance in the form of a grant. All buildings in which energy conservation measures are installed must have been completed before January 1, 1980.

(b) *Income limitations—grants.* In order to receive financial assistance in the form of a grant, a recipient must be an individual whose family has an annual income not in excess of 80 percent of the median area income.

(c) *Income limitations—loan subsidies.* In order to receive financial assistance in the form of reduction of principal or prepayment of interest:

(1) An owner-occupant of a one-family residential building, a tenant in a one- to four-family or multifamily residential building, an owner-occupant of a condominium dwelling unit, or a resident shareholder of a housing cooperative corporation must be an individual whose family has an annual income not in excess of 150 percent of the median area income.

(2) A housing cooperative corporation or a residential condominium association must be the owner of a cooperative or condominium with less than five units in which no resident shareholder or member has a family with an annual income in excess of 150 percent of the median area income, or the owner of a cooperative or condominium with more than four units which is located in a census tract in which the median income for a four-person family does not exceed 150 percent of the median area income for a four-person family.

(3) Except as provided in paragraph (c)(2) of this section, an owner of a multifamily residential, commercial or agricultural building, or a tenant in a commercial or agricultural building, shall not be subject to any income requirement.

(d) *Sales limitations.* An owner of, or tenant in, a commercial or agricultural building cannot have had gross annual sales of more than \$1,000,000 during the fiscal year of such owner or tenant preceding the fiscal year in which an assisted loan is made.

(e) *Owner-occupant.* An owner of a commercial or agricultural building must occupy the building in order to receive financial assistance in connection with the building.

(f) *Joint applications.* (1) A joint owner of a dwelling unit or of a building may apply for assistance individually, together with other joint owners in a single application, or with joint owners by separate application. If separate applications are made by two or more joint owners with respect to the same building or dwelling unit, such applicants collectively may not receive assistance which would exceed the maximum amount of assistance for which an applicant with an annual income equal to the average annual incomes of all joint owners of the dwelling unit or building would be eligible.

(2) A tenant jointly renting a dwelling unit or a building with other tenants may apply for assistance individually, together with other tenants in a joint application, or with other tenants by separate application. If separate applications are made by two or more tenants jointly renting a dwelling unit or building, such applicants collectively may not receive assistance which would exceed the maximum amount of assistance for which an applicant with an annual income equal to the average annual incomes of all tenants jointly renting the dwelling or building would be eligible.

(3) Members of the same family are not considered joint owners or tenants. Each applicant in a joint application must be eligible under this section. The average income of all joint applicants shall be used for purposes of § 1800.67(a) of this part.

(g) *Assistance on behalf of others.* (1) An organization may receive financial assistance on behalf of any owner or tenant who would be eligible to receive financial assistance, if such owner or tenant consents to the arrangement in writing. Such owner or tenant must comply with § 1800.127(b) of this part, and must be reported to the Internal Revenue Service pursuant to § 1800.127(a) of this part. The organization shall be responsible for compliance with all requirements of this part which would apply to the owner or tenant if he or she had received the financial assistance.

(2) The organization may receive the financial assistance in the form of a single grant in an amount equal to the sum of the grants which each owner or tenant could have received. If the financial assistance is in the form of reduction of principal or prepayment of interest, the organization may receive

the financial assistance in connection with a single loan in an amount equal to the sum of the amounts of financial assistance which each owner or tenant could have received.

(h) *Individually-metered tenants.* A tenant in a residential building for more than one family is eligible for financial assistance only if the tenant will pay costs for space heating and cooling which are measured by an individual meter after all the energy conservation measures are installed.

(i) *Relationship to other Federal programs.* No owner or tenant may receive financial assistance for an energy conservation measure if the owner or tenant has received, is seeking or has a current commitment for, assistance for the same energy conservation measure under any of the following Federal assistance programs:

(1) HUD.
(i) Section 8 Lower Income Rental Assistance for Moderate and Substantial Rehabilitation, 42 U.S.C. 1437f.

(ii) Flexible Subsidy (Troubled Projects), 42 U.S.C. 1715z-1a and Part 219 of this title.

(iii) Section 312 Rehabilitation Loans, 42 U.S.C. 1452b.

(2) Farmers Home Administration. Section 515 Direct Loans, 42 U.S.C. 1485.

(3) Department of Energy.
(i) Weatherization Program, 42 U.S.C. 6861 *et seq.*

(ii) Institutional Conservation (Schools and Hospitals) Program, 42 U.S.C. 6371 *et seq.*

(j) *Public Housing Agencies.* (1) A Public Housing Agency (PHA) which owns one- to four-family or multifamily residential buildings may receive financial assistance in connection with loans if all other relevant requirements of this part are met.

(2) A PHA may receive a grant on behalf of any tenant in a PHA-owned one- to four-family or multifamily residential building pursuant to paragraph (g) of this section. A PHA may serve as a financial institution and obtain payment directly from a State for such a grant, or it may receive the grant from another financial institution.

(k) *Cooperatives and condominiums.*

(1) When applying for assistance under this subpart, an owner of a unit in a condominium and a shareholder in a housing cooperative corporation are each regarded as the owner of a one-family building, regardless of the number of units in the condominium or cooperative. The principles stated in § 1800.67(a)(2) of this part do not apply. However, a tenant occupying a unit in a condominium or housing cooperative corporation shall be treated the same as

a tenant in a rental building and the principles stated in § 1800.67(a)(2) apply.

(2) When applying for assistance under this subpart, a condominium association and a housing cooperative corporation are each regarded as the owner of a building consisting of all units in the condominium or cooperative.

§ 1800.65 Eligible energy conservation measures.

(a) *One- to four-family residential buildings.* The following shall be eligible energy conservation measures for one- to four-family residential buildings, subject to paragraph (c) of this section:

(1) Caulking and weatherstripping.
(2) Furnace efficiency modifications including:

(i) Replacement burners, replacement furnaces, replacement boilers, or any combination thereof, which increases the energy efficiency of the heating system by at least 20%.

(ii) Devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights.

(3) Clock thermostats or clock timers.

(4) Ceiling, attic, wall, floor, pipe, and duct insulation.

(5) Water heater insulation.

(6) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflecting window and door materials (including films).

(7) Devices associated with load management techniques.

(8) Air-conditioning systems (not including heat pumps) provided that:

(i) They are installed in buildings in areas which have 1,000 or more average annual cooling degree days or meet some other reasonable basis for eligibility as defined by a State and approved by the Bank and the energy efficiency rating exceeds the average value of new air conditioners, which shall be determined by the Bank and provided to States, or

(ii) If they are replacement systems, they are also at least 20% more energy efficient than the systems being replaced.

(9) Heat pumps which replace:

(i) Existing heat pumps, or
(ii) A combination of electrical resistance heating and air conditioning.

(10) Heat pump water heaters in combination with or in replacement of existing electrical resistance domestic water heaters.

(11) Water flow controllers.

(12) Conversion from master utility meters to individual meters, when

directly related to and undertaken with the installation of any of the items specified in paragraphs (a)(2)-(11) of this section, and

(13) Energy audits (as included in the definition of "improvement cost" in § 1800.3 of this part).

(b) *Other buildings.* The following shall be eligible energy conservation measures for multifamily residential buildings, commercial buildings and agricultural buildings, if found to be cost-effective.

(1) Caulking and weatherstripping.

(2) The insulation of the building structure and any systems within the building.

(3) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflecting window and door systems (including films), glazing, reductions in glass area, and other window and door system modifications.

(4) Automatic energy control systems.

(5) Equipment, associated with automatic energy control systems, which is required to operate variable steam, hydraulic, and ventilating systems.

(6) Furnace, or utility plant and

distribution system, efficiency modifications including:

(i) Replacement burners, replacement furnaces, replacement boilers, or any combination thereof, which increases the energy efficiency of the heating system by at least 20%.

(ii) Devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights.

(7) Replacement or modification of a lighting system which increases the energy efficiency of the lighting system without significantly increasing the overall illumination of the building, including daylighting dimmers (unless such increase in illumination is necessary to conform to any applicable State or local law).

(8) Energy recovery systems which consist of equipment designed primarily to recover building waste energy from sources such as refrigeration or air conditioners for some useful purpose such as heating water.

(9) Cogeneration systems for commercial and agricultural buildings.

(10) Air-conditioning systems (not including heat pumps) provided that:

(i) The energy efficiency rating exceeds the average value of new air conditioners, which shall be determined by the Bank and provided to States, or

(ii) If they are replacement systems, they are at least 20% more efficient than the systems being replaced.

(11) Water flow controllers (not including controllers for flow of unheated water only).

(12) Conversion from master utility meters to individual meters, when directly related to and undertaken with the installation of any of the items specified in paragraphs (b)(2)-(11) of this section, and

(13) Energy audits (as included in the definition of "improvement cost" in § 1800.2 of this part).

(c) *Limitations.* An energy conservation measure listed in paragraph (a) of this section shall not be eligible for assistance unless it has been found to be cost-effective or unless it is one of the following measures:

(1) Caulking and weatherstripping,

(2) Attic, pipe, and duct insulation,

(3) Water heater insulation.

(4) Devices for modifying flue openings located in conditioned living space.

(5) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights.

(6) Clock thermostats or timers, or

(7) Water flow controllers.

§ 1800.67 Levels of assistance.

Financial assistance shall not exceed the least of any applicable amounts determined under paragraphs (a) and (b) of this section.

(a) *Fixed amount and percentage of costs.* (1) The maximum amount of assistance shall be determined according to the following chart (income limits are applied to the annual income of the family of the owner or tenant):

Building type	Assistance as percentage of improvement cost	Maximum assistance			
		1-family building	2-family building	3-family building	4-family building
(1) One- to four-family residential building					
Annual income of recipient: ¹					
80 percent or less of median area income	50 percent up to	\$1,250	\$2,000	\$2,750	\$3,500
80-100 percent of median area income	35 percent up to	875	1,400	1,925	2,450
100-120 percent of median area income	30 percent up to	750	1,200	1,650	2,100
120-150 percent of median area income	20 percent up to	500	800	1,100	1,440
Over 150 percent of median area income	do	(²)	(²)	(²)	(²)
(2) Multifamily residential building ²	do	(²)	(²)	(²)	(²)
(3) Agricultural or commercial building ³	do	5,000	5,000	5,000	5,000

¹ \$400 for a non-occupant owner.

² \$400 per dwelling unit for an owner.

³ \$400 for a tenant with annual income not in excess of 150% of median area income; \$400 per dwelling unit for an owner.

(2) In the case of energy conservation measures which do not benefit all dwelling units within a building, any dwelling units in the building which do not benefit from the energy conservation measures shall be counted in determining the building type but shall not be counted in determining maximum assistance. In order to determine the number of dwelling units in a building, the following principles shall be applied: (i) All dwelling units sharing a common space conditioning system shall be considered part of the same residential building; and (ii) except in the case of a manufactured home park, all dwelling units located on or above land included in the most recent recorded deed shall be considered part of the same building, whether or not any space conditioning systems are shared.

(3) If more than one application for assistance is submitted by eligible applicants in connection with energy conservation measures which benefit more than one dwelling unit, the aggregate financial assistance for those applicants may not exceed the maximum amount of financial assistance indicated in paragraph (a)(1)

of this section for the number of units benefited.

(b) *Interest prepaid.* Where the assistance to be provided is in the form of prepayment of interest, the amount of assistance shall not exceed the amount of funds necessary to prepay all interest on any portion of the loan financing eligible energy conservation measures.

§ 1800.69 Warranties.

(a) *Basic requirement.* (1) The contractor for the installation of energy conservation measures shall, in connection with such measures, warrant in writing that the recipient shall (for those measures found within one year from the date of installation to be defective due to materials, manufacture, design or installation) at a minimum be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts, materials or installation.

(2) If the energy conservation measures are not installed by a contractor, the supplier must provide a warranty equivalent to that required under paragraph (a)(1) of this section, except that the supplier is not required to warrant against defective installation.

(b) *Manner of compliance.* In all cases, materials, manufacture and design must be warranted. However, contractors or suppliers are not required to provide separate warranties as to materials, manufacture and design if they ensure that all rights under a manufacturer's or supplier's warranty complying with paragraph (a) of this section have been fully assigned and are enforceable by the recipient. (A contractor would still be required to provide separate warranty as to installation.) The financial institution must receive evidence acceptable to it that the warranty requirements of this section are satisfied. A contractor's or supplier's certification may be accepted as such evidence in all cases. A recipient's certification may be accepted as such evidence by itself only if there is no contractor.

(c) *Additional warranty terms.* A warranty may require that a recipient give notice of a defect within a reasonable time (not less than 30 days) after discovery of such defect by the recipient. Any replacement parts or materials must be provided at the site of installation without charge for transportation and (if a contractor installed the original parts or materials) must be installed without charge by the contractors.

(d) *Other law.* This section shall not be deemed to relieve a warrantor under this section from full compliance with Federal and State law applicable to warranties, except to the extent that such law is inconsistent with the requirements of this section.

(e) *No conflict with RCS requirements.* Except in areas of a State described in the second sentence of § 1800.77 of this part, warranties in compliance with the requirements of Section 542 of the Energy Security Act (42 U.S.C. 8213) and applicable regulations shall be considered in compliance with this section as applied to the purchase and installation of energy conservation measures.

(f) *Exceptions.* No supplier's warranty is required for an energy conservation measure listed in § 1800.65(a) (1), (4), (5), or (11) or § 1800.65(b) (1), (2), or (11) of this part, in a State which has made a written determination based on evidence that neither manufacturers' nor suppliers' warranties for such measures meeting the requirements of this section are generally available in the State and that the quality of the design, materials and manufacture for such measures is likely to be adequate in the absence of such warranties. Warranties from contractors will still be required in all cases where installation is by contractors.

§ 1800.71 Limitation on assistance to tenants.

Financial assistance may be provided to tenants only if the owner of the tenant's building or dwelling unit has given written consent to the tenant for installation of the energy conservation measures.

§ 1800.73 Limitation on assistance to residents of housing cooperatives.

Financial assistance may be provided to a resident of housing cooperatives only if the cooperative corporation has given prior written consent to the resident for installation of energy conservation measures.

§ 1800.75 Minimum expenditure for energy conservation measures.

The total improvement cost for energy conservation measures purchased and installed with the assistance of a grant must exceed \$250.

§ 1800.77 Contractors and suppliers.

All contractors and suppliers who install or supply energy conservation measures which assistance is provided in the form of a grant must appear on a list of approved contractors and suppliers which meets the requirements of Section 213(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8214. This requirement shall not apply in areas of a State which are not served by a public utility described in Section 211(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8212, or areas where such list has not been made public by a public utility under Section 215(a)(3) of the National Energy Conservation Policy Act, 42 U.S.C. 8216, or by the Secretary of Energy.

§ 1800.79 Residential energy audit information.

Financial institutions must inform applicants for financial assistance for energy conservation measures in one- to four-family or multifamily residential buildings, no later than the time that the application is submitted, of the availability of energy audits.

Subpart E—Program Operation

§ 1800.91 Cooperative agreements with States.

The financial assistance program of the Bank is implemented through States. Participating States will enter into cooperative agreements with the Bank which will form the legal framework for Bank/State relationships during program implementation. In addition to the matters covered in other sections of this subpart E, the cooperative agreements will cover such matters as the allocation and obligation of funds

for the State, the responsibilities of the State for the administration of its approved programs, Federal requirements applicable to the administration of its approved programs, and procedures covering resolution of any disputes between the Bank and a State, suspension or termination of a State's participation in programs of the Bank, and program closeout.

§ 1800.93 Program participants.

(a) *Initial State participants.* Initial State participants in the Bank program (ones which executed cooperative agreements with the Bank prior to October 1, 1983) may continue as participants and receive any additional funds allocated under § 1800.95(a) of this part on the basis of programs approved in their cooperative agreements. To receive any new allocation of funds, a State must properly execute and return to the Bank a Bank-prepared cooperative agreement amendment obligating such additional funds to the State within a 60-day period from the time such amendment is provided by the Bank. Funds not obligated by the Bank as a result of a State electing not to respond or not to receive such additional funds shall be included in the reserve fund described in § 1800.95(c) of this part.

(b) *States without cooperative agreements.* A State without a current cooperative agreement with the Bank may become a participant in the Bank program for any allocation of funds under § 1800.95(a) of this part by submitting a written program proposal which is accepted by the Bank. The Bank publishes, from time to time in the Federal Register, a Notice of Funding Availability which should be referred to for guidance as to the contents of the program proposal. Program proposals for the Fiscal Year 1984 allocation must be received by the Bank within 30 days after the effective date of this part as a final rule, and by a date to be announced in the Federal Register in subsequent Fiscal Years.

(c) *Local participation.* (1) A State may elect to permit local participants to assume responsibility for implementation of local programs within the State, as long as the State retains responsibility for:

- (i) Designation of local participants,
- (ii) Allocation of funds within the State, and
- (iii) Requests to the Bank for changes to a State program or its cooperative agreement with the Bank.

(2) "Local participants" may include metropolitan cities and urban counties as defined in § 570.3 of this title, other

subdivisions of a State empowered by State law to perform the function, and Indian tribes. Such subdivisions may include units of general local government, special purpose districts and multi-county districts as appropriate in each State, provided that any such subdivisions provide the State with documentation of the authority for the subdivision to perform the required functions in implementing this part under the laws of the State. Any other entity may be a local participant if approved by the Bank.

(3) A local participant which exercises a function or responsibility reserved to a State in this part shall be considered a State, to the extent of such function or responsibility. A State which designates local participants must retain ultimate responsibility for ensuring that State programs operate in accordance with the requirements of this part unless otherwise specified in its cooperative agreement.

(d) *Indian tribes.* (1) No more often than once in each Fiscal Year, the Bank may designate one entity as Indian Assistance Coordinator (IAC) for a period of at least one year. An IAC is responsible for ensuring that members of Indian tribes have the opportunity to receive financial assistance to the maximum extent permitted by funds available to the IAC. The IAC must:

(i) Be capable of adequately and fairly representing the interests of Indian tribes and their members,

(ii) Have experience in representing the interests of Indian tribes and their members,

(iii) Have experience in dealing with Federal financial assistance programs, preferably programs dealing with housing, solar energy, or energy conservation,

(iv) Have adequate staff and financial resources to perform the functions of a State under this part, and

(v) Meet all other requirements prescribed by the Bank for administering a program under this rule as for other State entities.

(2) Initially, an IAC will be designated only on the basis of a written program proposal and statement of qualifications submitted to the Bank in response to a competitive solicitation announced in the *Federal Register*. Whenever an IAC designation expires, the IAC may be redesignated without competitive solicitation or a new competitive solicitation may be announced in the *Federal Register*. An entity designated as IAC shall be informed of a tentative allocation of funds determined in the same manner as for States under § 1800.95(a) of this part except that the percentage for the IAC of the funds

being allocated shall be based on the ratio of the Indian population to U.S. population. Otherwise, the IAC shall be treated as a State for purposes of this part.

(3) This paragraph does not authorize States to discriminate against members of Indian tribes. States should ensure that members of Indian tribes in the State are able to receive financial assistance through the State program, regardless of the scope of any approved IAC program. However, a State may coordinate its program with any approved IAC program.

§ 1800.95 Allocation of funds.

(a) *Tentative allocation.* At least once during each Fiscal Year in which funds are available to the Bank, the Bank shall determine a tentative allocation for each State. At least 50 percent of available funds will be allocated under this paragraph, with the balance of available funds added to the reserve fund described in paragraph (c)(1) of this section. The percentage for a State of the funds being allocated is determined as follows:

(1) The sum of 50% of the number of households in the State with incomes at 80% or less of the median household income for the State, 30% of the number of households with incomes greater than 80% of the median up to 150% of the median and 20% of the number of households with incomes greater than 150% of the median,

(2) Multiplied by the ratio between the median household income for the United States and the State's median household income,

(3) Multiplied by the average amount of energy consumed per household for the State,

(4) Divided by the sum of the result produced for all States by the computation outlined in paragraphs (a) (1), (2) and (3), and

(5) Multiplied by 100.

The tentative allocation of funds for each new State participant shall be determined in the same manner as current participants, except that it shall be not less than \$120,000. Funds from the reserve fund described in paragraph (c)(1) of this section shall be used if necessary to reach \$120,000. Funds from the reserve fund shall also be used to increase any current participant's tentative allocation to \$20,000.

(b) *Obligation.* The Bank shall inform each State of the tentative allocation for a State. If a State elects to continue as a participant or becomes a new participant pursuant to § 1800.93 of this part, then the full amount of the State's tentative allocation shall be obligated to

a State by the cooperative agreement or an amendment to it.

(c) *Reserved Funds.* (1) A reserve fund shall exist consisting of: (i) Funds excluded from the tentative allocation process under paragraph (a) of this section, (ii) funds tentatively allocated to a State that does not elect to receive such funds, and (iii) funds recaptured under § 1800.97 of this part, to the extent that such funds remain available.

(2) Any reserved funds will be allocated and obligated in the fourth quarter of each fiscal year to States which elected to receive funds during such fiscal year. The amount of reserved funds which are made available to a State will be determined by the Bank, considering for each State its program scope, population characteristics, funds drawdown history, whether Bank funds are leveraged with any funds derived from sources not involving some form of Federal subsidy, and history of compliance with applicable rule provisions. In the event a State elects not to receive any such additional funds, a reallocation will be made.

§ 1800.97 Recapture and reallocation of funds.

Each cooperative agreement shall contain:

(a) A requirement that the State obligate all funds within one year of the date funds are obligated to the State by the Bank, or by the last date the funds are available under the terms of the applicable appropriation, whichever is later, to avoid recapture of funds by the Bank, and

(b) A provision permitting the Bank to recapture all unobligated funds from a State at any time following notice to the State of violation of this part by a State, serious or persistent violations (as determined by the Bank) of a cooperative agreement by a State, or serious or persistent violations (as determined by the Bank) of this part by local participants, financial institutions or recipients within the State.

§ 1800.99 Authorized expenditures.

(a) *Permissible uses of funds.* Funds allocated by the Bank to States for implementing financial assistance programs shall be expended only for payments to financial institutions which have provided financial assistance in accordance with this part, or for administrative expenses or promotional expenses.

(b) *Administrative expenses.* Funds received from the Bank may be used for payment of administrative expenses incurred in connection with an approved State program, to the extent authorized

in the cooperative agreement. All funds obligated to a State prior to October 1, 1983, which are used for administrative expenses must be matched with resources other than Bank funds, so that the cumulative amount of such funds drawn from the Bank for administrative expenses by a State or other administrative entity does not at any time exceed fifty percent of the cumulative amount of administrative expenses. For other funds, the Bank shall authorize the amount requested by the State without any matching requirement, subject to the following:

(1) No more than 12 percent of the amount of funds obligated to a State during a fiscal year, or \$20,000 of such funds, whichever is greater, shall be authorized for administrative expenses; and

(2) If the State is not the sole administrative entity in connection with an approved State program, no more than one-half of the maximum amount of funds described in paragraph (b)(1) of this section may be used for payment of administrative expenses incurred by the State, and any remaining funds authorized for administrative expenses may be used only for payment of administrative expenses of other designated administrative entities within the State.

A State may not draw from the Bank more than one-half of the funds authorized for administrative expenses until the first grant or subsidized loan has been made in the State, and subsequently the cumulative amount of administrative expenses drawn from the Bank shall not exceed 50% of authorized administrative expenses multiplied by a factor equal to one plus the ratio of the cumulative amount of funds drawn to pay for subsidies to the cumulative amount of funds obligated to a State for subsidies. This limitation on the amount of administrative expenses available will expire on January 1, 1985. Administrative expenses shall not include the purchase of nonexpendable personal property (defined in attachment N to OMB Circular A-102, "Property Management Standards").

(c) *Promotional expenses.* Funds received from the Bank may be used for payment of promotional expenses incurred in connection with an approved State program, to the extent authorized in the cooperative agreement. Promotional expenses may be incurred by the State and by any other designated administrative entities in the State. The Bank will not authorize payment of promotional expenses in excess of one percent of the cumulative funds obligated to the State.

(d) *Principles for determining allowable expenses.* Administrative and promotional expenses must be allowable under the principles and standards established in OMB Circular No. A-87, "Cost Principles for State and Local Governments".

§ 1800.101 Distribution of funds.

There is no predetermined distribution of funds for energy conservation measures or solar energy systems nor for the type of financial assistance to be made. The approval of funding levels and specific programs for States by the Bank shall constitute an initial distribution of funds for the energy conservation measures or solar energy systems and the type of financial assistance described in the approved State programs as contained in the cooperative agreement. A State may make a redistribution of approved funds for different eligible measures or types of financial assistance only with specific written approval of the Bank and amendment of the cooperative agreement.

§ 1800.103 Selection of financial institutions.

A State will select the financial institutions which will provide financial assistance within the State. A State may serve as a financial institution itself as long as it qualifies under the definition set forth in § 1800.3 of this part.

§ 1800.105 State discretion.

A State may establish maximum levels of financial assistance which are lower than the maximum levels set forth in this part. A State may also restrict the lists of eligible solar energy systems and energy conservation measures set forth in this part.

§ 1800.107 Reporting and recordkeeping requirements.

(a) *Semi-annual State reports.* Each State shall submit reports to the Bank within 30 days of the six month periods ending June 30 and December 31 beginning with the first such period in which a cooperative agreement is executed and continuing until program closeout. The reports shall cover, as a minimum, the following:

(1) A summary of the overall program for the reporting period and overall results to date, including financial reports required by Attachment H of OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments";

(2) Problems encountered and actions taken to resolve them;

(3) Acceptance/objections by industry, local governments, financial institutions, and the public;

(4) The numbers of applicants for and recipients of loans and grants by income category and type of building;

(5) Total costs of energy conservation and solar measures implemented and amounts of subsidies by type of measure;

(6) The estimated energy savings by income category of recipients, building type and type of measure;

(7) The cost-effectiveness of the program in terms of administrative costs, promotional costs, leveraging of funds, energy savings in terms of dollars per barrel of oil equivalent and other measures as may be appropriate; and

(8) Evaluation of the program in terms of achieving scheduled milestones and events and in meeting program goals and objectives.

(b) *Retention of records by States.*

Each State shall retain all records pertaining to use of funds received from the Bank, including all reports received from financial institutions, for a period of three years from the date of submission of the semi-annual State report for the period covered by such records, except that if any litigation, claim or audit is started before the expiration of the three-year period, all related records shall be retained for three years after final disposition of the litigation, claim or audit.

(Approved by the Office of Management and Budget under OMB control number 2504-0001.)

§ 1800.109 Manner of payment.

Payments to States will be made by electronic funds transfer whenever possible, letter of credit, or other means, pursuant to the cooperative agreements and in compliance with the Intergovernmental Cooperation Act (42 U.S.C. 4201 *et seq.*) and Treasury Circular No. 1075 (31 CFR Part 205). States may receive payments for administrative and promotional expenses only after they have been incurred. States may receive other payments only in amounts necessary to pay financial institutions for financial assistance in connection either with energy conservation measures or solar energy systems which have been installed or buildings which have been purchased, or with loans which have been closed if energy conservation measures or solar energy systems will be installed within 60 days of closing. States shall utilize appropriate procedures to minimize the time elapsing between the transfer of funds

by the Treasury to the State and the disbursement of funds by the State.

Subpart F—Miscellaneous

§ 1800.121 Penalties and remedies.

(a) *General.* Any person (including an applicant or financial institution) who knowingly makes any false statement or misrepresents any material fact with respect to any financial assistance applied for or provided under this part, or fails to make any disclosure or statement required by this part, is subject to a fine of not more than \$10,000, or imprisonment for not more than one year, or both, for each offense. Each false statement, material misrepresentation or failure to make a required disclosure or statement shall be a separate offense.

(b) *Penalties in this section not exclusive.* The penalties provided for in paragraph (a) of this section shall be in addition to any civil or criminal fines or penalties applicable under law, including Title 18 of the United States Code and any other applicable provisions of Federal, State or local law.

(c) *Other relief.* Nothing in this section shall limit any rights of the Bank to recover funds from financial institutions, recipients or any other persons or pursue any other remedies available under law.

§ 1800.12. Retention of records by financial institutions and recipients.

(a) *Financial institution.* Financial institutions (including States acting as financial institutions) shall retain all records related to applications for financial assistance for a period of three years from the date the financial assistance is provided (or the date of application, if never provided).

(b) *Recipients.* Recipients shall retain all records pertaining to the application, the assisted loan or grant, the solar energy system or energy conservation measures for which the loan or grant was sought, and warranties for a period of three years after the financial assistance is provided.

(Approved by the Office of Management and Budget under OMB control number 2504-0001.)

§ 1800.125 Audit.

(a) *Federal audits.* The Bank, the HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative, shall have access to all records required to be retained by this part or by any agreement with the Bank for the purpose of audit or other examinations or copying.

(b) *State audits.* Attachment P to OMB Circular A-102, "Audit Requirements", is applicable to States receiving funds under this part. Audits shall be made beginning by the end of calendar year 1984, or as otherwise provided in a cooperative agreement, and then at least once every two years. A copy of each audit shall be sent to the Bank.

§ 1800.127 Prohibition against tax credits and financial assistance for same expenditure.

(a) *Information provided to the Secretary of the Treasury.* As required by Section 506(f) of the Act, the Bank shall provide to the Secretary of Treasury such information as the Secretary of Treasury determines is necessary to insure that no person is allowed for the same expenditure both financial assistance under the Act and a credit against Federal income taxes under 26 U.S.C. 38 (investment credit) or 26 U.S.C. 44C (residential energy credit). Except as otherwise directed by the Secretary of the Treasury, the Bank intends to discharge this responsibility as well as the information return requirements of 26 U.S.C. 6050D by requiring either a State or financial institutions within a State to submit Internal Revenue Service Form 6497 ("Information Return of Nontaxable Energy Grants or Subsidized Energy Financing") or any replacement form duly approved by the Office of Management and Budget to the appropriate office of the Internal Revenue Service.

(b) *Information required from applicant.* As a condition of financial assistance, an applicant shall be required to provide to the financial institution:

(1) All information which the Secretary of Treasury determines is necessary under paragraph (a) of this section and which is possessed by the recipient, including the applicant's Social Security number or taxpayer identification number and other information required for Internal Revenue Service Form 6497 or any replacement form duly approved by the Office of Management and Budget, and

(2) A certification that the applicant will not claim a Federal tax credit under 26 U.S.C. 38 or 44C for amounts expended for the assisted energy conservation measures or assisted solar energy system up to the amount used as the basis for determining the financial assistance, except as permitted by regulations or other legal interpretations of the Internal Revenue Service.

(Approved by the Office of Management and Budget under OMB control number, 2504-0001.)

§ 1800.129 No gross income.

The amount of any financial assistance provided under this chapter shall not be included in the gross income of any recipient for purposes of the Internal Revenue Code of 1954, 26 U.S.C. 1 *et seq.*

§ 1800.131 No increase in basis.

No recipient shall receive any increase in basis under the Internal Revenue Code of 1954, 26 U.S.C. 1 *et seq.*, which is attributable to the amount of any financial assistance provided under this chapter.

§ 1800.133 Waiver of regulations.

Upon determination of good cause, the President of the Bank may waive any provision of this part unless the provision is required by the Act. Each such waiver will be in writing and shall be supported by documentation of the pertinent facts and grounds for waiver. No person shall have a right to a hearing in connection with any waiver or refusal to waive by the President of the Bank.

§ 1800.135 Applicability of general HUD regulations.

(a) *Not subject to HUD regulations.* The Bank is not subject to the regulations of general applicability to HUD contained in this title and issued by the Secretary of HUD or a delegatee of the Secretary, except as required by the statute or Executive Order authorizing such regulations, or except as such regulations are expressly adopted by the Bank in this part or otherwise. Nothing in this section shall excuse the Bank from compliance with statutes or Executive Orders.

(b) *Regulations adopted.* The following provisions of this title, as they may be amended from time to time, are adopted by the Bank and shall be binding as regulations governing the internal operations of the Bank, except as they may be modified by the Board: Part O (Standards of Conduct), Part 1 (Nondiscrimination), Part 2 (Hearing Practice and Procedures under Part 1), Part 7 (Equal Employment Opportunity), Part 10 (Rulemaking: Policy and Procedures), Part 15 (Production or Disclosure of Material or Information), Part 16 (Privacy Act), Part 17 (Administrative Claims), Part 20 (Board of Contract Appeals), and Part 50 (Procedures for Protection and Enhancement of Environmental Quality). References to "the Secretary" in such provisions shall ordinarily be construed as including the Board. In conjunction with its adoption of Part 50 of this title, the Bank adopts a categorical exclusion from requirements

for environmental clearances for approval of State programs and allocation of funds to the States, as well as for any actions taken by States or financial institutions in accordance with approved State programs.

(c) *Future HUD regulations.* The President of the Bank is authorized to subject the Bank to any regulations of general applicability to HUD which are added to this title in the future, by issuing a notice in the *Federal Register* to that effect.

§ 1800.137 Other Federal requirements.

(a) *General.* Financial assistance shall be provided by financial institutions in compliance with all applicable Federal statutes and regulations, as they may be amended from time to time including, but not limited to, those cited in this part and those generally applicable to "Federal financial assistance".

(b) *Non-discrimination.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1) and Part 1 of this title, Section 504 of the Rehabilitation Act of 1973 as amended (42 U.S.C. 701 *et seq.*), and any implementing HUD regulations adopted by the Bank, and the Age Discrimination Act of 1975 as amended (42 U.S.C. 6101 *et seq.*), and any implementing HUD regulations adopted by the Bank apply to the provision of financial assistance under this part. Certain aspects of the Bank's programs are subject to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) and Executive Order 11063, and any regulations under these provisions.

(c) *Historic preservation.* No financial assistance shall be provided in connection with any energy conservation measure or solar energy system with respect to any district, site, building, structure or object included in or eligible for inclusion in the National Register maintained by the Secretary of the Interior under 16 U.S.C. 470a as determined by the State or a financial institution, unless such financial assistance is in connection with an assistance program of a Federal agency other than the Bank for which the other Federal agency or a grant recipient under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) has complied with the procedures of the Advisory Council on Historic Preservation set forth in 36 CFR Part 800 or (in the case of Urban Development Action Grants) 36 CFR Part 801. This paragraph may be superseded by an exemption under Section 214 of the Historic Preservation Act of 1966 (16 U.S.C. 470v) if an exemption is granted by the Advisory Council on Historic Preservation for the financial assistance program of the

Bank, or by the terms of a Programmatic Memorandum of Agreement with the Advisory Council on Historic Preservation pursuant to 36 CFR 800.8.

(d) *Special flood hazard areas and wetlands.* In order to carry out the Federal policies stated in Executive Orders 11988 ("Floodplain Management") and 11990 ("Protection of Wetlands"), no financial assistance shall be provided in connection with buildings located in wetlands or an area that has been identified by the Federal Emergency Management Agency as having special flood hazards, unless such financial assistance is in connection with an assistance program of a Federal agency other than the Bank for which the Federal agency or a grant recipient under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*) has complied with the procedures set forth in Executive Order 11988 or 11990.

(e) *Flood insurance purchase requirements.* No financial assistance shall be provided in connection with any building located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59-79) or less than a year has passed since FEMA notification regarding such hazards, and insurance on the structure is obtained in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 42 U.S.C. 4001 *et seq.*).

(f) *Coastal barriers.* No financial assistance shall be provided in connection with any building located in an undeveloped coastal barrier (as defined in the Coastal Barriers Resources Act, 16 U.S.C. 3501 *et seq.*).

(g) *OMB Circular A-102.* A State shall comply with the requirements of Attachments G, H, J, L, N, O and P of OMB Circular A-102 and shall be regarded as a grantee for the purposes of such requirements. The cooperative agreement required by § 1800.91 of this part may clarify the requirements as applied to the financial assistance program of the Bank.

(h) *Lead-based paint.* Lead-based paint (as defined in § 35.61 of this title) shall not be used in connection with the installation of energy conservation measures or solar energy systems in one- to four-family or multifamily residential buildings. No financial assistance shall be provided for the purchase or installation of energy conservation measures or solar energy systems containing lead-based paint in one- to four-family or multifamily

residential buildings. No financial assistance shall be provided for the purchase of any newly constructed or substantially rehabilitated one- to four-family or multifamily residential building containing lead-based paint.

(i) *Other laws.* Financial institutions shall ensure that all financial assistance is provided in accordance with the following statutes and regulations to the extent applicable:

(1) Truth-in-Lending Act (15 U.S.C. 1601 *et seq.* and 12 CFR Part 226 (Regulation Z)).

(2) Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.* and Part 3500 of this title).

(3) Equal Credit Opportunity Act of 1976 (15 U.S.C. 1691 *et seq.* and 12 CFR Part 202).

APPENDIX I—CLIMATIC FACTOR FOR PASSIVE SOLAR ENERGY SPACE HEATING SYSTEMS

HDD	CDD			
	0-1,000	1,001-2,000	2,001-3,000	Over 3,000
	CH			
	0-500	501-1,000	1,001-1,500	Over 1,500
Under 1,000	0	0	0	0
1,000-1,500	.2	0	0	0
1,501-2,000	.3	.2	.1	0
2,001-2,500	.4	.3	.2	.1
2,501-3,000	.5	.4	.3	.2
3,001-3,500	.6	.5	.4	.3
3,501-4,000	.7	.6	.5	.4
4,001-4,500	.8	.7	.6	.5
4,501-5,000	.9	.8	.7	.6
5,001-5,500	1.0	.9	.8	.7
5,501-6,000	1.0	1.0	.9	.8
Over 6,000	1.0	1.0	1.0	.9

CDD—Average annual cooling degree days.
CH—Cooling hours above 80° F.
HDD—Average annual heating degree days.

Appendix II—Procedure for Calculating Subsidy and Reduced Interest Rate on Prepayment of Interest Loan Assistance

1. Energy conservation measures and retrofit solar energy systems.

A. Determine amount of maximum subsidy based on recipient (borrower) income eligibility and limitation based on cost-effectiveness of measures as per §§ 1800.47 and/or 1800.67 as appropriate.

B. Category 1 loan: A predetermined interest rate reduction below prevailing market rate is to be made (e.g., 10% versus 15% conventional rate).

1. Subtract finance charge of loan at the reduced interest rate from the finance charge at the conventional rate.

2. Find the growth factor per dollar using monthly compounding financial tables at the Bank authorized discount rate of 60% of conventional interest rate, as per § 1800.17(b), rounding up to the nearest 0.25 percentage increment, for the loan repayment term.

3. Divide the amount from step B.1 by the growth factor in step B.2 above.

4. If the maximum subsidy amount available is equal to or greater than the amount in step B.3 above, then the step B.3 amount is the amount of the subsidy to be permitted. If the maximum subsidy amount available is less than the step B.3 amount, this Class loan cannot be made as there is insufficient subsidy available to "buy-down" the loan to 10%. Use Category 2 loan procedures.

C. Category 2 loan: Determine interest rate reduction based on amount of subsidy available as per I.A. above.

1. Find the growth factor per dollar using monthly compounding financial tables at the Bank authorized discount rate of 60% of conventional interest rate, as per § 1800.17(b), rounding up to the nearest 0.25 percentage increment, for the loan repayment term.

2. Multiply the growth factor from step C.1 by the amount of subsidy available.

3. Subtract the amount from step C.2 above from the finance charge of the loan at the conventional interest rate.

4. If the result from step C.3 above is zero or greater, this result is the net finance charge of the loan. If zero, the result is a zero interest loan. If greater than zero, use a standard financial table or formula to find the interest rate needed to yield the net finance charge of the loan rounding up to the nearest percentage increment of interest rate available. This establishes the reduced interest rate of the loan and the entire amount of subsidy available is used.

5. If the result from step C.3 above is less than zero, meaning the subsidy available exceeds the amount required to "buy-down" the interest rate to zero percent, use the Category 1 loan procedure to determine the subsidy amount for any specific interest rate reduction down to zero percent.

II. Solar energy measures in buildings purchased.

Category 3 loan: Passive solar energy systems in new or substantially rehabilitated residential buildings being financed.

1. Determine subsidy amount as follows:

A. For passive space heating systems:

1. Find climatic factor from Appendix I for specific site location of building. If zero, subsidy is zero.

2. Find performance factor for specific building and passive system as per § 1800.47(b). If zero, subsidy is zero.

3. Multiply climatic and performance factors together and multiply this product by the maximum subsidy available (e.g., \$5,000 for a single dwelling unit building).

Note.—For the alternate passive solar space heating subsidy determination

procedure, or for active solar space heating or passive space cooling, the subsidy would be \$200 for each million Btu's reduction in annual energy consumption for the building or dwelling unit.

B. For water heating systems the subsidy is per § 1800.47(a)(2). For both a space and a water heating system the subsidy amounts would be combined, subject to the appropriate maximum amount in § 1800.47(a)(1).

2. Find the growth factor per dollar using monthly compounding financial tables at the Bank authorized discount rate of 60% of conventional interest rate as per § 1800.17(b), rounding up to the nearest 0.25 percentage increment, for the loan repayment term.

3. Multiply subsidy available from step 1 above by the growth factor from step 2 above.

4. Subtract the amount from step 3 above from the finance charge of the loan at the conventional interest rate. This is the net finance charge for the loan.

5. Find the interest rate required to yield the net finance charge, using a standard financial table or formula, rounding up to the nearest percentage increment of interest rate available. This establishes the reduced interest rate of the loan.

III. Portion of loan qualifies for a subsidy.

Category 4 loan: A portion of a loan is eligible for subsidized financial assistance.

1. Consider the entire loan as having two parts where one part (part A) represents the amount of the loan for which subsidized financial assistance is available. Part B is the balance of the loan amount.

2. Determine the amount of subsidy and the finance charge reduction for part A of the loan using procedures for Category 1, 2, or 3 loans, as applicable.

3. Subtract the finance charge reduction in step 2 above from the finance charge of the entire loan at the conventional interest rate. This is the net finance charge of the entire loan.

4. Use a standard financial table or formula to find the interest rate needed to yield the net finance charge of the loan rounding up to the nearest percentage increment of interest rate available. This is the reduced interest rate for the entire loan.

Appendix III—Prepayment of Interest Loan Subsidy Examples

Example 1, Category 1

It is desired to offer loans for energy conservation measures at 10% where the conventional rate is 15%. The applicant is the owner-occupant of a single-family dwelling and is at the 80-100% of

median income level. Energy audit results show the cost of measures to be installed is \$2,000 and estimated energy cost savings per year is \$500. The loan will be for 5 years.

1. From the rule income limitation, the maximum level of assistance is \$875 or 35% of \$2,000, whichever is less. In this case the limit is \$700 (35% of \$2,000).

2. As per step B.1 of the procedure for Category 1 loans, the difference in finance charges from 15% to 10% for \$2,000 is \$304.80 (\$854.80—\$550.00).

3. From step B.2, the discounted rate growth factor at 6.0% for 5 years is 1.3489.

4. Per step B.3, the amount of subsidy required to reduce the interest rate to 10% is \$225.96 (\$304.80 divided by 1.3489). Since this amount is within the allowable subsidy of \$700, the \$225.96 is the subsidy amount.

EXAMPLE 1 SUMMARY

	Conventional	Bank subsidized
Principal.....	\$2,000.00.....	\$2,000.00.....
Interest rate.....	15%.....	10%.....
Term.....	5 years.....	5 years.....
Monthly payment.....	\$47.80.....	\$42.40.....
Total payments.....	\$2,856.00.....	\$2,544.00.....

Example 2, Category 2

It is desired to offer a reduced interest rate loan for energy conservation measures using the full amount of the subsidy available. The applicant is the owner-occupant of a single family dwelling and is at 140% of median income level. Energy audit results show the estimated cost of measures to be installed is \$1,500 and the estimated energy cost savings is \$300 per year. The loan will be for 5 years where the conventional interest rate is 16%.

1. From the interim rule income limitation, the maximum level of assistance is \$500 or 20% of \$1,500, whichever is less. In this case, the limit is \$300 (20% of \$1,500).

2. As per step C.1 of the procedure for Category 2 loans, the discounted rate growth factor is 1.3828 (6.5 for 5 years). Applying this to the allowable subsidy yields \$414.84 (\$300 x 1.3828) as per step C.2.

3. Per step C.3, the net finance charge of the loan is \$273.81 (normal finance charge of \$688.65—\$414.84).

4. Using financial tables per step C.4, the interest needed to yield the net finance charge of the loan is found to be 7.0%, after rounding up to the nearest .25% increment. The loan is thus reduced to a 7.0% rate with a subsidy of \$300.

EXAMPLE 2 SUMMARY

	Conventional	Bank subsidized
Principal.....	\$1,500.00	\$1,500.00
Interest rate.....	16%	7.0%
Term.....	5 years	5 years
Monthly payment.....	\$36.48	\$29.70
Total payments.....	\$2,188.80	\$1,782.00

Note.—For a comparison of a reduction of principal type loan to example 2, the principal would be \$1200 at 16% interest for 5 years, the monthly payment would be \$29.18 and the total payment would be \$1,750.80.

Example 3, Category 3

A new single-family dwelling has a \$70,000 sale price located in Greensboro, North Carolina. The solar collection area of the passive solar space heating system is 354 square feet and the gross heated living floor area is 1700 square feet. The passive system meets the five recognition factors defined in the interim rule. The mortgage will be \$56,000 for 30 years where the conventional interest rate is 14%.

1. The climatic factor for Greensboro, NC is 0.6 from Appendix I based on a value of 3805 heating degree days and 916 cooling hours (from *Handbook of Air Conditioning Heating and Ventilating*, Third Edition, 1979). The performance factor is 1.0 as per § 1800.47(b). As per step 1.A of the procedures for Category 3 loans, the subsidy amount is \$3,000 (0.6 × \$5,000 maximum subsidy available).

2. From step 2, the growth factor is 5.5894 (5.75% for 30 years).

3. The amount of interest prepaid, per step 3, is \$16,768.20 (\$3,000 × 5.5894).

4. The net finance charge of the loan, per step 4, is \$166,099.80 (\$16,768.20 subtracted from \$182,868, the finance charge at 14%).

5. Per step 5, the interest rate needed to yield the net finance charge, after rounding up to the nearest 0.25 percent increment, is 13%.

EXAMPLE 3. SUMMARY

	Conventional	Bank subsidized
Principal.....	\$56,000.00	\$56,000.00
Interest rate.....	14%	13%
Term.....	30 years	30 years
Monthly payments.....	\$663.53	\$619.48
Total payments.....	\$238,870.80	\$223,012.80

Note.—If the subsidy had been the maximum allowable of \$5,000 (for a more northerly climate) the interest rate would be 12.25%, the monthly payment \$586.83 and the total payments \$211,258.80.

Also, for a comparison to a reduction of principal loan at a \$3,000 subsidy (\$53,000 at 14% for 30 years) the monthly payment would be \$627.98.

Example 4, Category 4

A home improvement loan for \$3,500 is being made which includes \$1,500 of eligible energy conservation measures. The conditions for the loan are otherwise as for example 2 of this appendix.

1. The amount of subsidy and the finance charge reduction for the eligible portion of the loan is \$300 and \$414.84 respectively as determined in example 2.

2. The finance charge of the entire loan at the conventional interest rate is \$1606.85 and the net finance charge of the entire loan is \$1192.01 (\$1606.85 - \$414.84).

3. Using financial tables, the interest needed to yield the net finance charge of the entire loan is 12.25% after rounding up to the nearest 0.25% increment. The loan is thus reduced to a 12.25% rate with a subsidy of \$300.

EXAMPLE 4 SUMMARY

	Conventional	Bank subsidized
Principal.....	\$3,500.00	\$3,500.00
Interest rate.....	16%	12.25%
Term.....	5 years	5 years
Monthly payments.....	\$85.11	\$78.30
Total payments.....	\$5,106.60	\$4,698.00

Note.—The calculations made for finance charges on loans and the interest rates needed to yield specific finance charges are based on tables in Thorndike's Financial Encyclopedia. Monthly payments are rounded up to the next \$0.01. This rounding up accounts for some differences in the finance charges expressed in the calculations compared to the total payments (principal plus finance charge) shown in the summary following each example.

Dated: March 6, 1984.

Richard H. Francis,
Manager of the Bank.

[FR Doc. 84-7024 Filed 3-15-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Approval of Amendments to the Arkansas Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 904 by approving certain amendments to the Arkansas permanent regulatory program under the Surface

Mining Control and Reclamation Act of 1977 (SMCRA). These amendments pertain to changes in Arkansas' Surface Coal Mining and Reclamation Code for (1) permit fees and bonding requirements for certain coal exploration operations and (2) inspection of inactive surface coal mining operations.

By a letter dated December 7, 1983, Arkansas submitted to OSM these amendments pursuant to 30 CFR 732.17. After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director has determined that the modifications to the Arkansas program meet the requirements of SMCRA and the Federal permanent program regulations. The Federal rules at 30 CFR Part 904 which codify decisions concerning the Arkansas permanent regulatory program are being amended to implement these actions.

EFFECTIVE DATE: The approval of the program amendments is effective March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma, 74103; Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas State Program

On February 19, 1980, Arkansas submitted its proposed regulatory program to OSM. On November 21, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 4 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the November 31, 1980 Federal Register (45 FR 77003-77017).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Arkansas program can be found in the November 21, 1980 Federal Register notice. Arkansas submitted amendments to satisfy the four conditions of approval and the Secretary approved these amendments effective January 22, 1982 (47 FR 3108).

II. Submission of program amendment

By a letter dated December 7, 1983, Arkansas submitted to OSM pursuant to

30 CFR 732.17, certain revisions to its regulations for permit fees, coal exploration operations and inspections.

In the amendment, Arkansas proposed to amend Part 771 of its regulations pertaining to permit fees. The State proposed to require that a request for coal exploration approval for the removal of more than 250 tons of coal accompanied by a \$250 review fee and a \$250 administration and enforcement fee.

Additionally, Arkansas proposed to add new language to its regulations at Part 776 of its bond requirements pertaining to exploration operations extracting more than 250 tons of coal. The proposal required performance bond in an amount of not less than \$5,000 to be paid to the Department of Pollution Control and Ecology (Department) after the request for approval to conduct such an exploration operation but before the Department approves such request.

Arkansas also modified Part 842 of its regulations pertaining to inspections. The State proposes to establish an inspection frequency for *inactive* surface coal mining and reclamation operations of one complete inspection per calendar quarter. Additionally, the State proposed procedures for conducting aerial inspections. The proposed regulation provides that any potential violation observed during an aerial inspection shall be investigated on site within three calendar days. The regulation further provides that if the observed potential violation presents any indication of a condition requiring a cessation order that the site shall be investigated immediately.

On January 24, 1984, the Director published a notice in the *Federal Register* announcing a public comment period and opportunity to request a public hearing (49 FR 2919). Since no requests were made, the public hearing scheduled for February 15, 1984, was not held. The public comment period ended February 23, 1984.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Arkansas on December 7, 1983, meet the requirements of SMCRA and 30 CFR Chapter VII, as set forth below.

Finding 1

The Director finds that the proposed revisions to Arkansas' Code at section 771.25(a)(2) allows Arkansas to charge a fee for processing and enforcing applications for coal exploration operations that is no less effective than the provisions found in 30 CFR 777.17

(permit fees) and 772.12 (standards for Coal Exploration Operations) and is in accordance with the minimum requirements of section 512 of SMCRA. While SMCRA or its implementing regulations do not specifically require a fee for other than surface coal mining operation permit applications, the Director finds that the State's proposal to collect a fee for certain coal exploration operations is consistent with the purposes of SMCRA (section 102) and the State's responsibility to enforce its regulations pertaining to coal exploration operations.

Finding 2

The Director finds that the proposed revision to section 776(c) of the Arkansas Code which provides that operators involved in coal exploration for an excess of 250 tons post a performance bond of not less than \$5,000 is no less effective than Parts 772.12 and 800 (Bond Requirements) of 30 CFR and is consistent with section 509 and 512 of SMCRA. Neither SMCRA or the regulations require the bonding of coal exploration operations. However, the Director believes that the Arkansas amendment will assist the State in enforcing its performance standards for such operations mining in excess 250 tons of coal and therefore, ensure a greater degree of environmental protection.

Finding 3

The Director finds that the proposed revision to the Arkansas Code at section 842.11(c) pertaining to (1) the inspection frequency for inactive operations and (2) procedures for conducting aerial inspections are no less effective than and contain the same or similar procedural requirements as provided in 30 CFR 840.11 and is no less stringent than section 517 of SMCRA. The Director finds that Arkansas has amended its required inspection frequency for inactive surface coal mining and reclamation operations in that it requires one complete inspection be made per quarter of each inactive operation. In its proposal, Arkansas does not specifically state that it will conduct such partial inspections of each inactive operation as are necessary to ensure effective enforcement of the approved State program, as provided in 30 CFR 840.11(a). However, the approved Arkansas program at section 842.11(a) provides that "inspections will be made as necessary to develop or enforce the State program." Therefore, the Director finds that the State's proposed revision to 842.11(c) jointly with its previously approved regulation at 842.11(a) provide procedures that are

the same or similar to those provided in 30 CFR 842.11 (a) and (b).

IV. Public Comment

1. Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, the following agencies offered no substantive objection to or approval on the amendments: (1) The Department of Energy; (2) the United States Fish and Wildlife Service; (3) the United States Department of Agriculture, Soil Conservation Service; (4) the Advisory Council on Historic Preservation; (5) the United States Bureau of Land Management; (6) the Department of Army, Corps of Engineers; (7) the United States Forest Service; (8) the Environmental Protection Agency; and (9) the United States Department of Agricultural Stabilization and Conservation Service.

V. Director's Decision

Accordingly, the proposed revisions to the Arkansas Code at sections 771.25(a)(2), 776(c), and 842.11(c) submitted to OSM by a letter dated December 7, 1983, are hereby approved pursuant to 30 CFR 732.17.

The Federal regulations codifying the Director's decisions on the Arkansas program at 30 CFR Part 904.15 are amended to indicate approval of the program amendments.

VI. 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 will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will 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 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 13, 1984.

James R. Harris,

Director, Office of Surface Mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

PART 904—ARKANSAS

1. Part 904 is amended by adding a new § 904.15 as set forth below:

§ 904.15 Approval of Amendments to State Regulatory Program

(a) The following is approved effective on March 16, 1984: Revised Arkansas Surface Coal Mining Code at sections 771.25(a)(2), 776(c), and 842(c) (1), (2), (4), and (5)(i)(ii) submitted to OSM by a letter dated December 7, 1983.

(b) [Reserved].

[FR Doc 84-7156 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

Approval of Amendment to the Virginia Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: The Director, OSM, is announcing final approval of an amendment to the Virginia Permanent Regulatory Program (hereinafter referred to as the Virginia program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment relates to the State's revised coal haulroad policy.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director, OSM, has determined that the amendment to the Virginia program meets the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Director has approved the amendment.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Director, Big Stone Gap Field Office, Office of Surface Mining, P.O.

Box 626, Big Stone Gap, Virginia 24219. Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION: The Virginia program was conditionally approved by the Secretary of the Interior on December 15, 1981 (46 FR 61088-61115). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 Federal Register.

Background on Amendment

On July 27, 1983, Virginia notified OSM of a policy revision to its coal haulroad policy which the State indicated was being made to conform to changes effected by OSM to the Federal rules (Administrative Record No. VA 504). In a letter of August 4, 1983, OSM clarified that the revised policy appeared to adopt some of the provisions of the recently revised Federal definition of "affected area" (48 FR 14821-22, April 5, 1983) and advised the State that such a policy change may necessitate a State program amendment pursuant to 30 CFR 732.17 (Administrative Record No. VA 514).

Following further discussions on the matter, the Director determined that the State's coal haulroad policy was a change in the provision, scope and objectives of the State program which warranted treatment as a State program amendment pursuant to the procedures of 30 CFR 732.17. Therefore, the proposed change by Virginia would be subject to the State program amendment process and open for public comment before it could be formally adopted as part of the Virginia program. On January 25, 1984, the Director published a notice in the *Federal Register* announcing a public comment period and opportunity to request a public hearing (49 FR 3095). Since no requests were made, the public hearing scheduled for February 21, 1984, was not held. The comment period ended February 24, 1984.

The issue of Virginia's coal haulroad policy has a long, complex history, including condition "r" of the Secretary of the Interior's approval of December 15, 1981 (46 FR 61099-61100). In that *Federal Register* notice the Secretary discussed Virginia's coal haulroad policy as submitted on August 13, 1981, and amended on October 15, 1981 by the State. The Secretary found the policy ambiguous as it related to public use and to maintenance of the road with public funds. As a condition of approval the Secretary required the State to

revise the policy as specified in his December 15, 1981 decision (46 FR 61100). The State, at its option, elected to satisfy the condition through State program statutory and regulatory amendments. See 47 FR 36127, August 19, 1982, and 48 FR 46028, October 11, 1983.

The State's policy is similar to that specified in the Secretary's decision except the State is deleting the criterion pertaining to the county within which the road is located having performance standards at least as stringent as the applicable minimum standards as the State regulatory authority for surface coal mining and reclamation operations. Pursuant to the State's letter of July 27, 1983, Virginia indicated that the criterion was being deleted to conform with revisions to the Federal regulations.

Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendment submitted by Virginia on July 27, 1983, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

The exact text of the State's coal haulroad policy is as follows:

All roads must be included in the permit area which are used, constructed or significantly improved for coal haulage or minesite access, except those for which there is substantial (more than incidental) public use and which are actually maintained with public funds in a manner similar to other public roads in the vicinity.

Coal haul and access roads as defined in permanent program regulations Section V701.5 will be considered part of the affected area of an operation and included in acreage calculations thereof unless all of the following conditions are met:

- The road has been designated as a public road pursuant to the laws of the jurisdiction in which it is located;
 - The road is maintained with the public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction in which it is located; and
 - There is substantial (more than incidental) public use of the road.
- The foregoing criteria will apply in re-permitting of operations previously permitted under the interim program regardless of whether or not a particular road was previously permitted.

As discussed above, the State's revision to its coal haul road policy adopts the three criteria for roads which are contained in the Federal definition of "affected area" at 30 CFR 701.5. Therefore, the Director finds that the State's revised policy is no less effective

than the Federal regulations at 30 CFR 701.5.

Public Comments

Several commenters stated support for Virginia's proposed modification to its coal haul road policy which deletes the fourth criterion pertaining to the county within which the road is located having performance standards at least as stringent as the applicable minimum standards as the State regulatory authority. Further, the commenters stated that the deletion was consistent with changes in the Federal regulations. For the reasons stated in his findings, the Director concurs that the revised policy is no less effective than the Federal regulations.

Several commenters objected to the State's revised policy being subjected to the State program amendment process because the State's modification is obviously no less effective than the Federal regulations. Following discussions with the State about the proposed policy revision and its potential impact on both Virginia's Chapters 19 and 23 programs, the Director determined that the revision was a change in provision, scope and objectives of the State program which warranted treatment as a State program amendment pursuant to 30 CFR 732.17. Therefore, the amendment was subjected to public comment. Although changes to State programs may appear to be obviously consistent with Federal provisions, the Director has the responsibility to ensure that changes in the provisions, scope and objectives of the State program are subject to the State program review process so that all interested parties are aware and have the opportunity to comment on the adequacy of proposed changes. The Director does not regard this important process as a "gross waste of time, effort and funding" as suggested by some commenters.

The Environmental Policy Institute stated that it is currently challenging OSM's new definition of "affected area" and recommended that OSM postpone a decision on Virginia's amendment as it relates to "affected area" until this litigation is resolved. Furthermore, the commenters stated that the Federal definition for "permit area", which governs performance standards for all mines, does not allow exemptions for coal haulroads. Therefore, Virginia's proposed amendment as it relates to "permit area" is not "as effective as" the Federal rules. The State's revised policy states that coal haul and access roads

will be considered part of the affected area of an operation and included in acreage calculations thereof unless all three specified conditions are met. Further, the revised policy provides that all roads must be included in the permit area which are used, constructed or significantly improved for coal haulage or minesite access, except those for which there is substantial (more than incidental) public use and which are actually maintained with public funds in a manner similar to other public roads in the vicinity. As stated in his findings, the Director has found that Virginia's three criteria or conditions that a road meet in order not to be included in the affected area are no less effective than those contained in the Federal rules at 30 CFR 701.5. Further, the Director finds no conflict between Virginia's determination of when a road will be included in the permit area and the revised Federal definition of "permit area" at 30 CFR 701.5. The Director finds no reason to delay acting upon the amendment due to litigation involving the Federal definition of "affected area". The Director presumes that the definition will be upheld by the Court. However, if the litigants should be successful in their challenge, mechanisms exist through the Federal rules at 30 CFR 732.17 to require a State to amend its program in such circumstances.

Effect of Director's Decision

The Director has determined that the State's revised policy on coal haul roads is consistent with SMCRA and no less effective than the Federal regulations. Therefore, the amendment has been approved and the Federal rules codifying the Director's decisions concerning the Virginia permanent program are being amended to reflect this action.

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 will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will 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 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 13, 1984.

James R. Harris,
Director, Office of Surface Mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 946—VIRGINIA

30 CFR 946.15 is amended by adding paragraph (k) as follows:

§ 946.15 Approval of regulatory program amendments.

(k) The following amendment was approved effective March 16, 1984: Revised coal haul road policy, submitted July 27, 1983.

[FR Doc. 84-7157 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-05-M

Bureau of Land Management

43 CFR Public Land Order 6522

[I-19117]

Idaho; Public Land Order No. 6484

Correction

In FR Doc. 84-5384 in the issue of Wednesday, February 29, 1984, appearing on page 7382 in the first column, the last paragraph was inaccurate and should be corrected to read as follows:

On page 49022, under T. 5 N., R. 27 E., the line reading "sec. 23, W½, NW¼," should read, "sec. 23, W½, NW¼NE¼."

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 50

U.S. Exchange Visitor Program;
Request for Waiver of the Two-Year
Foreign Residence Requirement

AGENCY: Office of the Secretary, HHS.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is issuing its final regulation on requests for waiver of the two-year foreign residence requirement of the U.S. Exchange Visitor Program. This amended regulation:

(1) Reflects the transfer of responsibility for the U.S. Exchange Visitor Program from the Department of State to the United States Information Agency;

(2) Changes the composition of the Exchange Visitor Waiver Review Board to reflect the transfer of responsibilities in the field of education to the Department of Education;

(3) Clarifies the definitions of the criteria that the Board applies; and

(4) Eliminates a provision that waivers will be requested for an exchange visitor based on the ability of the exchange visitor's citizen spouse to meet the Board's criteria.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: David E. Hohman, Deputy Director, Office of International Affairs, Department of Health and Human Services, Room 655-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201. Telephone: (202) 245-6174.

SUPPLEMENTARY INFORMATION: A proposed regulation was published in the *Federal Register* on November 28, 1983 (48 FR 53581), with a 60-day comment period. HHS received no comments on the proposed regulation.

Regulatory Impact

The regulation does not meet the criteria for a major regulation, and therefore a regulatory impact analysis is not required. We certify that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 45 CFR Part 50

Cultural exchange programs.
Immigration.

Dated: January 30, 1984.

H. P. Thompson,

Director, Office of International Affairs.

Approved: February 27, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

Accordingly, HHS is amending Title 45 of the Code of Federal Regulations by revising Part 50 as follows:

PART 50—U.S. EXCHANGE VISITOR
PROGRAM—REQUEST FOR WAIVER
OF THE TWO-YEAR FOREIGN
RESIDENCE REQUIREMENT

Sec.

50.1 Authority.

50.2 Exchange Visitor Waiver Review Board.

50.3 Policy.

50.4 Procedures for submission of application to HHS.

50.5 Personal hardship, persecution and visa extension considerations.

50.6 Release from foreign government.

Authority: 75 Stat. 527, 22 U.S.C. 2451 et seq.; 84 Stat. 116, 8 U.S.C. 1182(e).

§ 50.1 Authority.

Under the authority of Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 527) and the Immigration and Nationality Act as amended (84 Stat. 116), the Department of Health and Human Services is an "interested United States Government agency" with the authority to request the United States Information Agency to recommend to the Attorney General waiver of the two-year foreign residence requirement for exchange visitors under the Mutual Educational and Cultural Exchange Program.

§ 50.2 Exchange Visitor Waiver Review Board.

(a) *Establishment.* The Exchange Visitor Waiver Review Board is established to carry out the Department's responsibilities under the Exchange Visitor Program.

(b) *Functions.* The Exchange Visitor Waiver Review Board is responsible for making thorough and equitable evaluations of applications submitted by institutions, acting on behalf of exchange visitors, to the Department of HHS for a favorable recommendation to the United States Information Agency that the two-year foreign residence requirement for exchange visitors under the Exchange Visitor Program be waived.

(c) *Membership.* The Exchange Visitor Waiver Review Board consists of no fewer than three members and two alternates, of whom no fewer than three shall consider any particular application. The Director of the Office of International Affairs, Office of the

Secretary, is an ex officio member of the Board and serves as its Chairman. The Director may designate a staff member of the Office of the Secretary to serve as member and Chairman of the Board in the Director's absence. Two regularly assigned members and two alternates are appointed by the Assistant Secretary of Health to consider applications concerning health, biomedical research, and related fields. The Chairman may request the heads of operating divisions of the Department to appoint additional members to consider applications in other fields of interest to the Department (e.g. human services, social security). The Board may obtain expert advisory opinions from other sources.

(d) *Eligibility.* The Board will review applications submitted by private or non-federal institutions, organizations or agencies or by a component agency of HHS. The Board will not consider applications submitted by exchange visitors or, unless under extenuating and exceptional circumstances, other U.S. Government Agencies.

§ 50.3 Policy.

(a) *Criteria and information pertaining to waivers.* The Department of Health and Human Services endorses the philosophy of the Exchange Visitor Program that exchange visitors are committed to return home for at least two years after completing their program. This requirement was imposed to prevent the Program from becoming a stepping stone to immigration and to insure that exchange visitors make their new knowledge and skills available to their home countries. Accordingly, the Board carefully applies stringent and restrictive criteria to its consideration of requests that it support waivers for exchange visitors. Each application is evaluated individually on the basis of the facts available.

In determining whether to recommend an exemption for an exchange visitor from his/her obligation to the Exchange Visitor Program, the Board considers the following key factors:

(1) The program or activity at the applicant institution or organization in which the exchange visitor is employed must be of high priority and of national or international significance in an area of interest to the Department. The Board will not request a waiver when the application demonstrates that the exchange visitor is needed merely to provide services for a limited geographical area and/or to alleviate a local community or institutional manpower shortage, however serious.

(2) The exchange visitor must be needed as an integral part of the program or activity, or of an essential component thereof, so that loss of his/her services would necessitate discontinuance of the program, or a major phase of it. *Specific evidence* must be provided as to how the loss or unavailability of the individual's services would adversely affect the initiation, continuance, completion, or success of the program or activity. The applicant organization/institution must clearly demonstrate that a suitable replacement for the exchange visitor cannot be found through recruitment or any other means. The Board will not request a waiver when the principal problem appears to be one of administrative, budgetary, or program inconvenience to the institution or other employer.

(3) The exchange visitor must possess outstanding qualifications, training and experience well beyond the usually expected accomplishments at the graduate, postgraduate, and residency levels, and must clearly demonstrate the capability to make original and significant contributions to the program. The Board will not request a waiver simply because an individual has specialized training or experience or is occupying a senior staff position in a university, hospital, or other institution.

(b) *Waiver for members of exchange visitor's family.* Where a decision is made to request a waiver for an exchange visitor, a waiver will also be requested for the spouse and children, if any, if they have J-2 visa status. When both members of a married couple are exchange visitors in their own right (i.e., each has J-1 visa status), separate applications must be submitted for each of them.

§ 50.4 Procedures for submission of application to HHS.

(a) The applicant institution (educational institution, hospital, laboratory, corporation, etc.) should send a completed application (HHS Form 426; O.M.B. No. 0990-0001) to the Executive Secretary, Exchange Visitor Waiver Review Board, Room 655-G, Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201. Application forms, instruction sheets, and information may be obtained from the Executive Secretary (202/245-6174). The application must be filled out completely and signed by an authorized official of the applicant institution. The application and accompanying materials should include information that describes in

detail the circumstances of the case involved.

(b) Since the formal filing of an application for waiver with the Immigration and Naturalization Service automatically terminates the applicant's exchange visitor status, it is permissible to obtain the decision of the Exchange Visitor Waiver Review Board before filing with the Immigration and Naturalization Service.

§ 50.5 Personal hardship, persecution and visa extension considerations.

(a) It is *not* within the Department's jurisdiction to consider applications for waiver based on:

(1) Exceptional hardship to the exchange visitor's American or legally resident alien spouse or child; or

(2) The alien's unwillingness to return to the country of his/her nationality or last residence on the grounds that he/she or family members would be subject to persecution on account of race, religion or political opinion.

(b) Likewise, this Department is not responsible for considering requests to extend visas.

(c) Inquiries concerning the above should be directed to the District Office of the Immigration and Naturalization Service which has jurisdiction over the exchange visitor's place of residence in the United States.

§ 50.6 Release from foreign government.

The United States Information Agency has the responsibility to consider applications for waivers that are based solely on a notification from the exchange visitor's country that it has no objection to a waiver (22 CFR 63.31).

[FR Doc. 84-7155 Filed 3-15-84; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[General Order 16, Amdt. 44, Docket No. 82-48]

Miscellaneous Amendments to Informal Complaints Procedures

AGENCY: Federal Maritime Commission.
ACTION: Final rules.

SUMMARY: The Commission amends its Rules of Practice and Procedure to: (1) Increase the jurisdictional limit for the adjudication of small claims from \$5,000 to \$10,000; (2) provide for tariff notification of decisions of Administrative Law Judges and Settlement Officers in formal and informal docket proceedings; and (3) provide for submission of petitions for

reconsideration in informal adjudications to Settlement Officers. The increase in the ceiling reflects the present-day cost of doing business. Tariff notice is necessary to ensure that all shippers are treated equally. The procedure for filing of petitions for reconsideration will remedy a defect in the rules which permits parties to file such petitions with the Commission itself even though parties in informal claims procedures have waived the right to file exceptions to Settlement Officer decisions.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573 (202) 523-5725.

SUPPLEMENTARY INFORMATION: On October 18, 1982, the Commission published in the *Federal Register* a Notice of Proposed Rulemaking (46 FR 48338-48339) which would amend its Rules of Practice and Procedure to provide for revised procedures with respect to overcharge claims. Specifically, the jurisdictional limit for small claims would be raised from \$5,000 to \$10,000; tariff notices may be required to be published in cases involving overcharge claims; and petitions for reconsideration in small claims procedures would be submitted to Settlement Officers rather than the Commission itself.

In response to the notice, Sea-Land Service, Inc. (Sea-Land) and the Transportation Department of 3M (3M) submitted comments. Sea-Land supported the proposed rules. 3M proposed the following:

- (1) Eliminate the jurisdictional limit entirely;
- (2) Not require tariff notification;
- (3) Permit formal proceedings only under certain circumstances and within certain limitations; and
- (4) Raise the jurisdictional limit for special docket applications from 180 days to 2 years.

With respect to 3M's comments, the suggestion that the jurisdictional limit be eliminated entirely was not contemplated within this proceeding. In addition, its assertion that the \$10,000 limit was set arbitrarily is not accurate. The limit was established after review of all overcharge claims filed since 1975.

3M's objection to the tariff notification requirement is that it would add another element to "already crowded and ambiguous tariffs." The purpose of the notification is to assure that all shippers are treated equally. This outweighs any

problems which may be experienced with additions to tariffs.

3M's remaining two comments with respect to the conduct of formal proceedings and special docket applications are outside the scope of this proceeding. In particular, the suggestion as to special docket applications would require a legislative change.

After consideration of the comments submitted in response to the Notice of Proposed Rulemaking, the Commission has determined to adopt the rules as proposed.

List of Subjects in 46 CFR Part 502

Administrative practice and procedure.

PART 502—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553 and sections 22 and 43 of the Shipping Act, 1916 (46 U.S.C. 821 and 841a), Part 502 is amended to read as follows:

§ 502.301 [Amended]

1. Section 502.301 is amended by changing the \$5,000 limitation in the first sentence to read "\$10,000".

2. Section 502.304 is amended by addition of the following sentence after the first sentence to paragraph (g) and the addition of a new paragraph (h) to read as follows:

§ 502.304 Procedure and filing fee.

(g) *** Where appropriate, the Settlement Officer may require that the carrier publish notice in its tariff of the substance of the decision.***

(h) Within thirty days after service of a final decision by a Settlement Officer, any party may file a petition for reconsideration. Such petition shall be directed to the Settlement Officer and shall act as a stay of the review period prescribed in paragraph (g) of this section. A petition will be subject to summary rejection unless it: (1) Specifies that there has been a change in material fact or in applicable law, which change has occurred after issuance of the decision or order; (2) identifies a substantive error in material fact contained in the decision or order; or (3) addresses a material matter in the Settlement Officer's decision upon which the petitioner has not previously had the opportunity to comment. Petitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received. Upon issuance of a decision or order on reconsideration by the Settlement Officer, the review period prescribed in

paragraph (g) of this section will recommence.

3. Section 502.261 is amended by addition of a new paragraph (c) to read as follows:

§ 502.261 Petitions for reconsideration and stay.

(c) The provisions of this section are not applicable to decisions issued pursuant to Subpart S of this part.

4. Section 502.225 is amended to add a new sentence to read as follows:

§ 502.225 Decisions—contents and service.

*** In proceedings involving overcharge claims, the presiding officer may, where appropriate, require that the carrier publish notice in its tariff of the substance of the decision; this provision shall also apply to decisions issued pursuant to Subpart T of this part.

By the Commission.

Francis C. Hurney,
Secretary.

[FR Doc. 84-6911 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 31230-254]

Tanner Crab off Alaska; Notice of Closure

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of closure.

SUMMARY: The Regional Director, Alaska Region, National Marine Fisheries Service, has determined that the optimum harvest level of Tanner crab in the Chignik District in Registration Area J will be achieved on March 13, 1984, and that early closure of the fishery is necessary to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing the Chignik District to fishing for Tanner crab by vessels of the United States on that date in order to protect Tanner crab stocks in this district. The previously scheduled closing date is May 15, 1984.

DATES: This notice is effective from 12:00 noon, Alaska Standard Time (AST), March 13, 1984, until 12:00 noon Alaska Daylight Time (ADT), May 15, 1984. It was filed for public inspection with the Office of the Federal Register

on March 13, 1984. Public comments on this notice of closure are invited until March 28, 1984.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST weekdays) at (1) the NMFS Kodiak Field Office, ADF&G Building, Kashevaroff and Mission Roads, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Biologist, Kodiak Field Office), 907-486-4791.

SUPPLEMENTARY INFORMATION:

Background

The fishery management plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments by field order of season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under criteria set out in that section.

Sec. 671.26(f) established five districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of the districts is the Chignik District. An optimum yield (OY) of 5.0 million pounds has been established for this district. Results of trawl surveys conducted by the Alaska Department of Fish and Game (ADF&G) in 1983, however, indicate that only about 750,000 pounds of Tanner crab is available for harvest in the Chignik District without causing biological harm to the stocks.

The 1984 fishing season for this district began on February 10. Approximately 15 vessels have delivered about 500,000 pounds through March 6. The catch rate has declined since February 10 from about 19 to about 11 crabs per pot. This rapid decline in catch rate indicates that stocks are not sufficiently abundant to support a fishery through the scheduled May 15 closure date. The optimum harvest level of 750,000 pounds is expected to be reached on March 13.

In light of this information, the Regional Director, in accordance with § 671.27(b)(2), has determined that: (1) The actual condition of Tanner crab stocks in the Chignik District is substantially different from the condition that was anticipated at the beginning of the fishing year; and (2) this difference reasonably supports the need to protect those Tanner crab stocks by closing the Chignik District of Registration Area J, as described in § 671.26(f)(1)(iii). This district is closed, therefore, to all fishing for Tanner crab from 12:00 noon AST, March 13, 1984, until 12:00 noon ADT, May 15, 1984, at which time the previously scheduled closure of this district prescribed in § 671.26(f)(2)(iii) will begin.

This closure will become effective after this notice is filed for public

inspection with the Office of the Federal Register and the closure is publicized for 48 hours through ADF&G procedures, under § 671.27(a)(2). Public comments on this notice of closure may be submitted to the Regional Director at the address above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the Federal Register, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Chignik District will be subject to damage by overfishing unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comments on this order are

contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of § 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting requirements.

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

Dated: March 13, 1984.

William G. Gordon,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

[FR Doc. 84-7105 Filed 3-13-84; 5:06 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 49, No. 53

Friday, March 16, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Procedures for Product Recalls; Request for Comments

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation of federal agency procedures for product recalls. Interested persons are invited to comment on the draft recommendation.

DATE: Comments due by Friday, April 13, 1984.

ADDRESS: Send comments to: David M. Pritzker, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, 202-254-7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation of federal agency procedures for product recalls. The draft recommendation is based on a study prepared by Professor Teresa M. Schwartz of the George Washington University Law School and Robert S. Adler, Esq., formerly with the Consumer Product Safety Commission. Copies of the report may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. (Telephone: 202-254-7065).

The report on product recall procedures written for the Administrative Conference focuses on three federal agencies that account for the great majority of recalls: the National Highway Traffic Safety Administration, the Food and Drug Administration, and the Consumer Product Safety Commission. The draft

recommendation is based on the premise that recalling products that pose health or safety risks to the general public can be an effective and efficient means of preventing injury, provided affected persons learn about the recall and are motivated to respond. The draft proposes certain statutory changes and administrative practices that are intended to promote the effectiveness of recalls and the uniformity of agency recall procedures.

The Committee on Governmental Processes invites comments on the proposed recommendation, and requests that they be submitted to the address given above, not later than Friday, April 13, 1984.

Draft Recommendation: Procedures for Product Recalls

Introduction

Each year manufacturers recall millions of consumer product—ranging from toys and household appliances to drugs and autos—under an array of federal health and safety statutes. Most recalls are undertaken voluntarily, either on the manufacturer's own initiative or at the urging of a federal agency with recall authority. The recall remedy, while a valuable enforcement tool, is also one that is difficult to implement. A recall must be undertaken promptly if it is to serve its purpose of preventing injury. Further, to be effective, it must be implemented in a way that encourages public responsiveness.

For purposes of this recommendation, the term "recall" encompasses a variety of post-sale remedial actions by manufacturers and sellers of products, including: (1) notifying consumers of problems or potential problems with products; (2) offering to repair products; and (3) offering to refund the cost or to replace products. The recommendation is based, in part, on a study of the recall programs of three federal agencies that account for the great majority of recalls—the National Highway Traffic Safety Administration (NHTSA), the Food and Drug Administration (FDA) and the Consumer Product Safety Commission (CPSC).¹ Each of the three

¹ Other agencies that engage in product recalls include EPA, FAA, HUD and USDA.

agencies studied has the authority to order at least one of the post-sale remedial actions noted above. Each is actively involved in recalls of consumer products that pose health or safety risks to the general public, instances where the need for effective use of the recall remedy is the greatest and its implementation is the most difficult. However, their recall programs differ with respect to standards for ordering recalls, the scope of the remedy, and administrative procedures. Some of the differences are statutorily based; others grow out of varied methods of implementing the programs.

Although all three agencies make extensive use of recalls to implement their statutes, recalls have certain inherent limitations as enforcement tools. Consumers can, and sometimes do, render them ineffective by failing to respond. Further, recalls generally work well only if they are undertaken promptly and after a minimum of agency prodding. Recalcitrant firms can often thwart the effectiveness of the remedy merely by invoking available administrative procedures. There are a number of reasons for firms to be recalcitrant when faced with a possible recall. Companies may not enjoy much protection against product liability claims by recalling defective products—indeed, recalls can stimulate additional law suits. Recalls often bring adverse publicity, and they can be very expensive, requiring refunds or replacements of products that have already been produced and marketed.

Because recalls often work better than other remedies, however, they are a major enforcement tool of the three agencies studied. Recalls have virtually supplanted standards as the primary regulatory tool of the CPSC, for example. There are a number of reasons for their popularity. From the agencies' standpoint:

- Recalls do promote safety. Although response rates are lower than agencies would like, consumers in significant numbers do return or discard recalled products or use them more safely.
- In many cases, agencies can set quasi-standards by using recalls. Recalls establish precedents for what constitutes an unacceptably hazardous product.

—Recalls operate more quickly and efficiently than most standard setting. In recall cases, government and industry often share a sense of urgency that a hazardous product should be removed from the marketplace. This has led agencies to adopt informal, flexible settlement procedures which have made it easier for companies to agree to undertake recalls.

Industry also may prefer recalls to standards as an enforcement tool because recalls generally affect only the makers of unsafe products rather than all product manufacturers. Recalls, unlike many standards, do not impose across-the-board certification requirements and may impose fewer recordkeeping requirements.

Agencies must reconcile several interests in implementing their recall programs. They must be sensitive to the potential for consumers to disregard recalls if the remedy is overused. They must stress voluntary agreements to achieve prompt—and therefore effective—recalls, yet be willing to use their enforcement powers if voluntary efforts stall. They must be flexible in negotiating the terms of recalls to encourage voluntarism, yet assure that the notice and remedy are adequate to inform and protect product owners.

Some of the recommendations that follow are addressed to all of the agencies studied; others are addressed to individual agencies. In general, agencies should work together to develop a more uniform approach to recalls. Despite the differences in the agencies' programs, they share common characteristics and goals, and they must all deal with the general public. Agencies could benefit from sharing with each other what they have learned about recalls, and the public could benefit from more consistency in the recall programs.

We also recommend that agencies consider publicly classifying their recalls according to risk to help the public assess the hazards of recalled products. While this approach may present some problems in negotiating recalls, it recognizes the important role that the consumer plays as a partner with government and business in the recall process, and the need to provide that partner with adequate information.

In addition, we recommend additional enforcement tools for some agencies. As a practical matter, agencies cannot bring many enforcement actions, but the availability of these additional powers, and their occasional use when necessary, should assist the agencies in negotiating voluntary recalls and in

carrying out the overall aims of the recall programs. Even a relatively small number of enforcement actions ultimately serves the broader aim of encouraging voluntary compliance by others, and should therefore be streamlined where possible.

NHTSA Program

Two statutory changes are recommended for the automobile recall program. The first would revise the current defect notification provision that requires auto manufacturers to report defects to NHTSA when they determine in "good faith" that a recall is required under the statute. This provision should be amended to impose a broader reporting obligation similar to that provided under Section 15(b) of the Consumer Product Safety Act, which requires manufacturers to report defects that "could create" a potential hazard. A broader reporting obligation would give the agency earlier warning of potential safety-related defects and reduce the agency's information gathering burden.

The second recommended statutory change would give NHTSA additional authority in imminent hazard cases. Under current procedures, after NHTSA investigates and initially determines there is a safety-related defect, it holds an informal hearing where the manufacturer has the opportunity to dispute the initial determination of defect. If the agency makes a final determination of defect following this hearing, the manufacturer is ordered to recall the vehicles. If the manufacturer refuses, the government must bring an enforcement action in United States District Court to obtain a recall order. This proceeding is a trial *de novo* of the case, with review by a United States Court of Appeals. Currently, NHTSA may bypass the administrative hearing and seek a court ordered recall only in cases where a manufacturer knew of a safety-related defect but failed to conduct a recall.

If a case is taken through both administrative and judicial proceedings, the process can easily take five or more years to complete. At that point, there is little likelihood that the recall can be effective, for most of the injuries will have occurred. Furthermore, the longer the delay and the older the vehicles are that are recalled, the lower the owner response rate will be. NHTSA should be given authority to bypass the administrative hearing in cases of serious, imminent hazards and to seek court-ordered recalls.

CPSC Program

The CPSC enforces four significant safety statutes: the Consumer Product

Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act (FFA), and the Poison Prevention Packaging Act (PPPA). Both the CPSA and the FHSA give the agency the authority to order recalls, and this has become a favored enforcement tool of the agency. Under these two Acts, if a voluntary recall is not achieved, the agency must conduct a formal administrative hearing prior to ordering a recall. Under the CPSA, the agency may go directly to court to seek a recall if the product involved is "imminently hazardous." Under the FHSA, the agency may proceed administratively against imminently hazardous products. Neither Act contains a judicial review provision, with the result that "non-statutory" review of agency recall orders occurs in the United States District Court. The absence of a judicial review provision for recall orders under the CPSA and FHSA should be corrected. Congress should provide for judicial review in the United States Court of Appeals under the "substantial evidence" test.² This would eliminate the existing, lengthy, two-tiered review procedure. The FFA and PPPA omit recall provisions entirely, causing uncertainty as to the Commission's ability to use recalls against unsafe products governed by either of these Acts. It would promote recall uniformity and reduce delay if the Commission could address the risks posed by all products under its jurisdiction under the procedures of Section 15 of the CPSA.

FDA Program

The FDA has been involved in product recalls longer than any other federal agency and has in place perhaps the most elaborate recall program of any agency. Although the recall has come to be the FDA's principal enforcement tool, it has no express statutory authority to order most of these recalls. It relies on the willingness of manufacturers to recall products voluntarily, or it uses its authorized enforcement tools under the Food, Drug, and Cosmetic Act, such as seizures, injunctions, and criminal penalties, to encourage recalls.

FDA does enforce three statutes with recall provisions: the Radiation Control for Health and Safety Act; the Medical Device Amendments of 1976; and the Infant Formula Act of 1980. Although the recall provisions under these statutes are varied, and the overall statutory scheme is not very logical, it has not

² See ACUS Recommendation 75-3, The Choice of Forum for Judicial Review of Administrative Action, 1 CFR § 305.75-3.

created serious difficulties for the FDA, and no wholesale reform of the programs is recommended. Instead, it is recommended that the FDA be given authority to make some aspects of the recall programs uniform. For example, the FDA should be given general authority to require manufacturers to notify the agency of potential safety defects in their products. Its enforcement tools should be supplemented and made uniform for use when recalls are not undertaken voluntarily. It should be given authority (a) to detain products administratively prior to filing a seizure action; and (b) to seek court-ordered recalls as part of its injunctive relief. FDA should also have the option of seeking civil penalties where only criminal penalties are now available.³

Recommendations

1. *Interagency recall liaison group.* A group consisting of representatives from all agencies with recall programs should be established to inform each other about their programs and to do research in areas of common interest, such as how to improve consumer response rates and how to use new technology to improve recall notification.

2. *Recall notices.* Recall notices should clearly describe the nature of the defect and the nature and extent of the risk of harm that prompts the recall. Individual agencies may wish to consider whether their mission would be advanced by classifying recalls according to risk. The interagency liaison group could explore the possibility of coordinating the classification systems so that the agencies use similar methods of risk assessment and designate levels of risk in a similar manner.

3. *Central hotline switchboard for consumer inquiries and complaints.* Consumers do not always know which agency takes complaints or has information about recalls. A central switchboard would take all calls and refer them to the appropriate agency for experienced operators to handle.

4. *Publicizing recalls.* Each agency should seek to develop a method of publishing periodically an up-to-date list of pending recall notices within the agency's jurisdiction.

5. *NHTSA Program.*—(a) The defect notification provision of the National Traffic Safety and Motor Vehicle Act (NTSMVA) should be amended to require manufacturers to notify NHTSA of potential safety-related defects along

the lines of the defect notification provision under the CPSA.

(b) Congress should amend the NTSMVA to allow NHTSA to by-pass the administrative hearing and to seek court-ordered recalls in cases of serious, imminent hazards.

6. *CPSC Program.*—(a) Congress should amend the Consumer Product Safety Act (CPSA) to give the Commission specific authority to seek recalls of all products within its jurisdiction, including those now subject to the Federal Hazardous Substances Act, the Flammable Fabrics Act and the Poison Prevention Packaging Act.

(b) Congress should provide for judicial review of agency ordered recalls in the United States Court of Appeals under the "substantial evidence" test.

7. *FDA Program.*—(a) Congress should amend the Food, Drug, and Cosmetic Act to give FDA general authority to require manufacturers to notify the agency of potential safety defects in their products.

(b) Congress should give FDA additional enforcement tools through the authority: (i) to detain products administratively prior to filing a seizure action; (ii) to seek court-ordered recalls; and (iii) to seek civil penalties where only criminal penalties are now available.

List of Subjects in 1 CFR Ch. III

Consumer protection, Motor vehicle safety, Product Safety.

(5 U.S.C. 574)

Dated: March 14, 1984.

Richard K. Berg,
General Counsel.

[FR Doc. 84-7221 Filed 3-14-84; 12:05 pm]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1476

Compensation for Certain Losses Resulting From 1980 Soviet Embargo

Correction

In FR Doc. 84-5361 beginning on page 7399 of the issue of Wednesday, February 29, 1984, make the following corrections on page 7400:

1. In the first column, in the first line of § 1476.3(b)(1), "losses" should appear between "Actual" and "include".

2. In the second column, in the last line of § 1476.5(a), "withing" should be "within".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-11; Notice No. SC-84-1-NM]

Special Conditions; Israel Aircraft Industries Model 1125 Westwind Astra Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Israel Aircraft Industries (IAI) Model 1125 Westwind Astra series airplane. The airplane will have novel or unusual design features associated with an automatic takeoff thrust control system (ATTCS) and an unusually high operating altitude (45,000 feet) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that established in the regulations.

DATE: Comments must be received on or before April 30, 1984.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM-7), Docket No. NM-11, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address.

Comments must be marked: Docket No. NM-11. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James Walker (ATTCS) or Mark Quam (45,000 foot operation), Regulations and Policy Office, ANM-110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116/2134.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and

³ See ACUS Recommendation 72-8, Civil Money Penalties as a Sanction, 1 CFR § 305.72-6.

be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket, both before and after the closing date, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-11." The postcard will be date/time stamped and returned to the commenter.

Background

On May 12, 1981, IAI, Ben-Gurion International Airport, Tel Aviv, Israel, filed an application for a type certificate in the transport airplane category for the 1125 series airplane designated as the Model 1125 Westwind Astra series airplane. The 1125 series airplane is a derivative version of the 1121, 1123, 1124 series airplanes, for which FAA Type Certificate No. A2SW was issued. The aircraft has two Garrett Model TFE-731-3B-100G turbofan engines mounted on pylons extending from the aft fuselage, a maximum takeoff weight of 23,500 pounds, a 9-passenger interior, and a maximum operating altitude of 45,000 feet. Type certification of the Model 1125 Westwind Astra series airplane is being processed as a new type certificate in accordance with Subpart B of Part 21 of the Federal Aviation Regulations (FAR).

Israel Aircraft Industries has filed an application for certification to operate the Model 1125 Westwind Astra series airplane up to a maximum altitude of 45,000 feet. The oxygen protective capability is limited to 40,000 feet (in this case the passenger equipment). If failure occurs leading to cabin altitudes in excess of 40,000 feet, the event can be catastrophic. To reduce the probability of this event, special conditions are required in addition to the existing regulations.

Further, with the ATTCS installed and operating, takeoffs can be made with engine thrust set at less than the maximum takeoff thrust approved for the airplane under existing conditions. If an engine fails during takeoff, the automatic system will reset the fuel control fuel metering schedule on the

operating engine to provide the maximum takeoff thrust. This design feature is not adequately treated in the applicable airworthiness standards.

High Altitude Operation

The FAA policy is to apply special conditions to Part 25 transports when the certificated altitude exceeds the capability of the oxygen system (in this case, the passenger system). This has been the case for the early Learjet, Lockheed Jetstar, Aero Commander and Cessna 650 (46 FR 35929 dated July 13, 1981). These same special conditions are proposed herein, except as follows:

Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitudes in lieu of the 1/2-bay crack requirement used in previous special conditions. Crack growth data is used to prescribe an inspection program which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, Amendment 25-54.

The cabin altitude after failure may not exceed the cabin altitude/time curve limits in Figures 3 and 4. Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet. However, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude is not to exceed 25,000 feet for more than 2 minutes. The maximum cabin altitude has been set at 40,000 feet to agree with past FAA certification. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases). The limitations proposed herein differ from previously issued special conditions and are reflected in the changes to the notes proposed on Figures 3 and 4.

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be

accomplished by the use of mask-mounted regulators. Proposed Special Condition E.2, therefore, requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Automatic Takeoff Thrust Control System (ATTCS)

The special conditions proposed herein specify limits on the maximum power increment which may be applied to the operating engine(s) by the ATTCS, prescribe system reliability and status monitoring requirements, require provisions for manual selection of the maximum takeoff thrust approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of maximum takeoff thrust would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide a clear warning to the crew.

The FAA developed special conditions for an ATTCS for current, turbine-powered transport category airplanes and sent the proposal to U.S. user groups and various foreign civil aviation authorities for review and comment in November 1977. Comments were received, reviewed, and the special conditions revised and sent to the same groups in May 1978. This procedure was repeated again in November 1978. Cooperating with the FAA in this development were the Aerospace Industries Association of America (AIA), Air Transport Association of America (ATA), Air Line Pilots Association (ALPA), Allied Pilots Association (APA), Rolls Royce (RR), Hawker Siddeley Aviation Ltd. (HS), British Civil Aviation Authority (CAA), the civil aviation authorities of Australia and Japan, the French Technical Commission Navigation (FTCN), and the French civil aviation authorities, Lockheed, Boeing, McDonnell Douglas, and Rockwell International.

Based on the comments received and further review by the FAA, a number of changes were made to the special conditions proposed. These provide for consideration of the following specific matters:

1. For the fail-operational (able to perform its intended function after a single failure or combination of failures not shown to be extremely improbable

within the ATTCS system) system proposed, a reduction of the ATTCS failure probability from extremely improbable to improbable for the ATTCS alone, the addition of an extremely improbable failure probability for the combined ATTCS and engine failure, and deletion of the all-engine performance criteria.

2. For the nonfail-operational system proposed, a reduction in the failure probability from improbable to 10^{-3} for the ATTCS alone, introduction of a climb gradient for the combined ATTCS and engine failure case, and deletion of and engine failure warning means if the inherent characteristics of the engine failure are clearly made known to the pilot.

3. For clarifying changes, including a graphical presentation to clarify the definition of the term "Critical Time Interval."

The proposed special conditions differ in one major respect from similar special conditions previously issued for other airplane models including the IAI Model 1124 (46 FR 46118, September 17, 1981). The certification basis for the Model 1125 Astra series airplane includes Amendment 25-23 to Part 25 of the FAR, which modified the requirements of § 25.1309(b)(2). Previous model airplanes to which special conditions for an ATTCS were applied did not have to meet the current requirements of § 25.1309(b)(2). The current rules in § 25.1309(b)(2) are more stringent than the previous special condition requirements; therefore, the option to provide an ATTCS with reduced reliability if a specific level of minimum performance is available with both the ATTCS and an engine failed has been deleted from these special conditions. Also, ATTCS special conditions issued to date for other airplanes require the ATTCS to be designed to permit manual decrease or increase in thrust up to the maximum takeoff thrust approved for the airplane under existing conditions through the use of power levers. The ATTCS system installed on the "full throttle" engines of the Model 1125 Westwind Astra series airplane contains an electronic fuel controller and thrust limiters, which automatically limit thrust and prevent engine operating limits from being exceeded under conditions with full throttle employed.

If an engine fails, the signal from the ATTCS is transmitted to the limiters for the maximum thrust. If both an ATTCS and engine fail, the crew would be required to activate an override switch to obtain maximum thrust. Because of this design feature where the pilot must move his hand off the throttle to activate the maximum thrust available, the FAA has determined that the special conditions previously issued to other airplane series under "Powerplant Controls" should be modified to provide that such activation is permitted provided that the means to increase thrust is located on or forward of the power levers, is easily operated by either pilot, and meets the requirements of § 25.777.

Type Certification Basis

The type certification basis is as follows: Part 25 of the FAR effective February 1, 1965, Amendments 25-1 through 25-54; Part 36 of the FAR, including Amendments 36-1 through current amendment; and Special Federal Aviation Regulation 27, dated December 12, 1973, including Amendment 27-1 through current amendment. The special conditions which may be developed as a result of this notice will form an additional part of the type certification basis.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, are now issued after public notice in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions for the IAI Model 1125 Westwind Astra series airplane:

1. Operation above 41,000 feet to 45,000 Feet.

A. *Pressure Vessel Integrity.* 1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph D of this Special Condition (Pressurization) must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

3. In addition to the requirements of § 25.365, the fuselage pressure vessel should be capable of withstanding maximum regulated pressure combined with 1 g. flight loads with a frame or stringer failed and two adjacent panel's cracked, without total failure of the fuselage or without floor collapse.

B. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

C. *Air conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

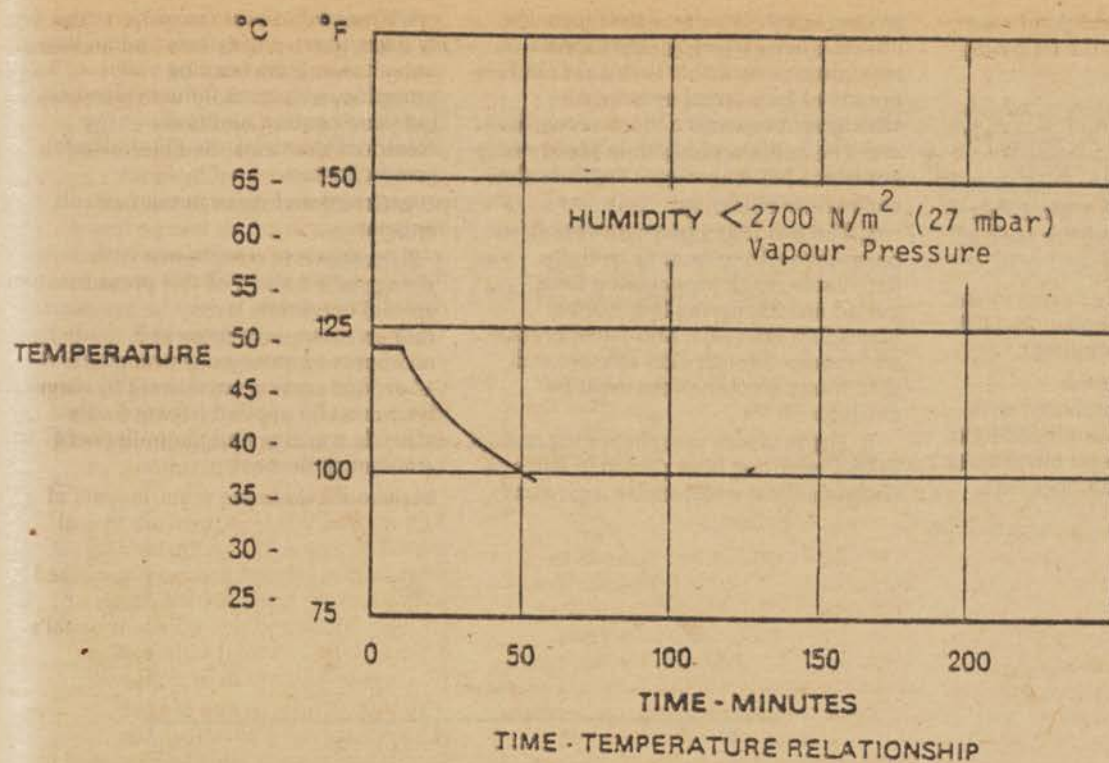
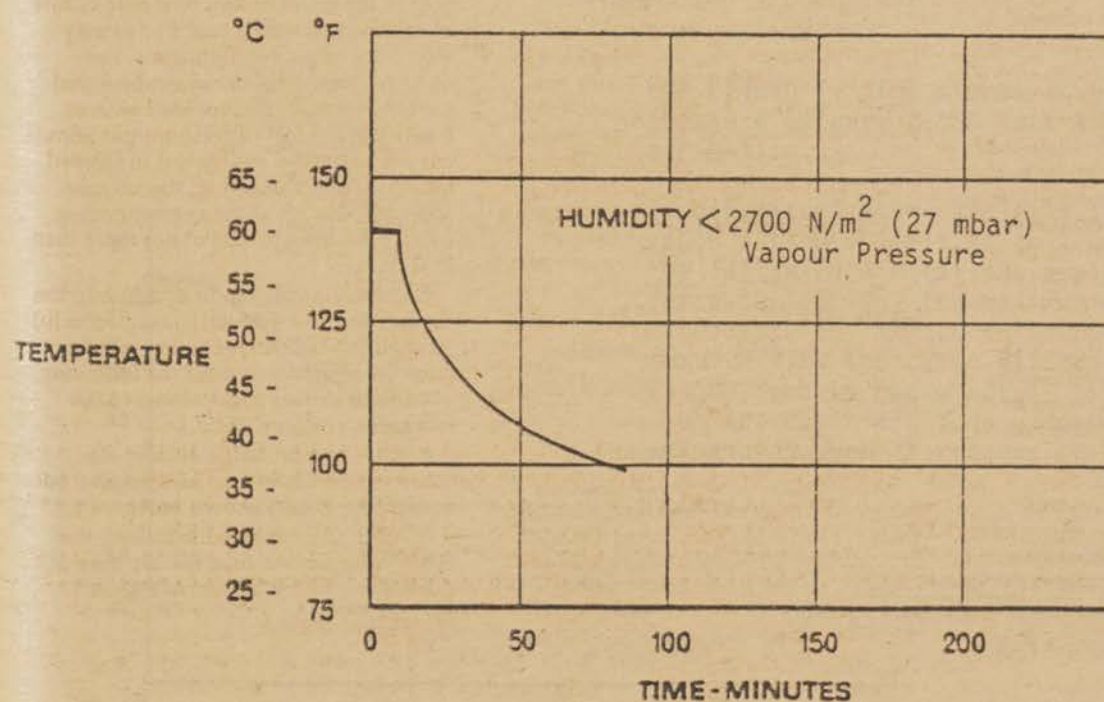


FIGURE 1



MAXIMUM TIME-TEMPERATURE RELATIONSHIP

FIGURE 2

D. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

a. Any probable double failure in the pressurization system (Section 25.1309, Amendment 41, may be applied).

b. Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening

having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum

operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs 1 and 2 of this pressurization special condition, it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

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For Figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

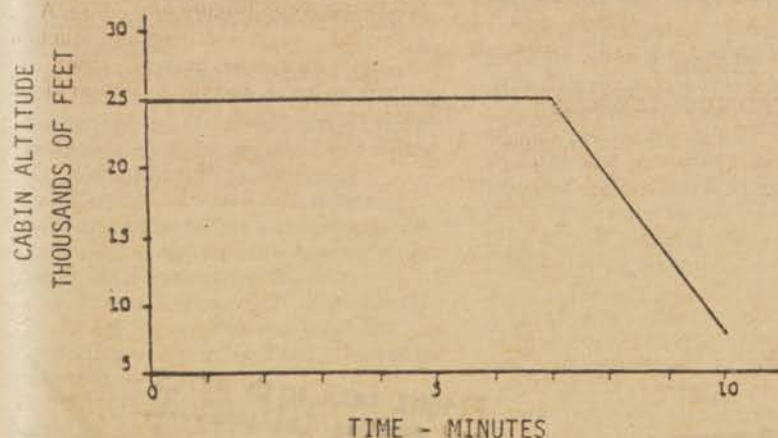


FIGURE 3
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to all passengers.)

For Figure 4, time starts at the moment cabin pressure exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

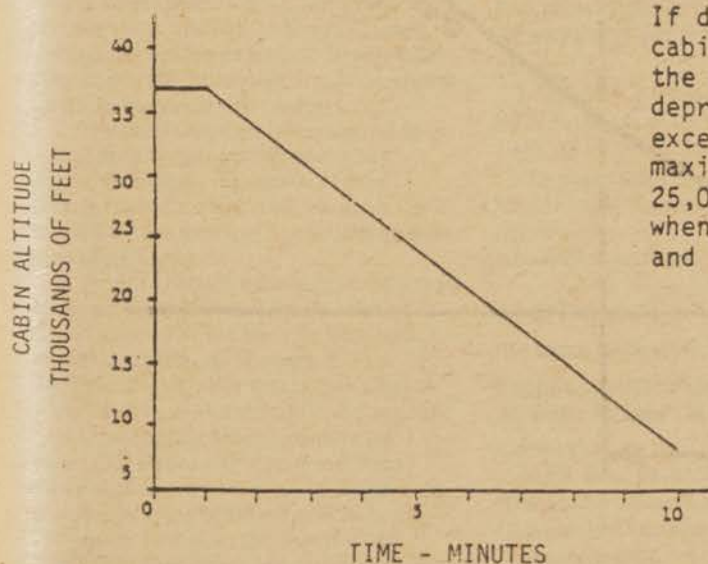


FIGURE 4
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to all passengers.)

E. *Oxygen Equipment and Supply.* 1. A continuous flow oxygen system must be provided for the passengers.

2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for the pilots. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

II. *Automatic Takeoff Thrust Control System (ATTCS).*

A. *General.* With the ATTCS and associated systems functioning normally

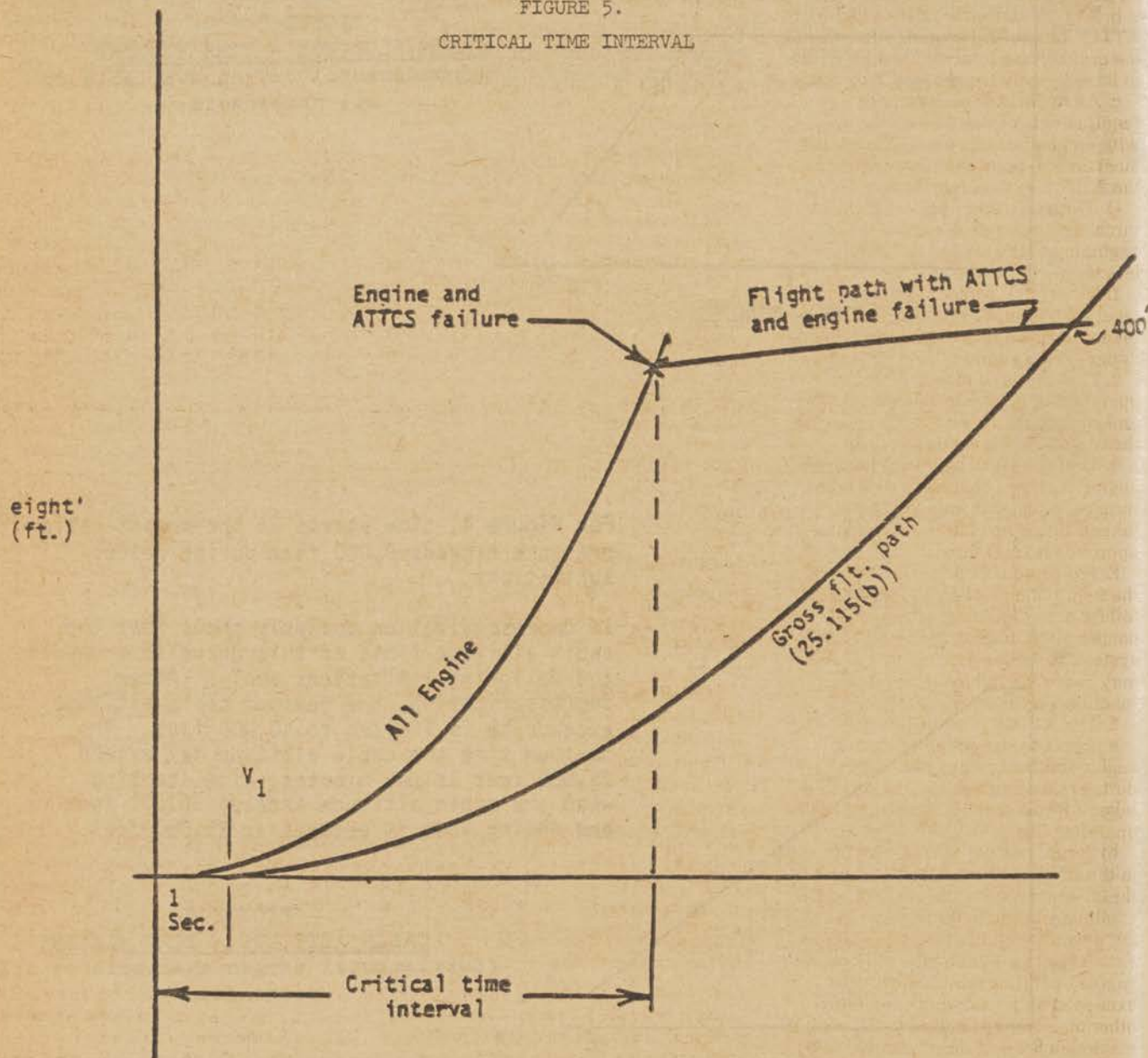
as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase thrust.

B. *Definitions.* 1. *ATTCS.* An ATTCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled thrust increase, and furnish

cockpit information on system operation.

2. *Critical Time Interval.* When conducting an ATTCS takeoff, the critical time interval between V_1 minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATTCS failure, the resulting minimum flight path thereafter intersects the Part 25 required gross flight path at no less than 400 feet from the takeoff surface. This definition is shown in the following graph (Figure 5):

FIGURE 5.
CRITICAL TIME INTERVAL



3. Takeoff Thrust. Notwithstanding the definition of "takeoff thrust" in Part 1 of the Federal Aviation Regulations (FAR), "takeoff thrust" means each thrust obtained from each initial thrust setting approved for takeoff under these special conditions.

C. *Performance Requirements.* The applicant must comply with the following performance requirements.

1. The following reliability and performance criteria apply:

a. Automatic Takeoff Thrust Control System (ATTCS) failure during the critical time interval must be shown to be improbable.

b. The concurrent existence of an ATTCS failure and engine failure during the critical time interval must be shown to be extremely improbable.

c. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATTCS system functioning.

D. *Thrust Setting.* The initial takeoff thrust setting on each engine at the beginning of the takeoff roll may not be less than—

1. Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power level position; or

3. That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust level to the maximum approved takeoff thrust.

E. *Powerplant Controls.* 1. Addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS system, including associated systems, may cause the failure of any powerplant function necessary for safety.

2. The ATTCS must be designed to—
a. Apply thrust on the operating engine following an engine failure during takeoff to achieve the selected takeoff thrust without exceeding engine operating limits;

b. Permit manual decrease or increase in thrust up to the maximum takeoff thrust approved for the airplane under existing conditions through the use of the power lever. For aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of thrust controlled by the power levers in the event of an ATTCS failure provided the means: is located on or forward of the power levers; is easily identified and operated under all operating conditions by a single action of either pilot with the

hand that is normally used to actuate the power levers; and meets the requirements of § 25.777, paragraphs (a), (b), and (c);

c. Provide a means to verify to the flightcrew before takeoff that the ATTCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. *Powerplant Instruments.* In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.28 and 11.29(b))

Note: This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

* Issued in Seattle, Washington, on February 27, 1984.

Wayne J. Barlow,

Acting Director Northwest Mountain Region.

[FR Doc. 84-7022 Filed 3-15-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 83-AWA-27]

Proposed Alteration of VOR Federal Airways and Jet Routes Badger, WI

In FR Doc. 5788 beginning on page 8005 in the issue of Monday, March 5, 1984, make the following correction.

On page 8008, second column, "V-262 [Reserved]" should have read "V-262 [Revised]".

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14 CFR Part 71

[Airspace Docket No. 83-AWA-13]

Proposed Alteration of VOR Federal Airways Badger, WI

Correction

In FR Doc. 84-5789, beginning on page 8004 in the issue of Monday, March 5, 1984, make the following corrections.

On page 8005:

1. In the first column, third line of V-97, "Hanesville" should have read "Janesville".

2. In the second line of the second

column, "270" should have read "272".

3. In the same column, fourth line of V-173, "(09° M)" should have read "(009° M)".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-360]

Oil and Gas Well Drilling and Servicing

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

ACTION: Extension of the comment period.

SUMMARY: This notice extends the comment period for written responses to OSHA's notice of proposed rulemaking on oil and gas well drilling and servicing. On December 28, 1983, OSHA published a Notice of Proposed rulemaking (48 FR 57202). Written comments were to be received by March 5, 1984. A number of requests have been received by OSHA requesting an extension of time to allow additional time to prepare comments. OSHA agrees to these requests and hereby extends the comment period from March 5, 1984, to June 4, 1984. OSHA has also received requests for public hearings to discuss specific issues. OSHA intends to schedule informal public hearings and to announce the date, location, and hearing issues in a forthcoming notice.

DATES: Written comments must be postmarked by June 4, 1984.

ADDRESSES: Written comments should be submitted in quadruplicate to the Docket Officer, Docket S-360, Room S6212, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, Washington, D.C. 20210, (202) 523-8151.

Authority: This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. (Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911, Secretary of Labor's Order No. 9-83 (48 FR 35736)).

Signed at Washington, D.C., this 13th day of March, 1984.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 84-7039 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-26-M

POSTAL SERVICE**39 CFR Part 267****Protection of Information; National Security Information****AGENCY:** Postal Service**ACTION:** Proposed rule.

SUMMARY: The purpose of this document is to propose changes to postal regulations dealing with the protection, classification and handling of national security information. The changes will conform postal practices and policies with an Executive Order which imposes new requirements on employees with access to national security information. The changes include a requirement to sign a nondisclosure agreement, a restriction on disclosure of classified information to individuals not authorized access, and notice that administrative sanctions may be imposed on an employee if the requirements of the regulation are not followed.

DATE: Comments must be received on or before April 16, 1984.

ADDRESS: Comments may be mailed to the Records Office, U.S. Postal Service, 475 L'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 during the above hours in Room 8121.

FOR FURTHER INFORMATION CONTACT: Rafael Rios (202) 245-4797.

SUPPLEMENTARY INFORMATION: The reference in the summary above is to Executive Order 12356 (April 2, 1982), and the regulation being changed to implement that Order is 39 CFR 267.5 (1983). The principal changes to § 267.5 are described above. Certain minor and clarifying changes are also proposed to be made.

List of Subjects in 39 CFR Part 267

Archives and records, Classified information, Postal service, Records and information, Security measures.

PART 267—PROTECTION OF INFORMATION

In § 267.5, revise paragraphs (a), (b)(3), (c)(1) (i), (ii), (iii)(C), (c)(2)(v), (c)(3), (e)(1), and (e)(3)(i). Paragraphs (c)(1), (c)(2), and (c)(3) introductory text is shown for user convenience.

§ 267.5 National Security Information.

(a) *Purpose and Scope.* The purpose of this section is to provide regulations to conform postal practices and procedures

with Executive Order 12356 (hereinafter referred to as the Executive Order) which deals with the protection, handling and classification of national security information.

(b) * * *

(3) "In the Custody of the Postal Service" means any national security information transmitted to and held by the U.S. Postal Service for the information and use of postal officials. (This does not include any national security information in the U.S. Mails)

(c) *Responsibility and authority.* (1) The Postal Service Records Officer shall serve as the USPS National Security Information Oversight Officer. This officer shall:

(i) Conduct an active oversight program to ensure that the appropriate provisions of these regulations are complied with;

(ii) Chair a committee composed of the Records Officer, the Chief Postal Inspector (USPS Security Officer), the General Counsel, the Executive Assistant to the Postmaster General, and the Director, Operating Policies Office, or their designees, with authority to act on all suggestions and complaints concerning the Postal Service's compliance with these regulations;

(iii) Ensure that appropriate and prompt corrective action is taken whenever a postal employee knowingly, willfully and without authorization:

(C) Violates any provisions of these regulations or procedures;

(2) The USPS Security Officer (the Chief Postal Inspector) shall:

(v) Report to the Attorney General any evidence of possible violations of federal criminal law by a USPS employee and of possible violations by any other person of those federal criminal laws.

(3) All postal employees who have access to national security information shall:

(i) Sign a nondisclosure agreement;

(ii) Be familiar with and follow all Program regulations and instructions;

(iii) Actively protect and be accountable for all national security information entrusted to their care;

(iv) Disclose national security information only to another individual who is authorized access;

(v) Immediately report to the USPS Records Officer and the USPS Security Officer any suspected or actual loss or compromise of national security information; and

(vi) Be subject to administrative sanctions should requirements (ii) through (v) not be followed.

(e) *General provisions.* (1) *Dissemination.* National security information received by the U.S. Postal Service shall not be further disseminated to any other agency without the consent of the originating agency.

(3) Freedom of Information Act or Mandatory Review Requests.

(i) Requests for classified documents made under the Freedom of Information Act (FOIA) and mandatory review requests (requests under Section 3-501 of the Executive Order for the declassification and release of information), including requests by the news media, should be submitted to: USPS Records Officer, U.S. Postal Service, Washington, D.C. 20260-5010.

(39 U.S.C. 401 (2), (10), 404(a)(7))

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-7071 Filed 3-15-84; 8:45 am]

BILLING CODE 7710-12-M

39 CFR PART 775**National Environmental Policy Act (NEPA); Amendment of Categorical Exclusions; Correction****AGENCY:** Postal Service.**ACTION:** Proposed rule; correction.

SUMMARY: On March 12, 1984 (49 FR 9236), the Postal Service published its proposal to amend certain categorical exclusions in its NEPA regulations. The Postal Service stated that it had found that two of the categorical exclusions needed to be expanded to conform them to actual conditions and accordingly proposed their expansion. The final date for reception of comments on this proposal was shown as March 11, 1984, which is incorrect. The date should have been April 11, 1984.

DATE: Comments must be received on or before April 11, 1984.

ADDRESSES: Written comments should be sent to the Manager, Program Planning Branch, Real Estate and Buildings Department, U.S. Postal Service, Washington, D.C. 20260-6424. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 4141, U.S. Postal Service Headquarters, 475

L'Enfant Plaza West, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:
Royal Rasmussen, (202) 245-4354.

In FR Doc. 84-6584 the date line is amended to read as follows: "Comments must be received on or before April 11, 1984."

(39 U.S.C. 401; 42 U.S.C. 4331, *et. seq.*; 40 CFR 1500.4(p))

W. Allen Sanders,
Associate General Counsel, Office of General
Law and Administration.

[FR Doc. 84-7070 Filed 3-15-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL 2544-8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On July 1, 1983, the State of Wisconsin submitted the State ambient lead standard and lead emission limitations as a proposed portion of the State Implementation Plan. EPA has reviewed this submittal and finds it consistent with all applicable requirements of the Clean Air Act (Act). Therefore, EPA is proposing to approve this submittal as a portion of the Wisconsin State Implementation Plan.

DATE: Comments on this submittal and on the proposed EPA action must be received by April 2, 1984.

ADDRESSES: Copies of the SIP submittal are available at the following addresses for review. (It is recommended that you telephone Anne E. Tenner, at (312) 886-6036 before visiting the Region V office.)

U.S. Environmental Protection Agency,
Region V, Air and Radiation Branch
(5AR-26), 230 South Dearborn Street,
Chicago, Illinois 60604

Wisconsin Department of Natural
Resources, Bureau of Air
Management, 101 South Webster,
Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible)

Gary Gulezian, Chief, Regulatory
Analysis Section, Air and Radiation
Branch (5AR-26), U.S. Environmental
Protection Agency, Region V, 230
South Dearborn Street, Chicago,
Illinois 60604

FOR FURTHER INFORMATION CONTACT:
Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On October 5, 1978, EPA promulgated the National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu\text{g}/\text{m}^3$) maximum arithmetic mean, as averaged over a calendar quarter. Section 110(A)(1) of the Act requires each State to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

The State of Wisconsin submitted the State ambient lead standard and lead emission limitations as a proposed portion of the State Implementation Plan on July 1, 1983, and additional material was submitted on October 13, 1983. These rule changes were published in the Wisconsin Administrative Register in April, 1983, and took effect on May 1, 1983.

The WDNR Board adopted Rule 154.03(7) which states:

(a) *Ambient Air Quality Standard.* The primary and secondary standard for lead and its compounds measured as elemental lead are: 1.5 micrograms per cubic meter of air maximum mean averaged over a calendar quarter as a constituent of suspended particulate matter.

and the WDNR Board adopted Rule 154.145 which states:

(b) *Statewide Lead Emission Limitations.*

(1) *General Limitation:* No person may cause, allow or permit emissions into the ambient air or lead or lead compounds which substantially contribute to an exceeding of an air standard or increment, or which creates air pollution.

(2) *Lead Limitations:* No person may cause, allow or permit lead or lead compounds to be emitted to the ambient air in amounts greater than the Department may establish by permit condition under Section 144.393(5) or 144.394 statute, by rule, or by special order.

The State lead air quality standard is as stringent as the Federal standard, however, it lacks the measurement method necessary to determine compliance with the standard. Although Rule NR 154.04 of the Wisconsin Administrative Code specifies measurement methods of air quality, it does not include a Federally approved procedure for measuring lead in the ambient air.

On November 8, 1983, the State of Wisconsin submitted a commitment letter to EPA, to revise Rule 155.04 of the Wisconsin Administrative Code to include a reference method for measuring compliance with the ambient air quality standard for lead, which is consistent with 40 CFR Part 50, 40 CFR Part 53, Appendix G, and required under 40 CFR Part 58 Ambient Air Quality Surveillance. The required test methods

for measuring lead at 40 CFR 58 and related section are considered by EPA to be the correct reference test methods. Prior to EPA approval, the State of Wisconsin shall use the reference test methods required at 40 CFR Part 58, Part 50, Appendix 6 and Part 53.

As a result, EPA proposes to approve the Wisconsin Ambient Air Quality Standard for lead since it is as stringent as the Federal standard, with the understanding that the State will fulfill its commitment to adopt a reference method to measure compliance with the standard. In addition, EPA also proposes to approve Rules 154.145(b)(1) and 154.145(b)(2) which is required for the approval of the Lead SIP for the entire State of Wisconsin. Wisconsin also submitted the rest of its Lead SIP on September 20, 1983. EPA is currently reviewing that submittal and will be proposing action on it at a later date.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals 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 Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)))

Dated: February 15, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84-7067 Filed 3-15-84; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 18

[NASA FAR Supplement Directive 84-1
(Dated April 1, 1984)]

**NASA Implementation of the Federal
Acquisition Regulation (FAR); NASA
Federal Acquisition Regulation
Supplement (NASA/FAR Supplement);
Invitation to Comment**

Correction

In FR Doc. 84-6047 appearing on page 8460 in the issue of Wednesday, March 7, 1984, the phone number under the **FOR FURTHER INFORMATION CONTACT** section should be corrected to read "202-453-2118".

BILLING CODE 1505-01-M

Notices

Federal Register

Vol. 49, No. 53

Friday, March 16, 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

Rural Electrification Administration

Colorado-Ute Electric Association, Inc.; Final Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Availability of Final Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has prepared a Final Environmental Impact Statement (FEIS) in connection with the proposed construction of approximately 440 km (275 miles) of single-circuit 345 kV transmission line and associated facilities by Colorado-Ute Electric Association, Inc. (Colorado-Ute), Western Area Power Administration (Western) and Public Service Company of Colorado. The proposed transmission line would extend from Colorado-Ute's Rifle Substation near Rifle, Colorado, to the San Juan Generating Station located near Farmington, New Mexico. Associated facilities include the expansion of existing substations at Grand Junction, Montrose, and Durango, Colorado; construction of a new substation (Long Hollow) near Durango, Colorado; addition of termination facilities at the Rifle Substation and the San Juan Generating Station Switchyard; and the construction of approximately 11 km (7 miles) of 115 kV transmission line from the proposed Long Hollow Substation to the existing Durango Substation. REA has been asked to provide financing assistance for the proposed construction.

DATE: Public comments must be received by REA no later than April 16, 1984.

ADDRESS: Submit written comments to Mr. William E. Davis, Director, Western Area—Electric, Rural Electrification Administration, Room 0207-S, U.S.

Department of Agriculture, 14th and Independence Ave., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Davis, Director, Western Area—Electric, above address, telephone: (202) 382-8848 or FTS 382-8848.

SUPPLEMENTARY INFORMATION: In response to the request for financing assistance from Colorado-Ute, REA and the cooperating agencies (Western, the U.S. Forest Service and Bureau of Land Management) prepared the FEIS for the proposed construction of approximately 440 km (275 miles) of 345 kV transmission line and associated facilities. The proposed construction would affect portions of Garfield, Mesa, Delta, Montrose, Ouray, San Miguel, Dolores, Montezuma and La Plata Counties, Colorado, and San Juan County, New Mexico.

The FEIS may be examined during regular business hours at the following locations:

Rural Electrification Administration,
14th and Independence Ave., S.W.,
Room 0207-S, Washington, D.C. 20250
Colorado-Ute Electric Association, Inc.,
1845 South Townsend Avenue,
Montrose, Colorado 81401
Western Area Power Administration,
1627 Cole Boulevard, Denver, Colorado
80401

The FEIS may also be examined at the Forest Supervisor's offices located in Glenwood Springs, Delta and Durango, Colorado; Bureau of Land Management District Offices in Montrose, Grand Junction, Glenwood Springs and Durango, Colorado, and Farmington, New Mexico; and also at public libraries in the affected counties.

Alternatives considered in the FEIS include no action, energy conservation and load management, purchase or required power, noncentralized generation sources, upgrading/rebuilding existing transmission facilities, installation of series compensation, system alternatives, alternative corridors, alternative substation sites and alternative structure designs.

The preferred alternative, which is the construction of a single-circuit 345 kV transmission line, would not affect threatened and endangered species or known cultural resources. The proposed project would remove a small amount of

agricultural land (approximately 1.6 ha (4 acres)) from production. Approximately 320 ha (790 acres) of commercial timberland would be lost for the life of the project. The project would cross some floodplain areas associated with the Colorado River. REA has tentatively concluded that there is no practicable alternative to crossing these areas. Further information concerning this matter can be found in the FEIS.

Copies of the FEIS have been sent to various Federal, State and local agencies and individuals which have already expressed an interest in this proposal, as outlined in the Council on Environmental Quality Regulations (40 CFR Part 1500). Limited copies are available upon request to Mr. William E. Davis, Director, Western Area—Electric, address above.

Final REA action concerning the project, including any release of funds for construction, will be taken only after REA has reached satisfactory conclusions with respect to the project's environmental effects and compliance with the National Environmental Policy Act of 1969 and with other environmentally related statutes, regulations, Executive Orders, and Secretary's Memoranda.

(This program is listed in the Catalog of Federal Domestic Assistance as 10.85—Rural Electrification Loans and Loan Guarantees)

Dated: February 22, 1984.

Harold V. Hunter,
Administrator.

[FR Doc. 84-0977 Filed 3-15-84; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Fitness Determination of Trans-Central Airline Corporation

AGENCY: Civil Aeronautics Board.

ACTION: Note of Commuter Air Carrier Fitness Determination—Order 84-3-47, Order to Show Cause.

SUMMARY: The board is proposing to find the Trans-Central Airline Corporation is fit, willing and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to the applicable safety standards.

Responses

All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 30, 1984.

FOR FURTHER INFORMATION CONTACT: Carolyn S. Kramp, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5090.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-3-47 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-3-47 to that address.

By the Civil Aeronautics Board: March 9, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-7087 Filed 3-15-84; 8:45 am]

BILLING CODE 6520-01-M

Fitness Determination of Metro Express, Inc., d.b.a. Eastern Metro Express

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 84-3-52, Order to Show Cause.

SUMMARY: The Board is proposing to find that Metro Express, Inc. d/b/a Eastern Metro Express is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service conform to applicable safety standards.

Responses

All interested persons wishing to respond to the Board's tentative fitness determination shall file their responses with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Franklin McDermott, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5105.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-3-52 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue,

N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-3-52 to that address.

By the Civil Aeronautics Board: March 12, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-7084 Filed 3-15-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41696]

Hawaiian Pacific Airlines Fitness Investigation; Second Notice of Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled proceeding which had been scheduled to be held before the undersigned Chief Administrative Law Judge on March 13, 1984, is hereby postponed until April 3, 1984, in Room 1027 in the Universal Building, 1825 Connecticut Ave., N.W., Washington, D.C. at 9:30 a.m. (local time).

Dated at Washington, D.C., March 12, 1984.

Elias C. Rodriguez,
Chief Administrative Law Judge.

[FR Doc. 84-7088 Filed 3-15-84; 8:45 am]

BILLING CODE 6320-01-M

Use-It-or-Lose-It Test of Essential Air Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Tentative Approval of a Use-It-or-Lose-It Test of Essential Air Transportation—Order 84-3-53, Order to Show Cause.

SUMMARY: The Board is proposing to authorize Tennessee Airways to conduct a use-it-or-lose-it test of essential air transportation at London/Corbin, Kentucky, under which a higher level of essential air service will be established for a period of up to two years to provide the point with an opportunity to reestablish traffic at the community. If the test is unsuccessful, the community has agreed to accept a zero essential air service determination. The complete text of this order is available as noted below.

DATES: Objections—all interested persons wishing to object to the Board's tentative decision shall submit their response no later than April 4, 1984.

Reply Comments:—all reply comments shall be submitted no later than April 19, 1984.

ADDRESSES: Objections should be sent to Docket 41240, Docket Section, B-12, Civil Aeronautics Board, 1825

Connecticut Avenue, N.W., Washington, D.C. 20428 and to all persons listed in Appendix C of Order 84-3-53.

FOR FURTHER INFORMATION CONTACT: William C. Boyd, Chief, Essential Air Services Division I, Bureau of Domestic Aviation, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5405.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-3-53 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-3-53 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 13, 1984.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 84-7085 Filed 3-15-84; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41996]

Silvas Air Lines Fitness Investigation; Change of Site for Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to begin on March 19, 1984, at 10:00 a.m. (local time), has been changed to Hearing Room 540, 2120 L Street, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., March 12, 1984.

John M. Vittone,
Administrative Law Judge.

[FR Doc. 84-7086 Filed 3-15-84; 8:45 am]

BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

The Education Subcommittee of the California 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 Education Subcommittee on the California Advisory Committee of the California Advisory Committee to the Commission will convene at 3:00 p.m. and will end at 6:00 p.m., on April 6, 1984, at Dr. Jack Share's Office, (Chair, Education Subcommittee), 13546 Riverside Drive, Sherman Oaks, California 91423. The purpose of the meeting is to discuss the

focus and purpose of proposed education project.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Maurice B. Mitchell, at (303) 444-3541 or the Western Regional Office at (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 13, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-7116 Filed 3-15-84; 8:45 am]

BILLING CODE 6335-01-M

Pennsylvania 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 Pennsylvania Advisory Committee to the Commission will convene at 2:00 p.m. and will end at 4:30 p.m., on April 25, 1984, at the I.L.G.W.U. Building, 4th Floor Conference Room, 35 S. 4th Street, Philadelphia, Pennsylvania, 19106. The purpose of the meeting is to discuss the status of Advisory Committee projects and engage in program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Joseph Fisher, at (215) 351-0750 or the Mid-Atlantic Regional Office at (202) 254-6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 13, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-7119 Filed 3-15-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: U.S. Census—Age Search

Form numbers: Agency—BC-600, BC-649, BC-658; OMB-0607-0117

Type of request: Revision of a Currently Approved Collection

Burden: 157,500 respondents; 31,500 reporting hours

Needs and uses: The Census Bureau maintains the 1900-1980 Federal censuses for searching purposes. The purpose of the searching is to furnish, upon request, transcripts of personal data from historical population census records. Information relating to age, place of birth, and citizenship is furnished to individuals for their use in qualifying for social security, old age benefits, retirement, court litigation, passports, etc. The Census records maintained are confidential by Act of Congress, except upon written request from the person to whom the information pertains.

Affected public: Individuals or Households

Frequency: Upon request

Respondent's obligation: Voluntary

OMB desk officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census

Title: Annual Survey of State Tax Collection

Form numbers: Agency—F-5; OMB—0607-0046

Type of request: Extension of a Currently Approved Collection

Burden: 79 respondents; 109 reporting hours

Needs and uses: This survey is used to collect tax data from state and local governments and the District of Columbia. Data from this survey is incorporated into the national income accounts. Data is also used by officials and researchers in analysis of state government finances, in long established Census Bureau reports, and to determine revenue sharing entitlements.

Affected Public: State and local Governments

Frequency: Annually

Respondent's obligation: Voluntary

OMB desk officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 13, 1984.

Edward Michals,

Department Clearance Officer.

[FR Doc. 84-7124 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of the Census

Census Advisory Committee on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463, as amended by Pub. L. 94-409), notice hereby is given that the Census Advisory Committee on Population Statistics will convene on April 6, 1984, at 9:15 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The Committee is composed of six members appointed by the Secretary of Commerce and nine members designated by the President of the Population Association of America from the membership of that Association.

The agenda for the meeting, which is scheduled to adjourn at 4:15 p.m., is: (1) Introductory remarks by the Director-designate of the Bureau of the Census, including program and budget developments; (2) decennial census update; (3) Survey of Income and Program Participation (SIPP) update; (4) obtaining expert advice; (5) 1990 census activities, including (a) geographic planning and nationwide block numbering, and (b) testing progress and plans; (6) the Census Bureau's international data base; (7) the SIPP research agenda; (8) valuation of noncash income; (9) historical demographic statistics for the bicentennial census; (10) Committee meeting to develop recommendations; and (11) recommendations, election of new chairperson, and agenda for next meeting.

The meeting is open to the public, and a brief period is set aside for public comments and questions. Those persons with extensive questions or statements must submit them in writing to the Committee Control Officer at least 3 days before the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Dr. Campbell Gibson, Room 2266, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, D.C. 20223). Telephone (301) 763-1408.

Dated: March 13, 1984.

C. L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 84-7050 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[C-201-003]

Ceramic Tile From Mexico; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of countervailing duty order.

SUMMARY: On September 26, 1983, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico. The review covers the period February 23, 1982 through December 31, 1982. The notice stated that the Department had preliminarily determined the bounty or grant to be zero for ten firms and 18.96 percent *ad valorem* for all other firms.

We gave interested parties an opportunity to comment on our preliminary results. After review of all comments received, we have determined the total bounty or grant to be zero for ten firms and 16.49 percent *ad valorem* for all other firms.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (43 FR 43705) the preliminary results of its administrative review of the countervailing duty order on ceramic tile from Mexico (47 FR 20013, May 10, 1982). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of Mexican ceramic tile, including non-mosaic, glazed and unglazed ceramic floor and wall tile. Such merchandise is currently classifiable under items 532.2400 and 532.2700 of the Tariff Schedules of the United States Annotated.

The review covers the period February 23, 1982, the date liquidation of entries was suspended in the preliminary affirmative determination (47 FR 7866), through December 31, 1982, and three programs found countervailable in the order: CEDI, FOMEX and CEPROFI.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results. At the request of two exporters of ceramic tile, Ceramica Regiomontana and Industrias Intercontinental, we held a public hearing on November 7, 1983.

Comment 1: The exporters contend that we should have used information furnished by the Mexican government to calculate CEDI benefits. It is inconsistent for the Department to use U.S. import statistics (instead of Mexican government data) and assume full use in calculating CEDI benefits, while using Mexican government figures to calculate FOMEX loan benefits. The exporters cite *Industrial Fasteners Group, American Importers Association v. United States*, — C.I.T. — Slip Op. 82-14, February 11, 1982, in which the court said it would not sustain a basis for the calculation of a subsidy "which neither represents nor adequately estimates the allowance or benefit bestowed * * *".

Department's Position: For CEDI, since all firms received the maximum rate (15 percent) upon approval of their applications for individual shipments, we applied the maximum rate while providing for a certification process that would allow zero rates for firms not applying for or receiving any countervailable benefits. To calculate a weighted-average CEDI rate (reflecting suspension of the program in August 1982), we used U.S. import statistics since there were no consistently calculated figures from the Mexican government which we could break down into exports for January 1–August 25, 1982 (when CEDI was in effect) and for August 26–December 31, 1982.

On the other hand, we used Mexican government figures for FOMEX since benefits from that program depended on actual use. There was no maximum or standard benefit as there was for CEDI.

As stated in the original order, the Department believes that the facts in the Indian fasteners case are not directly comparable to the facts in this case. In contrast to the Indian tax deduction program, the CEDI was consistently granted as a fixed proportion of the f.o.b. price of each shipment.

Comment 2: The exporters contend that it was incorrect for the Department to consider benefits, exports, and sales

for the period January 1–December 31, 1982, since the period of review was February 23 through December 31, 1982.

Department's Position: We asked for information for the full calendar year 1982 since it was unlikely that the Mexican government could obtain information on exports, sales, etc., for the period February 23–December 31. For FOMEX and CEPROFI we have no reason to think the final rates would be different, since we have no indication that the level of use of these two programs before February 23 was different from that on or after February 23.

For CEDI, we agree that including the period before February 23 distorts the weighted-average CEDI rate for the whole year, since the 15 percent rate prior to suspension of the CEDI program was in effect during that period. We have recalculated the weighted-average rate to cover only the period February 23–December 31, 1982, but still using U.S. import statistics as the best information available for the weights. This lowers the weighted-average CEDI rate for unclassified firms to 9.05 percent *ad valorem*.

Comment 3: The exporters contend that, with respect to FOMEX loans, we should have used as a benchmark interest rate the commercial interest rates obtained by individual companies rather than a nationwide average benchmark rate.

Department's Position: The Department has held in other cases that, since FOMEX is part of a broad national lending program, it is more appropriate to use national average commercial interest rates as our benchmark rather than rates at which individual companies received loans (see, for example, the final determination on cement from Mexico, 48 FR 43063, September 21, 1983). In announcing changes to our general methodology on February 10, 1984 (49 FR 51560), we have continued to use a nationwide average benchmark rate for short-term loans like FOMEX.

However, we are making a change in these final results in the particular national benchmark rate for peso loans. We are now using the average of the Costo Porcentual Promedio de Captacion ("the CPP"), which represents the average cost of money to Mexican banks. We added to the average CPP 10 percentage points to arrive at an average national, short-term commercial rate to creditworthy customers. The CPP has been published monthly in the Government of Mexico's *Diario Oficial* since October 1981. Based on all information now available, we believe

the CPP-based rate is a more accurate reflection of the average short-term, commercial interest rate than the annual rate based on the Banco de Mexico's *Indicadores Economicos*, which we previously used. See the preliminary affirmative determination on unprocessed float glass from Mexico (48 FR 56095, December 19, 1983).

On the basis of the CPP plus 10 percent rate as the benchmark for peso loans, we determine the amount of net bounty or grant from FOMEX pre-export loans to be 4.9 percent. The benefit from FOMEX export loans remains at 2.14 percent, for a total net bounty or grant under FOMEX to uncertified firms of 7.08 percent *ad valorem*.

Comment 4: One exporter contends that, since it got a small benefit under only one of the three programs, it should not be subject to the full countervailing duty rate.

Department's Position: It is the general practice of the Department to calculate a country-wide countervailing duty rate. The Department firmly believes that issuing individual company appraisal instructions ("master lists") in countervailing duty cases would be unduly burdensome, particularly in cases where, as here, a very large number of companies is involved. We cannot possibly hope to conduct timely administrative reviews under section 751 unless we generally impose country-wide countervailing duty rates. In this particular case, we have already provided a procedure for firms found not to have applied for or received any benefits to obtain a zero rate.

Comment 5: The petitioner, the Tile Council of America, contends that the Department improperly excluded benefits under the "Ajuste Salarial" CEPROFI. It contends this cannot be the same program held not countervailable in the final determination on ammonia from Mexico (48 FR 28522, June 22, 1983), since the ammonia case involved a one-time-only wage increase benefit during March and April 1982, while for ceramic tile benefit occurred during August-October 1982.

Department's Position: Despite the disparity in dates, our information indicated this is the same program considered in the ammonia investigation and that, whenever the Ajuste Salarial was available, it was generally available to any company which would increase wages. We do not consider this program to be countervailable.

Comment 6: The petitioner argues that advance payment of benefits under the "Nuevos Empleos" CEPROFI program, in anticipation of the creation of the new jobs for which the program provides tax

credits, is an additional subsidy and should be treated as a non-commercial loan.

Department's Position: We do not consider this to be an "advance" payment because the normal administration of the program provides that companies may receive the benefit once their applications have been approved by the Mexican government. The tax credits are usable at any time for paying any federal tax facing the company. Since all companies can receive the payment early there is no special preference; therefore, no extra benefit is given.

Comment 7: The petitioner contends that we should not aggregate sales figures for exporting and non-exporting firms in determining CEPROFI benefits. In addition, we should not have included export sales figures for the firm of Ricardo C. Martinez since the lack of reported export volume data for this firm makes the reported export value data suspect. Finally, we should not have added total sales plus total exports for Ladrillera Monterrey since it results in a "greatly exaggerated" figure which to calculate benefit.

Department's Position: Since we consider CEPROFI to be a domestic subsidy, we divide the benefit by total sales. All the firms for which the Mexican government supplied information are exporters or have exported in the past (which is how the Mexican government got their names for response to our questionnaire) or in anticipation of future exports to the U.S., they have applied to the Mexican government for certifications needed to receive zero deposit rates from us. The lack of volume figures for Ricardo C. Martinez does not mean that its sales figure is inaccurate. As for Ladrillera Monterrey, its export figure was added in error, due to an incorrect listing by the Mexican government for "Chiladrillera Monterrey." However, the amount erroneously added accounted for only 0.12 percent of the total sales figure, so recalculation does not change the CEPROFI benefit of 0.22 percent found in our preliminary results.

Comment 8: The petitioner contends that we should have included CEPROFI benefits given to local Ideal Standards, Gres, and Vitromex in the numerator of our calculation.

Department's Position: Ideal Standard was not an exporter of tile in 1982, and both CEPROFI tax certificates for that firm were for Mexican-made equipment, under a provision of the CEPROFI program which is available to all firms in Mexico and thus is not countervailable. The Mexican government did not include Ideal

Standard in the revised annexes it sent to us on June 13, 1983, after the verification. Gres was not included in the Mexican government's list since it did not export in 1982; we examined it for CEPROFI benefits only because we had received a request from this firm for a zero rate. We did not examine Vitromex during the verification; it was not on the Mexican government's list since it did not export tile in 1982.

Comment 9: The petitioner contends that the advance provision of CEDI benefits should be regarded as a non-commercial loan and thus an additional benefit.

Department's Position: We agree that the advance CEDI payments are an additional benefit, since they result in the receipt of CEDI certificates at a time earlier than they would be received under the normal administration of this program. Based on the best information available, we determine that the benefit to uncertified firms under the program for the advance payment of CEDI certificates during the period of review was 0.14 percent *ad valorem*. This is in addition to the benefit of 9.05 percent for the normal CEDI program.

Comment 10: The petitioner contends that we should not have included the export value figures for Ricardo C. Martinez in calculating FOMEX benefits, since no export volume figures were reported.

Department's Position: As in Comment 7 above, we believe the lack of volume figures for this firm does not mean its value figure is incorrect.

Comment 11: The petitioner contends that Ceramicas y Pisos should not receive a zero rate since its certification does not state that it will forego the future receipt of benefits.

Department's Position: The firm presented before the hearing an amended certification in acceptable form.

Final Results of the Review

After consideration of all the comments received, we determine that the total net bounty or grant during the period of review was zero for the following ten firms:

Ceramica Santa Fe
Jesus Garza Arocha
Prodiba, S.A.
Juan Rodriguez Benavides
Industrias AGE, S.A.
Norberto Cortez Gonzalez
Reynol Martinez Chapa
Ceramicas y Pisos Industriales de Culiacan, S.A.
Teofilo Covarrubias Villarreal
Reynaldo Gutierrez (Ladrillera la Casa)

For all other firms, we determine that the total net bounty or grant during the period of review was 16.49 percent *ad valorem*.

The Department will instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the ten zero-rate firms and to assess countervailing duties of 16.49 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after February 23, 1982 and exported on or before December 31, 1982.

The Mexican government suspended the CEDI program effective August 26, 1982, thus, the only programs currently in effect for this merchandise are the FOMEX and CEPROFI programs. Therefore, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties of zero on shipments of this merchandise from the ten zero-rate firms and 7.30 percent of the entered value on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department is beginning immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 9, 1984.

Judith H. Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-7028 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-029]

Certain Castor Oil Products From Brazil; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On October 25, 1983, the Department of Commerce published the

preliminary results of its administrative review of the countervailing duty order on certain castor oil products from Brazil. The review covers the period January 1, 1981 through December 31, 1981.

We gave interested parties an opportunity to comment on the preliminary results. The American Manufacturers of Castor Oil Products, the petitioner, requested a hearing which we held on January 17, 1984. After review of all comments received, the Department has determined the net subsidy during the period of review to be 4.70 percent.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 25, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR 49320) the preliminary results of its administrative review of the countervailing duty order on certain castor oil products from Brazil (41 FR 8634, March 16, 1976). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. Such merchandise is currently classifiable under items 178.2000, 490.2650 and 490.2670 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1981 through December 31, 1981 and ten programs: (1) Preferential financing for exports; (2) income tax exemptions for export earnings; (3) the export credit premium for the Industrial Products Tax ("IPI"); (4) preferential export financing under CIC/CREGE 14-11; (5) accelerated depreciation for capital goods manufactured in Brazil; (6) fiscal benefits for special export programs; (7) tax reduction on equipment used in export promotion ("CIEX"); (8) preferential export financing under Resolution 68 ("FINEX"); (9) incentives for trading companies (Resolution 643); and (10) partially-indexed long-term loans.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. The petitioner, the American Manufacturers of Castor Oil Products ("AMCOP"), requested a hearing which was held on January 17, 1983.

Comment 1: The petitioner argues that the Department should verify the accuracy of the response information. The petitioner cited the decision of the Court of International Trade which requires that the Department verify every review (*Al Tech Specialty Steel v. United States*, Slip Ops. 83-119 and 83-120 (November 21, 1983)).

Department's Position: We disagree, and have appealed the *Al Tech* decision. The Department maintains that neither section 751 of the Tariff Act nor the Commerce Regulations require verification of information submitted in the course of an administrative review. We have long held that verification in section 751 administrative reviews is discretionary. See, e.g., "Final Results of Administrative Review of Countervailing Duty Order" on bicycle tires and tubes from Korea (48 FR 32205, July 14, 1983).

Comment 2: The petitioner argues that we should look at the internal corporate allocation of all subsidies to these companies rather than at only those subsidies received for the product covered by this order.

Department's Position: We allocate fully to products under review any subsidies directly tied to them. To allocate tied subsidies fully to the products to which they were tied and simultaneously to allocate any part of the same subsidies to other products would result in double-counting, which would be inconsistent with both the statute and the Subsidies Code.

Comment 3: The petitioner argues that the Department should reconsider its decision that the following five programs were not used during the review period: BEFIEEX, CIEX, FINEX, incentives for trading companies and partially indexed long-term loans.

Department's Position: We have accepted the questionnaire response which says that these programs were not used. Absent contrary evidence, there is nothing to reconsider. We have received no such evidence.

Comment 4: The petitioner states that the Department should investigate three additional programs (Fundo Nacional de Participacoes, PROEX, and PROSIM) as a part of this review.

Department's Position: The Department will consider new

allegations when possible. However, the petitioners have not submitted any evidence to support a reasonable possibility that these programs were used by producers of the products covered by this review. If we receive such an allegation we will consider it in the first review possible.

IPI Credit Premium Offset Tax

In our notice of preliminary results of review we stated that the IPI credit premium has been offset by an export tax since June 26, 1981. We have since discovered that, while this tax has been assessed since June, 1981, it was not collected until December 1982.

We consider the lag in collection to have conferred a benefit to the producers equivalent to an interest free loan, in the amount of the tax owed, rolled-over monthly until the tax was actually paid. Under current practice, the offset tax is to be paid 45 days after the end of the month in which the shipment earning the premium occurred. For purposes of calculating the benefit, we consider the interest free loan to have begun on the date the tax was due (i.e. 45 days after the end of the relevant month).

As a commercial benchmark, we have used the monthly Banco do Brasil rate for discounts of accounts receivable. The monthly rate in 1981 was 4.97 percent. Using this, we calculated the *ad valorem* benefit to be 0.95 percent. For purposes of the cash deposit of estimated countervailing duties, we believe this tax is now collected at the appropriate time and the potential benefit under this program is zero.

Final Results of the Review

Based on our analysis of comments received, we determine the aggregate net subsidy to be 4.70 percent for the period January 1, 1981 through December 31, 1981.

The Department will instruct the Customs Service to assess countervailing duties of 4.70 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1981 and entered, or withdrawn from warehouse, for consumption on or before August 2, 1981.

On August 3, 1981, the International Trade Commission ("the ITC") notified the Department that the Brazilian government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979. On January 27, 1984, the ITC notified the Department of its determination that an industry in the United States would be materially injured or threatened with material injury if the order were revoked. As a

result, the Department will instruct the Customs Service to assess countervailing duties, in the amount of the prevailing deposit rates at the time of entry, on all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 3, 1981 and on or before January 27, 1984. These rates are 1 percent of the f.o.b. invoice price for the period August 3, 1981 through December 24, 1981; 2.53 percent of the f.o.b. invoice price for the period December 25, 1981 through September 7, 1983; and 0.82 percent of the f.o.b. invoice price for the period September 8, 1983 through January 27, 1984.

We determine the potential subsidy, for purposes of the cash deposit of estimated countervailing duties, to be 0.40 percent. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department will instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, on any shipments of hydrogenated castor oil and 12-hydroxystearic acid from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin the next administrative review on January 1, 1985.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 9, 1984.

Judith H. Bello,

Acting Deputy Assistant Secretary.

[FR Doc. 84-7031 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DS-M

Non-Rubber Footwear From Argentina; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On December 22, 1983, the Department of Commerce published the

preliminary results of its administrative review of the countervailing duty order on non-rubber footwear from Argentina. The review covers the period January 1, 1981 through December 31, 1981.

We gave interested parties an opportunity to comment on the preliminary results. After review of all comments received, the final results of the review are the same as those presented in the preliminary results.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT:

Lorenza Olivas or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR 56622) the preliminary results of its administrative review of the countervailing duty order on non-rubber footwear from Argentina (44 FR 3474, January 17, 1979). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Argentina non-rubber footwear described in Part IA of Schedule 7 of the Tariff Schedules of the United States Annotated, excluding items 700.5100 through 700.5400, 700.5700 through 700.7100, and 700.9000.

The review covers the period January 1, 1981 through December 31, 1981 and three programs: (1) The reembolso, a cash rebate of taxes; (2) pre-export financing; and (3) an export tax on hides.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the petitioner, Footwear Industries of America, Inc.; and two unions, the Amalgamated Clothing and Textile Workers Union and the United Food and Commercial Workers International Union.

Comment 1: The petitioner alleges that the Department, in determining the benefit attributable to pre-export peso loans, used the same commercial benchmark that the Department had in its review of 1980. However, unlike the earlier review where the Department found a 13.4 percent interest differential,

the Department determined in the current review that the rate of interest paid on loans received under this program during 1981 was not lower than the commercial benchmark. The petitioner further argues that a short-term loan carrying a one percent interest rate must confer a benefit when compared to a loan under a commercial program.

Department's Position: The Department used as a benchmark a commercial peso interest rate in 1981, indexed to the rate of inflation.

Because the pre-export loans are peso loans indexed to the U.S. dollar, depreciation of the peso erodes benefits received from the one percent interest rate. To the extent that changes in the inflation rate, the index for commercial loans, do not correspond on a one-to-one basis with depreciation of the peso, the difference between our commercial benchmark and the pre-export loans fluctuates. In 1981, the peso depreciated more rapidly against the dollar than the rate of inflation increased. Thus, the potential benefit from the one percent loans was dissipated.

Comment 2: The petitioner and the unions object to the Department's preliminary characterization of the purchasers of hides as "too broad a class to be a group of enterprises or industries" within the meaning of section 771(5) of the Tariff Act. These domestic parties argue that the beneficiaries of the Argentine export tax on hides, tanners and producers of apparel and accessories of leather, are a well-defined, specific group of industries. The U.S. government has recognized it as such a group in its Standard Industrial Classification ("SIC") Group 31. Therefore, the artificially low domestic price for hides and leather is a countervailable benefit.

Department's Position: The Department remains unconvinced that the users of hides and leather compose a group of industries within the meaning of section 771(5). Leather is used not only to produce apparel and accessories but also for such items as furniture and automobile upholstery, oil seals, gaskets, book bindings and sporting goods. While SIC codes are not controlling, we note that the coding groups for the steel industry (which we previously have recognized meets the section 771(5) test) are at the SIC four digit level rather than the broader two digit level. If we were to adopt the proposal of the petitioner and the unions here, we would by analogy have to treat not the four digit subsets for steel but the two digit group of "Primary Metals Industries" (Group 33) as meeting the requirements of section 771(5). We also

note that we have previously rejected agricultural crops and forestry as meeting the requirements of section 771(5). See, final negative countervailing duty determinations on certain softwood products from Canada (48 FR 24159, May 31, 1983) and on fresh asparagus from Mexico (48 FR 21618, May 13, 1983). Both of the latter two groups are classified at the two digit level in the SIC codes (Groups 08 and 01, respectively).

Moreover, even if we were to consider the users of leather to be a "specific group of enterprises or industries", we would still find the export tax not to be countervailable. The domestic parties' argument is based upon the assumption that the government caused the Argentine price of the input to the non-rubber footwear industry to drop through use of the export tax (because less was exported, domestic supply increased and the per unit price fell). Actual prices, however, depend upon a complicated interaction of domestic and international supply and demand elasticities. Absent a showing of an actual reduction in the input price, we cannot conclude that the export tax has reduced the domestic price of hides.

Comment 3: The petitioner and the unions allege that there is a close vertically integrated relationship between the Argentine tanning industry and manufacturers of leather products in Argentina. They contend that the alleged subsidy arising from the export tax on hides is passed on to the manufacturers of finished leather products.

Department's Position: Since we have found that the export tax on hides does not confer a subsidy, it is unnecessary for us to address the degree of interrelationship between tanners and producers of non-rubber footwear.

Final Results of the Review

After consideration of all of the comments received, the final results of our review are the same as those presented in the preliminary results of the review. We determine the total bounty or grant conferred to be 8.83 percent *ad valorem* for the period January 1, 1981 through December 31, 1981. Accordingly, the Department will instruct the Customs Service to assess countervailing duties of 8.83 percent of the f.o.b. invoice price on all shipments of Argentine non-rubber footwear exported on or after January 1, 1981 and exported on or before December 31, 1981.

Further, as provided for by section 751(a)(1) of the Tariff Act, we will instruct the Customs Service to collect a cash deposit of estimated countervailing

duties of zero percent of the entered value on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 9, 1984.

Judith H. Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-7030 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-062]

Pig Iron From Brazil; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On November 30, 1983, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on pig iron from Brazil. The review covers the period January 1, 1981 through December 31, 1981.

We gave interested parties an opportunity to comment on the preliminary results. After review of all comments received, the Department has determined the net subsidy during the period of review to be 10.31 percent.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1983, the Department of Commerce ("the

Department") published in the *Federal Register* (48 FR 54091) the preliminary results of its administrative review of the countervailing duty order on pig iron from Brazil (45 FR 23045, April 4, 1980). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian pig iron of basic, foundry, malleable, and low phosphorous grades. Such merchandise is currently classifiable under item 606.1300 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1981 through December 31, 1981 and ten programs: (1) Preferential financing for exports; (2) income tax exemptions for export earnings; (3) the export credit premium for the Industrial Products Tax ("IPI"); (4) preferential financing under CIC-CREGE 14-11; (5) partially-indexed long-term loans; (6) Fundo de Democratizacao do Capital das Empresas ("FUNDECE"); (7) fiscal benefits for special export program; (8) tax reductions on equipment used in export production ("CIEIX"); (9) incentives for trading companies (Resolution 643); and (10) preferential financing for the storage of merchandise destined for export (Resolution 330).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the Government of Brazil.

In this review, we have followed the calculation methods used in the notice of preliminary results of this review. At the same time, the Department recognizes that there may be other reasonable methods of measuring benefits for our use in this and other cases. Specifically, in the preliminary affirmative countervailing duty determination on certain carbon steel products from Brazil (49 FR 5157, February 10, 1984), we adopted several new methods. The Department has asked for comments on this proposed methodology.

The preliminary results in this review of the order on Brazilian pig iron were published and comments received prior to the Department's publication of the preliminary determination on certain carbon steel products. We believe it is inappropriate to apply the new methodology in this section 751 review until the methodology is adopted, possibly in the final determination in the pending steel case. Further, future

acceptance of the new methodology does not indicate that the existing methodology is not also a reasonable way to calculate the benefits (see also, notice of final results of administrative review on float glass from Belgium, 47 FR 32467, July 27, 1982).

Comment 1: The Government of Brazil argues that, in accordance with the Court of International Trade's decision in *The Ambassador Division of Florsheim Shoes Co. v. United States*, No. 83-125 (CIT, December 1, 1983), the Department has no authority to collect countervailing duties on entries subject to the review greater than the cash deposits on those entries. The Brazilian government further argues that the results of a section 751 review should only apply to future entries.

Department's Position: We disagree. The Department has appealed the *Florsheim* decision. The Department believes that its practice of retroactive collection is correct and will continue to operate on that belief pending the outcome of the appeal.

Comment 2: The Government of Brazil argues that the Department has overstated the benefit from the income tax exemption for export earnings. Brazilian federal tax laws permit corporations to invest 26 percent of taxes owed in certain specified corporations. The Brazilian government claims that this provision results in an effective reduction of the corporate income tax rate, which directly diminishes the benefit from the income tax exemption.

Department's Position: We have considered and rejected this argument in other section 751 administrative reviews of Brazilian countervailing duty orders. See, e.g., notice of final results of administrative review of certain castor oil products from Brazil (48 FR 40534, September 8, 1983).

Comment 3: The Government of Brazil claims that benefits derived from the income tax exemption for export earnings should be allocated over total revenue rather than export revenue. Under this program, a Brazilian exporter receives an exemption from income tax liabilities at the end of the fiscal year based upon a ratio of export to total revenue, provided that the firm has made an overall profit. The Brazilian government argues that, because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefit accrues to the operations of the whole firm and not just to exports. Thus, by allocating the benefits only to export revenue, the Department overstates the value of the subsidy.

Department's Position: We have considered and rejected this argument in other section 751 administrative reviews of Brazilian countervailing duty orders. See, e.g., notice on castor oil *supra*. Therefore, the Department will continue to allocate the benefit over export revenue instead of total revenue.

Comment 4: The Government of Brazil claims that, in calculating the interest differential under the program of preferential financing for exports, the Department should not include the exemption of Resolution 674 loans from the tax on financing transactions ("the IOF"). The IOF is an indirect tax on the financing of the purchase of physically incorporated inputs. Considering the IOF tax an integral part of the commercially-available rate (i.e., considering exemption from the tax a subsidy) is contrary to the General Agreement on Tariffs and Trade and U.S. law, both of which permit the non-excessive rebate of indirect taxes.

Department's Position: We have considered and rejected this argument in other Brazilian countervailing duty cases. See, e.g., notice on castor oil, *supra*. It is appropriate that we include the exemption of Resolution 674 loans from the IOF as part of the measurement of the full benefit provided under this program.

Comment 5: The Government of Brazil argues that benefits under the preferential financing for exports program are realized when the borrower makes payments under such loans. Consequently, the Department should calculate the net subsidy as occurring on the date of payment, similar to the Department's treatment of long-term loans, rather than prorate the benefit over the life of the loan. The Brazilian government also maintains that the "straddle" method is inconsistent with the method used to calculate a benefit from loans in other countries.

Department's Position: We have considered and rejected this argument in other section 751 administrative reviews of Brazilian countervailing duty orders. See, e.g., notice on castor oil, *supra*.

Comment 6: The Government of Brazil has argued that loans under the CIC-CREGE 14-11 program are not countervailable because they are granted in accordance with commercial considerations.

Department's Position: We have considered and rejected this argument in other section 751 administrative reviews of Brazilian countervailing duty orders. See, e.g., notice on castor oil, *supra*.

Comment 7: The Government of Brazil contends that, even if the Department determines CIC-CREGE 14-11 to be

countervailable, it should not be included in calculating the duty to be assessed on 1981 exports. The Brazilian government contends that, since this would be the first time that we would determine the program countervailable in this case, it should only apply prospectively.

Department's Position: Section 751 of the Tariff Act requires the Department to "review and determine the amount of any net subsidy." The statute does not limit this review and its application in assessment to programs previously found countervailable.

IPI Credit Premium Offset Tax

In our notice of preliminary results of review we stated that the IPI credit premium has been offset by an export tax since June 26, 1981. We have since discovered that, while this tax has been assessed since June, 1981, it was not collected until December 1982.

We consider the lag in collection to have conferred a benefit to the producers equivalent to an interest free loan, in the amount of the tax owed, rolled over monthly until the tax was actually paid.

Under current practice, the offset tax is to be paid 45 days after the end of the month in which the shipment earning the premium occurred. For purposes of calculating the benefit, we consider the interest free loan to have begun on the date the tax was due (*i.e.* 45 days after the end of the relevant month).

As a commercial benchmark we have used the monthly Banco do Brasil rate for discounts of accounts receivable. The monthly rate in 1981 was 4.97 percent. Using this, we calculated the *ad valorem* benefit to be 0.95 percent. For purposes of the cash deposit of estimated countervailing duties, we believe this tax is now collected at the appropriate time and the potential benefit under this program therefore is zero.

Final Results of the Review

Based on our analysis of the comments received, we determine the aggregate net subsidy to be 10.31 percent for the period January 1, 1981 through December 31, 1981.

The Department will instruct the Customs Service to assess countervailing duties of 10.31 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1981 and on or before December 31, 1981.

We determine the potential subsidy, for purposes of the cash deposit of estimated countervailing duties, to be 4.65 percent. The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing

duties, as provided for in section 751(a)(1) of the Tariff Act, of 4.65 percent of the f.o.b. invoice price on any shipments of pig iron from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: March 9, 1984.

Judith H. Bello,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-7032 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DS-M

Carl F. Baasel and Carl Baasel Lasertechnik K.G., Actions Affecting Export Privileges; Order

In the matter of: Carl F. Baasel, c/o Carl Baasel Lasertechnik K.G., Sandstrasse 21, 8000 Munich 2, Federal Republic of Germany, and Carl Baasel Lasertechnik K.G., Sandstrasse 21, 8000 Munich 2, Federal Republic of Germany.

The Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce, having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. section 2401, *et seq.* (Supp. V 1981)) (the Act), and Part 388 of the export Administration Regulations (currently codified at 15 CFR Part 368, *et seq.* (1983)) (the Regulations) against Carl F. Baasel, on his own behalf and on behalf of Carl Baasel Lasertechnik K.G. (hereinafter collectively referred to as Baasel), based on allegations that Baasel violated Sections 387.2, 387.3, 387.4 and 387.5 of the Regulations; and

The Department and Baasel having entered into a Consent Agreement whereby Baasel has agreed to settle this matter: (1) By a denial to Baasel of all export privileges for a period ending ten years from the date of this Order to all destinations in Country Groups P, Q, S, W, Y, and Z, as defined in Supplement No. 1 to Part 370 of the Regulations; and

(2) by payment by Baasel of a civil penalty in the amount of \$40,000.

The terms of the Consent Agreement having been approved by me in complete settlement of the matter;

It is therefore ordered, First, Baasel, for a period ending ten years from this date, is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any export of U.S.-origin commodities or technical data from the United States or abroad to all destinations in Country Groups P, Q, S, W, Y, and Z, as defined in Supplement No. 1 to Part 370 of the Regulations;

A. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations and shall apply only to exports or reexports to destinations in the Country Groups identified above;

B. Such denial of export privileges shall extend not only to Baasel but also to his agents, employees and successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which Baasel is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services;

Second, that a civil penalty in the amount of \$40,000 is assessed against Baasel. Payment of \$30,000 of the civil penalty is suspended under Section 388.16(c) of the Regulations for five years and will be waived at the end of this period, provided Baasel has committed no further violation of the

Act, the Regulations, or this Order. Payment to the Department of \$10,000 shall be made within 30 days of service of this Order, in the manner specified in the attached instructions;

Third, that Baasel will submit to the Director, Office of Export Enforcement, a semi-annual report concerning the receipt and disposition of U.S.-origin goods and technical data by Baasel during the ten-year denial set forth above; and

Fourth, that the proposed Charging Letter, the Consent Agreement and this Order be made available to the public.

This Order is effective immediately.

Entered this 9th day of March 1984.

Theodore Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 84-7027 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-25-M

[A-580-007]

Certain Circular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain circular welded carbon steel pipes and tubes (CWPT) from the Republic of Korea (Korea) are being sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of publication of this notice, whether these imports are materially injure, a U.S. industry. We have directed the U.S. Customs Service to continue to suspend the liquidation of entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after October 28, 1983, in accordance with our preliminary determination, and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. Hyundai Steel Pipe Co., Ltd., preliminarily excluded, is now subject to suspension as of the date of publication of this notice. Union Steel Manufacturing Co., Ltd., previously subject to suspension under the preliminary determination, is now *de minimis*.

We have determined that two companies should be excluded from this determination. Those firms which are

subject to the suspension of liquidation and those firms which are excluded from this action are indicated in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Agreements Compliance Division, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1102.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that CWPT from Korea are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673). The margins for the individual firms investigated are indicated in the "Suspension of Liquidation" section of this notice. The dumping margins ranged from 0.00 percent to 64.95 percent. The overall weighted-average margin on all sales compared is 1.04 percent.

Case History

On April 21, 1983, we received a petition filed by counsel for the Committee on Pipe and Tube Imports (CPTI). The CPTI represents the following domestic manufacturers of CWPT: Allied Tube and Conduit Corp.; American Tube Co., Inc.; Bull Moose Tube Co.; Copperweld Tubing Group; Kaiser Steel Corp.; Merchants Metals, Inc.; Pittsburgh-International; Southwestern Pipe, Inc.; and Western Tube and Conduit. In accordance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that CWPT from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on May 11, 1983 (48 F.R. 22179). On June 6, 1983, the ITC found that there is a reasonable indication that imports of certain CWPT are materially injuring, or are threatening to materially injure, a United States industry.

Questionnaires were presented in Seoul, Korea to Korean CWPT producers on June 9, 1983. The five Korean producers that responded to our

questionnaires account for approximately 90 percent of Korean CWPT exports to the United States during the period of investigation. They are: Union Steel Manufacturing Co., Ltd. (Union); Pusan Steel Pipe Co., Ltd. (Pusan); Hyundai Steel Pipe Co., Ltd. (Hyundai); Korea Steel Pipe Co., Ltd. (KSP) and Dongjin Steel Co., Ltd. (Dongjin).

On July 8, 1983, counsel for the Korean CWPT producers requested additional time to respond to our questionnaires. On July 11, 1983, we granted a two-week extension to July 25, 1983. On July 21, 1983, counsel for the respondents requested an additional two-week extension which we also granted. We received the responses on August 8, 1983.

Pursuant to section 733(c)(1)(A) of the Act, we postponed the preliminary determination, at the request of the petitioner, to no later than October 24, 1983 (48 FR 41055).

We received submissions from counsel for petitioner on September 12 and 29, 1983 and October 5 and 11, 1983 alleging that home market sales of CWPT had been made at less than the cost of producing the merchandise in Korea. After reviewing the submissions, we determined that there were reasonable grounds to believe or suspect that home market sales had been made at prices which were less than their costs of production pursuant to section 773(b) of the Act. We presented a cost of production questionnaire to the Korean CWPT producers on October 14, 1983. Responses were received on November 21 and 30, 1983. Since we did not receive cost of production information in time for the preliminary determination, we have investigated whether home market sales of CWPT have been made at prices which are less than their costs of production for our final determination.

On October 24, 1983, we made a preliminary determination that CWPT are being, or are likely to be sold in the United States at less than fair value (48 FR 49900). After receiving a request from counsel for the respondents, on November 28, 1983, we postponed the final determination until no later than March 12, 1984 (48 FR 54388), in accordance with section 735(a)(2)(A) of the Act.

From December 5-16, 1983, we verified the responses of the manufacturers in Korea, and from February 8-13, 1984, we verified respondents' data pertaining to sales by those Korean manufacturers that maintained sales subsidiaries in the United States.

The hearing which was originally scheduled for December 21, 1983 was held on February 14, 1984 to allow the parties an opportunity to address the issues.

Scope of Investigation

The merchandise covered by this investigation is CWPT, which are defined for purposes of this proceeding as: welded carbon steel pipes and tubes, of circular cross section, currently provided for in items 610.3231, 610.3232, 610.3241 and 610.3244 of the *Tariff Schedules of the United States Annotated* (1983).

We investigated sales of CWPT by Union, Pusan, Hyundai, KSP and Dongjin during the period from November 1, 1982, to April 30, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

In making our fair value comparisons, we made several changes to the figures provided by respondents because the figures did not represent an amount calculated according to our usual practices or because verification indicated that another amount should be used.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by the Korean producers, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the packed f.o.b., c.i.f., c. & f., ex-dock duty paid price or c.i.f. duty paid and delivered price to unrelated distributors. We made deductions, where appropriate, for Korean inland freight, ocean freight, marine insurance, foreign brokerage and handling, U.S. brokerage and handling, U.S. duty, U.S. inland freight, wharfage expenses and government testing and inspection fees. With the exception of Union, we added back to the U.S. price, the amount of import duties and defense taxes rebated upon exportation of the CWPT, which had been assessed upon the importation of materials used to produce the exported CWPT as provided for under sections 772(d)(1)(B) of the Act. In the case of Dongjin, we also added the amount of countervailing duty currently being imposed on this company's CWPT imports into the United States to offset

an export subsidy, pursuant to section 772(d)(1)(D) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales.

Petitioners alleged that sales of CWPT in the home market were at prices below the cost of producing CWPT. We examined production costs, which included all appropriate costs for materials, fabrication, and general expenses. Sales below the cost of production were found to be made by Korean CWPT producers. Where sales of the merchandise under investigation were made over an extended period of time and in substantial quantities, and were at prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade, we disregarded these sales in our analysis, in accordance with section 773(b) of the Act. All five producers had sufficient home market sales of CWPT above cost of production to use these sales in determining foreign market value.

We calculated home market prices based on c. & f., ex-factory, or f.o.b. packed prices of merchandise sold to unrelated distributors in Korea. From these prices we deducted, where appropriate, inland freight and rebates. We made circumstances of sale adjustments for differences between U.S. and home market credit costs and advertising, in accordance with section 353.15(a) of the Commerce Regulations and for indirect selling expenses in the home market used as an offset to U.S. commissions in accordance with section 353.15(c) of the Commerce Regulations. We also made an adjustment, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 353.16 of the Commerce Regulations. We deducted home market packing cost and added the cost of U.S. packing, pursuant to 773(a)(1) of the Act.

We disallowed Union's claimed circumstance of sale adjustment for warehousing expenses. Since respondent was not able to demonstrate that the warehousing occurred after the sale of the subject merchandise, we cannot consider such warehousing to be a circumstance which bears a direct relationship to the sales under consideration, as required by section 353.15 of the Commerce Regulations.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making this determination by using standard verification procedures,

including on-site inspection of the manufacturer's operations and examination of accounting records and selected documents containing relevant information.

Results of Investigation

	Weighted— average margin percentage	Percentage of total sales compared
Union	0.24	100
Pusan	0.76	81.4
Hyundai	1.35	100
KSP	2.13	100
Dongjin	0.22	100

Petitioner's Comments

Comment 1

Posco, the Korean steel producer which supplies the coil used to produce the merchandise under investigation, maintains a two-tiered pricing system. It sells coil for eventual domestic consumption at higher prices than coil which will be processed and exported. This allows it to compete with imported coil which benefits from the receipt of duty drawback. The cost of producing the merchandise under investigation must be calculated only on the basis of the higher coil costs incurred by the respondent pipe and tube manufacturers in producing for domestic consumption. Since the Department is required by law to exclude from constructed value the amount of any taxes or duties imposed on raw materials which are rebated upon exportation of the merchandise to the U.S., it would, conversely, include any taxes or duties assessed upon imported raw materials used in producing the merchandise sold in the home market in computing the cost of producing that merchandise. It follows, therefore, that the same methodology should apply in the instant case to the different costs of raw materials under the dual pricing system maintained by POSCO.

DOC Position

Section 773(b) of the Act requires us in appropriate circumstances, to determine whether home market sales have been made at less than the cost of producing the merchandise in question. Section 353.7(b) of our regulations (19 CFR 353.7(b)), in interpreting and applying the Act, requires the cost of production be computed on the basis of the "costs of materials, labor, and general expenses, excluding profit incurred in producing such or similar merchandise." (emphasis added)

Similarly, section 773(c)(1) of the Act requires us, in calculating constructed

value, to use "the cost of materials * * * and of fabrication or other processing of any kind employed in producing *such or similar merchandise*. * * *" (emphasis added). The phrase "such or similar merchandise", in turn, is defined in section 771(16) of Act (in relevant part to this issue) as " * * * merchandise which is the subject of the investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise."

Consequently, where there are different costs associated with producing merchandise produced for export as compared with merchandise produced for domestic sale and the merchandise is physically identical, we have used the average cost of producing that merchandise in calculating cost of production or constructed value.

Finally, we disagree with petitioner that duties are excluded from the cost of materials in a constructed value calculation. Section 773(e)(1) of the Act and section 353.6(a)(1) of the Commerce regulations exclude only certain internal taxes from the cost of materials in a constructed value context. Since the law makes no distinction between the cost of materials with respect to whether those costs include duties, petitioner's argument in this regard is inapposite to the question of whether we should segregate the costs of raw materials in calculating either constructed value or cost of production.

Comment 2

The Department should make certain recalculations of conversion costs for those home market products having lighter wall thicknesses which were produced in very small quantities. In order to change production from one diameter to another, a significant amount of down time occurs in the mill. The fact that smaller quantities of home market products were weight-averaged with the larger production of export products distorts the actual cost of production of these home market products.

The Department must calculate cost of production of home market products based on actual costs of producing those products. Weight averaging the costs of production for products which are different and which are also produced in different quantities is not acceptable.

DOC Position

Where a product sold in the home market is not identical to the product sold to the United States and there are quantifiable production cost differences to which the dissimilarity between products is attributable, we took these

cost differences into account in calculating cost of production. The product differences are not attributable to the sizes of production runs. Consequently, we did not take them into account in calculating cost of production. (See also DOC Position to Petitioner's Comment 1.)

Comment 3

In the calculation of cost of production for the home market products, labor and overhead costs for home market products should be allocated according to the tons per hour produced of each size of pipe and tube, rather than allocating these costs on a per ton basis.

DOC Position

We agree with petitioner. An allocation method which does not reflect machine productivity by size will tend to understate the cost of small diameter pipes and tubes and overstate the costs of larger diameter pipes and tubes. We asked respondents to reallocate these costs based on standard machine hours, where a method reflecting productivity had not originally been provided. KSP and Union did not have the data available to comply with this request. We reallocated their costs on a size-by-size basis using as the best available information the average experience of those companies where the data had been supplied.

Comment 4

Respondents sell pipes and tubes in the home market on the basis of standard weight, while cost of production is calculated on an actual weight basis. However, the actual wall thicknesses used by respondents and supplied to the Department in calculating actual weight are inaccurate. Although companies may claim to produce pipes and tubes at the absolute minimum tolerance for the standard, the experience of the U.S. domestic industry is such that consistent production at that minimum is not possible. Any attempt to produce as close to the minimum tolerance as respondents claim they do would result in a significant portion of the Korean pipes and tubes being below the minimum specification and, therefore, being rejected.

DOC Position

Costs of production were provided to the Department on an actual weight basis. Except for Dongjin, the weights in the home market sales responses were based on standard weight conversions. In order to compare cost of production to home market selling prices, the same units should be used to calculate these

figures. The companies supplied us with the actual wall thickness of the pipes and tubes sold in the home market on a size-by-size basis. To compute the actual weight of the pipes and tubes produced, the companies used actual wall thickness in the formula for standard weight conversions. The resulting units of weight are the "actual" units of weight used by each company to allocate production costs. Actual wall thickness reflects the gauge of the coil that had been used in the production of these pipes and tubes. The deviation from the standard gauge for pipes and tubes does vary between companies. However, these numbers were examined during verification and were found to reflect each company's actual experience.

Comment 5

In determining the cost of production for home market products, the Department should use the time period of last quarter of 1982 and first quarter 1983.

DOC Position

We agree with petitioner. During verification we found that domestic pipe and tube sales are made from inventories of finished goods. Production for domestic sales remains in inventory an average of 30 days. Consequently, we consider the appropriate production costs for comparison to home market sales prices to be those incurred in the last quarter of calendar year 1982 and the first quarter of calendar year 1983. We believe, particularly since the cost of a significant raw material input was declining in price throughout the calendar year preceding the period of investigation, that these costs more accurately reflect what it actually costs to produce the pipes and tubes sold in the home market during the period of investigation.

Comment 6

The Department was correct in recomputing the cost of the production of Dongjin according to U.S. Generally Accepted Accounting Principles (GAAP) because the method used by Dongjin would not have reflected the variable and fixed costs of producing the merchandise. However, petitioner objects to the low value assigned to raw materials obtained by Dongjin upon takeover of the bankrupt Ilssin company.

DOC Position

Dongjin was formed to purchase Ilssin Steel, a company in bankruptcy and

controlled by its creditors. Included in the business purchase were inventory (raw material and finished goods), plant and equipment. The Department accepted the stated purchase price of the business, including inventory, because it was based on an independent appraisal of replacement cost. In accounting for the purchase, the company has recorded the sum of the cash payments and the nominal value of the notes as the cost or value of the assets; the accounting was in conformity with Korean GAAP. However, the accounting is not consistent with U.S. GAAP in that it does not capture the financial aspects of the purchase. The effect of using U.S. GAAP on the cost of production submitted by the respondent on the two markets and the concerned companies' own costs. In making would be a decrease in depreciation expense but a reflection of the financial aspects of the transaction. In this case, the method of accounting did not change the basis for our fair value comparisons.

Comment 7

The Department must make an adjustment for differences between the Korean galvanizing specifications and galvanizing specifications on export products and for differences in wall thickness for products sold in the two markets, pursuant to section 353.16 of Commerce Regulations.

DOC Position

We determine that an adjustment should be made for differences in the zinc standards. Respondents claim that the amount of zinc used on home market and U.S. products is the same because they perform hot-dipped galvanizing, a process which makes it difficult to control the amount of zinc applied to lighter coated products such as that sold in the home market. Respondent's data were not submitted in a manner to support these claims. Therefore, to adjust for differences in galvanizing, we used, as best information available, the different specifications for zinc application in the two markets and the concerned companies' own costs. In making this adjustment, we took into account differences in surface areas between products.

We also adjusted for certain differences in the wall thicknesses of home market products where they differed from the wall thicknesses of the U.S. products. In Certain Steel Pipes and Tubes from Japan (48 FR 1206), the Department made adjustments for certain differences in the dimensions of the compared products. Pipes and tubes whose size were within a plus or minus

ten percent variation in dimension were compared without adjustment, while adjustments were made where greater dimensional variation occurred. In keeping with the earlier case concerning pipes and tubes from Japan, we made adjustments in those instances.

Petitioner provided us with information to support their claim that production costs varied with differences in wall thicknesses, but these data were not presented in a way that demonstrated what those differences were. Since the data provided by the Korean companies did not break out the costs for such dimensional differences as wall thicknesses, we used as the best information available the relative relationships of the last published trigger prices for pipes and tubes of different wall thickness to adjust home market prices for wall thickness differences, according to section 776(b) of the Act.

Comment 8

Respondents' cost of production information contains inconsistencies that cast doubt on its credibility. Other than those discussed elsewhere, these issues include decreasing coil costs, decreasing labor costs, higher profits in the home market, higher general selling and administrative (GSA) expenses for export sales than for home market sales, the weight averaging of costs over two time periods and unexpected cost relationships between some products.

DOC Position

The Department was aware of petitioner's concerns and addressed all these issues during on site verification in Korea. Information supplied by respondents was checked against their internal records; some data were reallocated and resubmitted based on the cost accountants' findings.

Comment 9

In those cases where no product sold in the home market is identical or similar to a product sold to the United States, the Department should use third country sales, or given no third country sales, constructed value to represent the foreign market value. Likewise, if an insignificant quantity of a product exported to the U.S. is sold in the home market, comparison to that home market product should be avoided and constructed value should be used. The Department also should make comparisons on all products sold to the United States during the period of investigation.

DOC Position

Similar products are sold in the home market for all U.S. sales covered by this investigation. Adjustments for the any differences between products sold in the two markets were made as described elsewhere in this notice. In those cases where, for certain companies, only small quantities of a given size and type of any product existed in the home market, we examined their prices individually and found them to be representative when they were compared to the prices at which similar products were sold in larger quantities by the concerned company or the prices at which the same product was sold by the other pipe and tube producers. Therefore these products were used for comparison to U.S. sales.

With the exception of the sales of tube hollows, we made comparisons on all pipes and tubes sold to the United States during the period of investigation. While we believe tube hollows to be similar to the products in the home market being used for comparison purposes, we were not able to develop enough specific information to determine what, if any adjustments, should be made before making fair value comparisons. As tube hollows represent only 4.26 percent of the pipe and tube sales made during the investigative period, we decided not to include them in our comparisons for the final determination in this case.

Comment 10

The Department must ascertain whether the duty drawback adjustment claimed by the Korean producers was properly computed. Drawback receipts from exports of products outside the investigation should not be allocated to exports of pipe and tube products under investigation. Furthermore, no drawback should be claimed for export sales utilizing domestically produced flat rolled steel.

DOC Position

During on site verification, we ascertained the amount of drawback for which the five Korean companies were in fact eligible. Where the drawback claim was not calculated properly, we made changes in those figures; in all cases the amounts allowed were limited exclusively to exports of products under investigation. We traced both import licenses for coil and export permits for investigated pipe and tube directly to the drawback application. Where there was insufficient imported coil to cover an exported article, we verified that no duty drawback claim was made.

Comment 11

If Korean law limits promissory notes to a maximum of 90 days, then any additional time claimed by respondent for home market credit adjustments should be disallowed.

DOC Position

We are unaware of any Korean law limiting promissory notes to 90 days for financing in the home market. In the Final Results of Administrative Review on Bicycle Tires and Tubes from Korea (48 FR 26494 (1983)), we found that respondent companies had, in fact, received promissory notes for no longer than 90 days. We did not, however, find a law limiting promissory notes to 90 days for home market financing.

Respondent claimed credit expenses for home market sales on the basis of the time period between the shipment of the merchandise under investigation and the time the promissory note was paid. We verified that the respondent's information was accurate. We calculated credit expense by applying the appropriate short-term interest rate to the days outstanding between the date of shipment to the first unrelated purchaser and the date of payment by that purchaser. This credit expense is allowable as a circumstance of sale adjustment pursuant to 19 CFR 353.15(a) of our regulations.

Comment 12

The additional rebate granted by Pusan after the period of investigation and applied retroactively to the home market sales under investigation is not allowable as either a rebate or as a circumstance of sale adjustment.

DOC Position

Due to the obvious implications for administration of the antidumping law, in our sales comparisons, we are reluctant to reflect changes that are made subsequent to the initiation of an antidumping investigation, particularly when these changes would retroactively affect the sales prices of merchandise sold during the investigative period. The burden must be placed on respondent to demonstrate clearly that these changes are normal in the trade. While the pipe and tube producers generally offer rebates on home market sales of the investigated products, there is no evidence that retroactive rebates are a normal business practice. Therefore, we did not make the requested adjustment.

Comment 13

Due to Union's inability to provide cost of production information on a size-by-size basis, the Department should use constructed value as the foreign

market value for comparison with U.S. purchase price.

DOC Position

In the investigation of lightweight polyester filament fabrics from Korea (48 FR 49679 (1983)), we requested and the respondent companies provided individual costs of production for each fabric under investigation. At issue in that case was whether respondents' methods for allocating costs were reasonable. Ultimately, the Department accepted respondents' methods as being the most reasonable methods available.

By contrast, in this case, Union did not provide its cost of production on a size-by-size basis as requested by the Department. Therefore, we used as the best available information data provided by three companies being investigated other than Union, to allocate Union's labor and factory overhead costs on a size-by-size basis. We calculated the average relative difference between sizes from information provided by the three other companies. We then allocated Union's costs using the relative cost difference between sizes.

*Respondent's Comments**Comment 1*

Respondents used weighted-average costs of hot-rolled coil pursuant to the "consistent policy directives" of the Department of Commerce; i.e., that weighted average costs are to be used rather than separate costs of production for domestic and export goods where domestic and export cost differences are not directly attributable to differences in physical characteristics of the merchandise.

In its policy papers, the Department interprets the cost of production and constructed value sections of the law as referring to "generic" merchandise, not specific items in every case, for two reasons: (1) The statute would be distorted if producers could be found to be selling below cost where the average cost of producing goods of the generic type is less than the price of the home market product and (2) the Department's policy paper notes, if the Department utilized separate costs for domestic and export, it would be contrary to the interpretation provided in section 353.16 of Department Regulations concerning differences in physical characteristics of similar merchandise. The petitioner has not offered sufficient legal or policy justifications to overturn the Department's rulings.

DOC Position

See DOC Position to Petitioner's Comment 1.

Comment 2

Dongjin's treatment of the transaction in its accounting records was in conformity with Generally Accepted Accounting Principles (GAAP) in Korea, and that accounting treatment required by Korean law. The legislative history of the 1973 Trade Reform Act does not deal with the situation where foreign tax law mandates equal accounting treatment throughout all sectors of the economy for a certain occurrence. The Department would be violating "its own fundamental precept" by restructuring Dongjin's costs in accordance with GAAP.

Position

See DOC Position to Petitioner's Comment 2.

Comment 3

With respect to the transaction described above, the Department should not use the discount rate of 10 percent, but rather should use 5.78 percent, the interest rate POSCO provisionally negotiated with the Bank in an "arms-length" transaction. The 10 percent rate governs only short-term commercial loans by banks.

DOC Position

We did not use the 5.78 percent provisional interest rate because it was never adopted or applied. The bank instead insisted that all payments be considered principle. The rate used by the Department to record the financial aspect of this transaction is one known from a review of the company's books and records to be incurred by Dongjin on other than short-term financing.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we instructed the U.S. Customs Service to suspend liquidation of all entries of CWPT from Korea, which were entered, or withdrawn from warehouse for consumption on or after October 28, 1983, with the exception of CWPT produced by Dongjin and Hyundai (48 FR 49900 (1983)).

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 be suspended for Hyundai, and will continue to be suspended for Pusan and KSP. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin

amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The companies excluded from this determination are identified by an asterisk (*) in the chart below. The weighted-average margins are as follows:

Manufacturers/producers/exporters	Weighted-average margins (percent)
Union Steel Mfg. Co., Ltd.	*0.24
Pusan Steel Pipe Co., Ltd.	0.76
Hyundai Steel Pipe Co., Ltd.	1.35
Korea Steel Pipe Co., Ltd.	2.13
Donglin Steel Co., Ltd.	*0.22
All Other Manufacturers/Producers/Exporters	1.04

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final 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 on whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all 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 an antidumping order, directing Customs officers to assess an antidumping duty on CWPT from Korea entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: March 12, 1984.

William T. Archey,
Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-7143 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-563-008]

Certain Welded Carbon Steel Pipes and Tubes From Taiwan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain welded carbon steel pipes and tubes from Taiwan are being sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening to materially injure, a United States industry. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after October 28, 1983, in accordance with our preliminary determination, and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin, as described in the "Suspension of Liquidation" section of this notice. Those firms which are subject to the suspension of liquidation are indicated in the "Suspension of liquidation" section of this notice.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Agreements Compliance Division, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; Telephone: (202) 377-4036.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that certain welded carbon steel pipes and tubes (CWPT) from Taiwan are being sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673). The dumping margins for the firms investigated are indicated in the "Suspension of Liquidation" section of this notice.

Case History

On April 21, 1983, we received a petition filed by counsel for the Committee on Pipe and Tube Imports (CPTI). The CPTI represents the following domestic manufacturers of CWPT: Allied Tube and Conduit Corp., American Tube Co., Inc., Bull Moose

Tube Co., Copperweld Tubing Group, Kaiser Steel Corp., Merchants Metals, Inc., Pittsburgh-International, Southwestern Pipe Inc., and Western Tube and Conduit. In accordance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that CWPT from Taiwan are being, or are likely to be sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on May 11, 1983 (48 FR 22179). On June 6, 1983, the ITC preliminarily determined that there is a reasonable indication that imports of CWPT are materially injuring a United States industry.

The petitioner alleged that at least 16 Taiwanese companies produce CWPT for export to the United States. However, we identified three producers and exporters that account for approximately 95 percent of the exports to the United States. Questionnaires were presented in Taiwan to these producers and exporters on June 7, 1983. On July 5, 1983, we received a letter from counsel for the Taiwan CWPT producers and exporters requesting additional time in which to respond because of the lack of computer capability and the complexity of the responses. We granted an extension and, on July 13, 1983, we received a response from Kao Hsing Chang Iron & Steel Corporation (KHC). On July 23, 1983, we received responses from Tai Feng Industries, Inc. (TFI) and Yieh Hsing Enterprise Co., Ltd. (YH).

The preliminary determination in this investigation was scheduled for September 28, 1983. Pursuant to section 733(c)(1)(A) of the Act, we subsequently postponed the preliminary determination, at the request of the petitioner, to no later than October 24, 1983 (48 FR 41055).

On October 24, 1983, we made a preliminary determination that CWPT from Taiwan are being, or are likely to be sold in the United States at less than fair value (48 FR 49902). Our preliminary determination was based on the best information available, in accordance with Section 776(b) of the Act. This section of the Act states that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, the

Commerce Department may use the best information otherwise available for determining if sales have been made at less than fair value. We did so with respect to all respondents, for the following reasons. We presented the questionnaires to respondents on June 7, 1983. The responses were due no later than July 7, 1983. Subsequently, at the request of the respondents, we granted an extension to July 13, 1983. On August 25, 1983, we cautioned counsel for the respondents that we might not be able to use the information contained in the responses for the preliminary determination if they were not amended to include data, by size, of pipes and tubes sold in the home market and in the United States. We considered size data essential because the unit prices of pipes and tubes vary by size. On September 2, 1983, we gave written notices to counsel for the respondents that the data requested on August 25, 1983, would have to be submitted no later than September 9, 1983, in order to be used for the September 28, 1983, preliminary determination. On September 8, 1983, we notified counsel for the respondents that the preliminary determination had been postponed until no later than October 24, 1983, and that the requested information has to be submitted no later than September 26, 1983, in order to be used for the preliminary determination. On September 22 and September 29, 1983, counsel for the respondents submitted responses to the Department's request for information. However, information by size on home market and United States sales of pipes and tubes were not included.

On September 29, 1983, we gave written notice to counsel for the respondents that the information requested would have to be submitted by October 14, 1983, in order to be verified for use in our final determination and that absent a timely and adequate response, we might base our final determination on the best information otherwise available.

Responses in acceptable form were received from TFI and YH on October 12, 1983. On November 8, 1983, KHC requested postponement of our final determination and an extension of time to supply the Department with an acceptable response to our questionnaire. On November 29, 1983, KHC filed an acceptable response to our questionnaire. On November 30, 1983, pursuant to section 735(c)(2)(A) of the Act, we postponed our final determination to no later than March 12, 1984 (48 FR 54526).

We held a hearing on February 14, 1984, to allow the parties an opportunity to address the issues.

Scope of Investigation

The merchandise covered by this investigation is certain welded carbon steel pipes and tubes, which are defined for purposes of this proceeding as: welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inches, and 0.375 inches or more but not over 4.5 inches in outside diameter, provided for in items 610.3231, 610.3232, 610.3241 and 610.3244 of the *Tariff Schedules of the United States Annotated* (TSUSA).

When this investigation was initiated, the scope of the investigation also included welded carbon steel pipes and tubes of rectangular (including square) cross section, provided for in TSUSA items 610.3955 and 610.4975. However, in its preliminary determination, the ITC found that there was no reasonable indication that imports of welded rectangular pipes and tubes were materially injuring, or were threatening to materially injure, a United States industry. Accordingly, we terminated our investigation on these products.

Since the three respondents produced and exported over 95 percent of the CWPT exported to the United States during the period of this investigation, we limited our investigation to them. We investigated sales of CWPT by these respondents during the period from November 1, 1982, to April 30, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by KHC, TF, and YH because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the packed f.o.b., c. & f., or c.i.f. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling charges, bank charges, ocean freight, marine insurance and stamp tax. We added back to the U.S. price the amount of import duties rebated or not collected which had been assessed upon the importation of the raw materials used in the production of CWPT, in accordance with section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales.

For two companies, YH and TF, we used the best information available, in accordance with section 776(b) of the Act, because verification of these companies' responses to our questionnaire revealed discrepancies which rendered the home market sales prices unreliable. The "Supplemental Information" section of this notice contains a full discussion of the reasons for using the best information available. The best information available for purposes of this determination is the information contained in the petition. This information consists of average Taiwanese home market prices for steel pipes and tubes. From these prices we deducted, where appropriate, figures for inland freight and stamp, education and business taxes which we were able to verify for YH. We also made an adjustment for YH's verified indirect selling expenses in the home market used as an offset to U.S. commissions, in accordance with § 353.15(c) of the Commerce Regulations. The average Taiwanese home market prices which we are using as a basis for YH's and TF's foreign market values do not include packing cost. We added the cost of U.S. packing pursuant to Section 773(a)(1) of the Act.

We used home market prices for KHC as a basis for foreign market value. From those prices we deducted, where appropriate, inland freight and stamp, education and business taxes. We made an adjustment, where appropriate, for commissions directly related to sales to unrelated parties, and for differences between U.S. and home market credit costs, in accordance with § 353.15(a) of the Commerce Regulations. We also deducted home market packing cost and added the cost of U.S. packing, pursuant to 773(a)(1) of the Act.

Supplemental Information

In performing the on-site verification in accordance with section 776(a) of the Act, our investigators found discrepancies in the reports of home market sales in the responses of two firms, YH and TFI. Those discrepancies, in quantity of sales and in product description, were of sufficient magnitude to disqualify the use of the home market data in our calculations of dumping margins. In the case of YH, we found that the quantities reported were incorrect because of off-specification pipe being shown as standard weight in a significant number of cases. We were,

however, able to verify YH's inland freight, and stamp, education and business taxes, and indirect selling expenses because the freight expenses are based on correct quantities and the stamp, education and business taxes and the indirect selling expenses were calculated as percentages of the verified value of the merchandise sold in the home market. In the case of TFI, we were unable to relate the reported sales with the proofs of delivery of the pipe. We were consequently unable to verify the total quantity of sales or any of the claimed adjustments to the home market prices.

Verification

In accordance with section 776(a) of the Act, we verified the respondent's data by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and selected documents containing relevant information.

Petitioner's Comments

Comment 1

The Department cannot use the home market sales prices submitted in the questionnaire responses by YH and TF because they were unverifiable. The Department should use the information supplied by the American Institute in Taiwan as the best information available. Furthermore, since the Department was unable to verify the quantity of home market sales for either YH or TFI, it must deny all claimed adjustments to home market prices because they are quantity-based, and, therefore, unverifiable.

DOC Position

We agree, in part for the reasons set forth in the "Supplemental Information" section of this notice.

Comment 2

The Taiwanese manufacturers should not be given adjustments to U.S. sales prices for duty rebates. The Department has not received official documents from the Taiwanese Customs authorities issued to the Taiwanese companies which are verifiable and establish that import duties have either been paid in cash by the importers or debited in an account for the imports. Furthermore, the Department should not grant the claimed rebates since they have not, as yet, been paid.

DOC Position

We have verified in several previous investigations that the Taiwanese duty rebate system operated in a manner which permitted adjustment of the U.S.

prices pursuant to section 772(d)(1)(B) of the Act. See, e.g., *Carbon Steel Plate from Taiwan*, Notice of Determination of Sales at LTFV, (44 FR 9639 (1979)); *Motorcycle Batteries from Taiwan*, Final Determination of Sales at LTFV, (47 FR 9264 (1982)); *Bicycle Tires and Tubes from Taiwan*, Final Determination of Sales at Not LTFV, (48 FR 19437 (1983)); *Bicycles from Taiwan*, Final Determination of Sales at LTFV, (48 FR 31688 (1983)); *Color televisions from Taiwan*, Final Determination of Sales at LTFV, (49 FR 48490 (1984)).

While we did verify that import duties were, in fact, imposed upon imports or debited in an account for the importers, our verification initially raised some questions as to the operation of the Taiwanese duty rebate system with respect to imported steel coil, because the Taiwanese Customs authorities temporarily suspended the granting of duty rebates to all Taiwanese pipe and tube manufacturers. Subsequent to our verification, Taiwanese Customs confirmed in writing that they had established that Taiwanese pipe and tube manufacturers were entitled to duty rebates and would be receiving those rebates or credits in the near future. The documents provided by Taiwanese Customs showing approval of duty rebates correspond to the documents gathered by the Department during its on-site verification of the pipe and tube companies' records.

Comment 3

The receipt of checks from operating customer companies which are subsequently dishonored by a bank is not sufficient to write off those accounts receivable as a bad debts. Therefore, the adjustment to home market sales prices claimed by KHC for bad debt expenses must be denied.

DOC Position

We agree. Without additional information demonstrating that the payments in question will remain uncollected, a circumstance of sale adjustment is not allowable simply because a check is returned for lack of sufficient funds and the company registers such failures to pay in its accounting records.

Respondents' Comments

Comment 1

The claimed duty rebate adjustment is lawful and proper.

DOC Position

We agree. See the discussion at petitioner's comment 2.

Comment 2

The Department is required to use the resubmitted home market sales data of YH that was submitted in corrected form after the verification.

DOC Position

We disagree. During the course of our verification, we discovered YH was selling pipe and tube of nonstandard specification. However, in its questionnaire response, YH reported standard weights. Had the Department not uncovered this discrepancy, a serious understatement of the weight of the pipe sold and the resulting overstatement of the sales price and adjustments to sales price in the home market would have occurred. After having been discovered in these incorrect statements, the company submitted amendments to its response to our questionnaire and requested a reverification. The purpose of verification is to confirm the information submitted by a respondent. If, during the course of verification we discover a systematic misstatement of the facts which would materially alter our conclusions, we are fully justified in using petitioner's data in making our determination.

Comment 3

The bad debt adjustment claimed by respondents is lawful and proper.

DOC Position

We disagree. See the discussion at petitioner's comment 3.

Comment 4

Home market sales prices should be adjusted regarding the stamp tax, education surtax, and business tax.

DOC Position

We agree, in part, and have adjusted the home market selling price for YH and KHC, for whom we verified this information.

Comment 5

The preliminary margin was an unlawful penalty.

DOC Position

We disagree. As stated in our notice of preliminary determination of sales at less than fair value and the "Case History" section of this notice, respondents were given numerous opportunities over many months to submit acceptable responses. When the information was finally furnished, it was too late to be included in the preliminary determination. This action left us no choice but to use the best information

available, which was the petitioner's data.

Comment 6

The present investigation was not lawfully instituted.

DOC Position

We disagree. As outlined in our initiation memorandum and notice of initiation (48 FR. 22179), the petition and subsequent information filed by the petitioner on May 4, 1983, satisfied our rules and regulations covering initiation of an antidumping investigation.

Comment 7

Respondents should have a further opportunity to comment because of the unrealistic preliminary determination and the rescheduling of the verification trip.

DOC Position

We disagree. Our actions which seem unfair to respondents resulted from the respondents' own conduct. We properly notified respondents of the last day we could take into account information in making our preliminary determination. Further, in most respects this was a simple price to price antidumping investigation with no unusual claims for adjustments. A change in the date of verification should not inconvenience a respondent who submits correct information.

Our discovery of certain gross discrepancies in the responses of YH and TFI a month earlier would not have affected the results of this investigation with respect to those companies. On October 12, 1983, YH and TFI did submit adequate questionnaire responses. However, at issue is not the adequacy of these submissions but rather the extent of their accuracy. YH's and TFI's home market sales information was sufficiently inaccurate to make its use impossible in our final determination.

Comment 8

Determination of home market prices for TFI sales must be based on information supplied by the respondents.

DOC Position

We disagree. During the course of the verification, we discovered that TFI had reported incorrect quantities of pipe and tube sold in its home market. After attempting to reconcile the response with company records, we were forced to end our attempt to verify TFI's response. Had we not uncovered this misstatement, serious distortion of home market prices would have occurred.

The purpose of verification is to confirm the information submitted by respondents. If, during the course of verification, we discover a systematic misstatement of the facts which would materially alter our conclusions, we are fully justified in using petitioner's data in making our calculations.

Comment 9

Foreign market value should be based on verified price lists and discount worksheets for TFI.

DOC Position

We disagree. We have no way to know how much tonnage was sold at the list prices, nor how much discount individual customers received. Petitioner's data with appropriate adjustments is the best information available.

Comment 10

The Department should use the weighted average of the other two respondents or treat TFI as "all other manufacturers, producers, exporters."

DOC Position

We disagree. We investigated TFI. It alone controlled the timing and quality of information to be submitted for our use in determining whether sales had occurred at less than fair value.

Comment 11

The Department should adjust TFI's home market sales for inland freight, interest, and entertainment expenses.

DOC Position

We disagree. The claimed adjustments were allocated according to quantity, which we were unable to verify.

Comment 12

The Department should use U.S. sales prices supplied by TFI and should adjust them for rebated duties, stamp and business taxes, ocean freight, export charges, and other charges.

DOC Positions

We agree. We verified U.S. sales prices and adjustments and have used them in our calculations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, at the time of our preliminary determination we directed the United States Customs Service to suspend liquidation of all entries of certain welded carbon steel pipes and tubes from Taiwan. This suspension of liquidation applied to all merchandise entered, or withdrawn from warehouse,

for consumption on or after October 31, 1983. As of the publication of this notice, the Customs Service shall require a cash deposit equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/producers/exporters	Weighted-average margins (percent)
Kao Hsing Chang	9.7
Tai Feng	43.7
Yieh Hsing	38.5
All others	9.7

ITC Notification

In accordance with section 735(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 are materially injuring, or are threatening to materially injure, a United States industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all 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 an antidumping order, directing Customs offices to assess an antidumping duty or CWPT from Taiwan entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Dated: March 12, 1984.

William T. Archey,
Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-7144 Filed 3-15-84; 8:45 am]
BILLING CODE 3510-DS-M

[A-475-031]

Large Power Transformers From Italy; Revised Preliminary Results of Administrative Review of Antidumping Finding and Intent To Revoke in Part

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Revised Preliminary Results of Administrative Review of Antidumping Finding and Intent to Revoke in Part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on large power transformers from Italy. The review covers two of the three known exporters of this merchandise to the United States currently covered by the finding, Italtrafo and Tecnomasio Italiano Brown Boveri, and consecutive periods from May 15, 1975 through May 31, 1983.

As a result of the review, because Italtrafo's responses to requests for information were inadequate, the Department has preliminarily determined to use the best information available for assessment and estimated antidumping duties cash deposit purposes for this firm. The best information available indicates the existence of dumping margins during the periods of review. With respect to Tecnomasio Italiano Brown Boveri, the Department intends to revoke the antidumping finding.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Carol Mitchell or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1972, the Treasury Department published in the *Federal Register* (37 FR 11772) an antidumping finding with respect to large power transformers from Italy.

On January 1, 1980, the provisions of title I of the Trade Agreements Act of 1979 became effective. Title I replaced the provisions of the Antidumping Act of 1921 ("the 1921 Act") with a new title VII to the Tariff Act of 1930 ("the Tariff Act"). On January 2, 1980, the authority for administering the antidumping duty law was transferred from the Department of the Treasury to the Department of Commerce ("the Department"). On March 28, 1980, the Department published in the *Federal*

Register (45 FR 20511-12) a notice of intent to conduct administrative reviews of all outstanding dumping findings.

On April 13, 1982, the Department published in the *Federal Register* (47 FR 15820) preliminary results of its review and a tentative determination to revoke in part. The Department preliminarily postponed any appraisal pending receipt of more specific information from two firms, and tentatively determined to revoke with regard to the third firm. Interested parties were given an opportunity to comment and to request a hearing.

Subsequently, the Department requested the additional information from the two firms. The Department is now revising its preliminary results for one of the two firms. The substantive provisions of the 1921 Act and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980. We will cover the other firm in a separate notice. For the third firm currently covered by the finding, we now intend to revoke the finding in part.

Scope of the Review

Imports covered by the review are shipments of large power transformers ("transformers"), that is, all types of transformers rated 10,000 KVA (kilovolt-amperes) or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electric power. The term "transformers" includes, but is not limited to, shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers. Not included are combination rectifier-transformer units, commonly known as rectifiers, if the entire integrated assembly is imported in the same shipment and entered on the same entry and the assembly has been ordered and invoiced as a unit, without a separate price for the transformer portion of the assembly. Transformers covered by this finding are currently classifiable under items 682.0765 and 682.0775 of the Tariff Schedules of the United States Annotated.

The review covers two of the three known exporters of Italian large power transformers to the United States currently covered by the finding, Italtrafo (now known as Ansaldo Componenti, S.p.A.) and Tecnomasio Italiano Brown Boveri, S.p.A., and consecutive periods from May 15, 1975 through May 31, 1983. The third firm, that will be covered in a separate notice, is Industrie Elettiche di Legnano.

Italtrafo failed to provide an adequate response to requests for information. For this firm the Department used the best

information available to determine the assessment and estimated antidumping duties cash deposit rates.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for Italtrafo (now Ansaldo Componenti, S.p.A.):

Period	Margin (percent)
May 15, 1975 to Sept. 20, 1976.....	9.00
Sept. 21, 1976 to Nov. 22, 1980 ¹	9.00
Nov. 23, 1980 to May 31, 1983.....	87.31

¹ No shipments during the period.

As a result of the review, the Department intends to revoke the finding with respect to Brown Boveri. This firm has not exported Italian large power transformers to the United States since the date of the finding, and there are no known unliquidated entries for this firm. As provided for in § 353.54(e) of the Commerce Regulations, Brown Boveri has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding if circumstances develop which indicate that Italian large power transformers produced by Brown Boveri and thereafter imported into the United States are being sold at less than fair value. If this revocation is made final with respect to Brown Boveri, it will apply to all unliquidated entries of large power transformers produced by Brown Boveri and entered, or withdrawn from warehouse, for consumption on or after April 13, 1982, the date of our tentative determination to revoke.

Interested parties may submit written comments on these revised preliminary results and intent to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication of the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service.

Further, as provided for by section 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping

duties based upon the most recent of the above margins shall be required on all shipments of large power transformers from Italtrafo (now known as Ansaldo Componenti, S.p.A.). For any future entries from a new exporter not covered in this or prior reviews, whose first shipments of large power transformers occurred after May 31, 1983 and who is unrelated to any reviewed firm, a cash deposit of 87.31 percent shall be required. For Legnano we shall not require a cash deposit of estimated antidumping duties until we complete our administrative review of the firm. These deposit requirements shall be effective for all shipments of Italian large power transformers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: March 8, 1984.

Alan F. Holmer,
Deputy Assistant Secretary for Import
Administration.

[FR Doc. 84-7121 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-010]

Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that rectangular welded carbon steel pipes and tubes (RWPT) from the Republic of Korea (Korea) are being sold in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determination, and the ITC will determine, within 45 days of publication of this notice, whether imports are materially injuring, or are threatening to materially injure, a U.S. industry. We have directed the U.S. Customs Service to continue to suspend the liquidation of entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after October 31, 1983, in accordance with our preliminary determination, and to require a cash deposit or bond for each such entry in an amount equal to the

estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Terry Link, 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) 377-0189.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that RWPT from Korea are being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673). The margin for the firm investigated, Union Steel Mfg. Co., Ltd. (Union), is indicated in the "Suspension of Liquidation" section of this notice.

Case History

On July 14, 1983, we received a petition filed by counsel for the Committee on Pipe and Tube Imports (CPTI). The CPTI represent the following domestic manufacturers of RWPT: Allied Tube and Conduit Corp.; American Tube Co., Inc.; Bull Moose Tube Co.; Copperweld Tubing Group; Kaiser Steel Corp.; Merchants Metals, Inc.; Pittsburgh-International; Southwestern Pipe, Inc.; and Western Tube and Conduit. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that RWPT from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a United States industry.

A questionnaire was presented to Union on August 4, 1983. Union, a producer of the subject merchandise, accounts for approximately 97 percent of the exports to the United States during the period of investigation. The response was received on September 12, 1983. A supplemental questionnaire was sent to counsel for Union on September 16, 1983, and the response was received on September 28, 1983.

On October 18, 1983, the petitioner alleged that home market sales of RWPT are being made at less than the cost of production in Korea. We presented a cost of production questionnaire to Union on October 21, 1983, and received a response on November 22, 1983.

On October 24, 1983, we made a preliminary determination that RWPT are being, or are likely to be, sold in the

United States at less than fair value (48 FR 50132). After receiving a request from Union, who accounts for approximately 97 percent of the exports of RWPT to the United States, on November 28, 1983, we postponed the final determination until not later than March 14, 1984 (48 FR 54390), in accordance with section 735(a)(2)(A) of the Act.

We held a hearing on February 6, 1984, to allow the parties an opportunity to address the issues.

Scope of Investigation

The merchandise covered by this investigation is certain rectangular welded carbon steel pipes and tubes, which are defined for purposes of this proceeding as: welded carbon steel pipes and tubes, of rectangular (including square) cross section, currently provided for in items 610.3955 and 610.4975 of the *Tariff Schedules of the United States Annotated* (1983).

We investigated sales of RWPT by Union during the period from February 1-July 31, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Union, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the packed f.o.b., c.i.f., c. & f., or ex-dock duty paid price. We made deductions, where appropriate, for Korean inland freight, ocean freight, marine insurance, foreign brokerage and handling, U.S. brokerage and handling, and U.S. duty.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales.

Petitioners alleged that sales of RWPT in the home market were at prices below the cost of producing RWPT. We examined production costs, which included all appropriate costs for materials, fabrication, and general expenses. Sales below the cost of production were found to be made by Union. Where sales of the merchandise under investigation were made over an extended period of time and in substantial quantities, and were at

prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade, we disregarded these sales in our analysis, in accordance with section 773(b) of the Act. For Union, we found that sufficient sales of RWPT were made at or above the cost of production. Therefore, we used those sales in determining foreign market value.

We calculated home market prices based on c. & f. or ex-factory, packed prices on merchandise to unrelated distributors. From these prices we deducted, where appropriate, inland freight and rebates. We made a circumstances of sale adjustment for differences between U.S. and home market credit costs, in accordance with section 353.15 of the Commerce Regulations. We also deducted home market packing cost and added the cost of U.S. packing, pursuant to 773(a)(1) of the Act.

We disallowed respondent's claim for a circumstances of sale adjustment for after-sale warehousing in calculating foreign market value. Since respondent was not able to demonstrate that the warehousing occurred after the sale of the subject merchandise, we cannot consider such warehousing to be a circumstance which bears a direct relationship to the sales under consideration, as required by § 353.15 of the Commerce regulations.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making this determination by using standard verification procedures, including on-site inspection of the manufacturer's operations and examination of accounting records and selected documents containing relevant information.

Results of Investigation

We made fair value comparisons on 100 percent of U.S. sales reported by Union. We have found that the foreign market value of RWPT exceeded the U.S. price on 31.62 percent of the sales we compared. These margins ranged from 0.05 percent to 10.43 percent. The weighted-average margin on all sales compared is 1.47 percent. The weighted-average margin for Union is presented in the "Suspension of Liquidation" section of this notice.

Petitioner's Comments

Comment 1. Due to respondent's inability to provide cost of production information on a size-by-size basis, the Department should use constructed value as the foreign market value for comparison with U.S. purchase price.

DOC Position. In conjunction with our parallel investigation of circular pipe and tube from Korea, we gathered information from three companies under investigation that allowed us to allocate labor and factory overhead costs on a size-by-size basis for Union. Based on this information, we were able to allocate Union's costs to the different sizes of the product under investigation. Therefore, we used this information as the best available information to determine the method of allocating Union's costs.

Comment 2. Respondent's cost of production information contains inconsistencies that cast doubt on its credibility. These include a decreasing coil cost, higher GSA expenses for export sales than for home market sales, and lower scrap weights than other manufacturers.

DOC Position. We were aware of these issues prior to verification and addressed them as verification. The information supplied by respondent was checked against its internal records; some data were reallocated and resubmitted based on the cost accountant's findings.

In particular, we carefully examined all scrap rates and recoveries during verification. We verified respondent's data on yields, scrap recoveries, and valuation (scrap credits). Moreover, in accordance with our request, Union reallocated its scrap costs at verification to reflect only those incurred on primary production, rather than primary and secondary production.

Comment 3. POSCO, the Korean steel producer which supplies the coil used to produce the merchandise under investigation maintains a two-tiered pricing system. It sells coil for eventual domestic consumption at higher prices than coil which will be processed and exported. This allows it to compete with imported coil which benefits from the receipt of duty drawback. The cost of producing the merchandise under investigation must be calculated only on the basis of the higher coil costs incurred by the respondent pipe and tube manufacturers in producing for domestic consumption. Since the Department is required by law to exclude from constructed value the amount of any taxes or duties imposed on raw materials which are rebated upon exportation of the merchandise to the U.S., it would, conversely, include any taxes or duties assessed upon imported raw materials used in producing the merchandise sold in the home market in computing the cost of producing that merchandise. It follows, therefore, that the same methodology should apply in the instant case to the

different costs of raw materials under the dual pricing system maintained by POSCO.

DOC Position. Section 773(b) of the Act requires us in appropriate circumstances, to determine whether home market sales have been made at less than the cost of producing the merchandise in question. Section 353.7(b) of our regulations (19 CFR 353.7(b)), in interpreting and applying the Act, requires the cost of production be computed on the basis of the "costs of materials, labor, and general expenses, excluding profit incurred in producing such or similar merchandise." (emphasis added)

Similarly, section 773(c)(1) of the Act requires us, in calculating constructed value, to use "the cost of materials * * * and of fabrication or other processing of any kind employed in producing such or similar merchandise * * *." (emphasis added) The phrase "such or similar merchandise", in turn, is defined in section 771(16) of Act (in relevant part to this issue as) " * * * merchandise which is the subject of the investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise."

Consequently, where there are different costs associated with producing merchandise produced for export as compared with merchandise produced for domestic sale and the merchandise is physically identical, we have used the average cost of producing that merchandise in calculating cost of production or constructed value.

Finally, we disagree with petitioner that duties are excluded from the cost of materials in a constructed value calculation. Section 773(e)(1) of the Act and § 353.6(a)(1) of the Commerce regulations exclude only certain internal taxes from the cost of materials in a constructed value context.

Since the law makes no distinction between the cost of materials with respect to whether those costs include duties, petitioner's argument in this regard is inapposite to the question of whether we should segregate the costs of raw materials in calculating either constructed value or cost of production.

Comment 4. The Department was correct when it preliminarily determined that home market sales of A-500 tubing should not be included for the purpose of determining foreign market value. The Department should maintain this position for its final determination.

DOC Position. We agree. See DOC Position to Respondent's Comment 5.

Comment 5. If Korean law limits promissory notes to a maximum of 90

days, then any additional time claimed by respondent for home market credit adjustments should be disallowed.

DOC Position. We are unaware of any Korean law limiting promissory notes to 90 days for financing in the home market. In the Final Results of Administrative Review on Bicycle Tires and Tubes from Korea (48 FR 26494 (1983)), we found that respondent companies had, in fact, received promissory notes for no longer than 90 days. We did not, however, find a law limiting promissory notes to 90 days for home market financing.

Respondent claimed credit expenses for home market sales on the basis of the time period between the shipment of the merchandise under investigation and the time the promissory note was paid. We verified that respondent's information was accurate. We calculated credit expense by applying the appropriate short-term interest rate to the days outstanding between the date of shipment to the first unrelated purchaser and the date of payment by that purchaser. This credit expense is allowable as a circumstance of sale adjustment pursuant to 19 CFR 353.15(a) of our regulations.

Comment 6. If the Department compares home market sales to an average cost of production and there are not sufficient sales above the cost of production of a particular size, than the foreign market value to be compared with the U.S. price for the same size should be the constructed value.

DOC Position. We did not compare home market sales to an average cost of producing pipes and tubes. We computed the cost of production for each size of pipe and tube under investigation. See our position in response to Petitioner's Comment 1.

Comment 7. Respondent has artificially raised the prices of both KSD3568 and A-500 tubing by converting feet prices to ton prices on a supposed actual basis for price comparisons. The Department should only compare prices of those products based on the standards established by Korean and ASTM specifications.

DOC Position. Respondent provided cost of production information and home market sales based on actual weight per meter. It provided U.S. sales on the basis of standard weight per foot and provided information by which we could convert the standard weight to actual weight. We verified that the information provided by respondent, including the conversion factors, was accurate. In determining unit prices, it is essential that we use the same weight bases. Therefore, we converted the weight for

each U.S. sale from standard weight to actual weight.

Respondent's Comments

Comment 1. Respondent prepared its cost of production data on the basis of weighted-average cost of hot-rolled coil. This is pursuant to the consistent policy directives of the Department that weighted-average costs are to be used, rather than separate costs of production for domestic and export goods, where there are no cost differences attributable to differences in physical characteristics of the merchandise.

DOC Position. See DOC Position to Petitioner's Comment 3.

Comment 2. Respondent does not allocate its costs on a size-by-size basis and it was unable to do so for purposes of this investigation. It is the Department's policy to rely on the verified cost data of the investigated company, even where relatively unsophisticated companies are unable to subdivide costs on a product specific basis. In its recently concluded investigation involving lightweight polyester fabric from Korea, the Department required and verified specific cost allocations where possible. But the Department also noted that, in certain cases, further allocation of costs was not possible based upon the books and records of the companies in question. The Department accepted these companies' methods as being reasonable methods. Similarly, the Department should not reject a company's cost of production information where, as here, it is unable to further refine that information.

DOC Position. In the investigation of lightweight polyester filament fabrics from Korea (48 FR 49679 (1983)), we requested and the respondent companies provided individual costs of production for each fabric under investigation. At issue in that case was whether respondents' methods for allocating costs were reasonable. Ultimately, the Department accepted respondents' methods as being the most reasonable methods available.

By contrast, in this case, respondent did not allocate its cost of production on a size-by-size basis as requested by the Department. The only processing difference between rectangular, including square, and circular pipe and tube is that rectangular products go through one further processing step where they are formed to their final rectangular shape. Due to this similarity in production processes for the two types of products, we used information provided by three companies being investigated, other than Union, in the parallel investigation of circular pipes

and tubes to allocate Union's labor and factory overhead costs on a size-by-size basis. We calculated the average relative difference in cost between different sizes from information provided by the three companies. We then allocated Union's costs using the average relative cost difference between sizes.

Comment 3. Respondent is unaware of the Korean law limiting promissory notes to 90 days, but states that the terms extended to customers in Korea were verified precisely. Since there is no information in the record of this investigation which indicates that the credit expenses incurred by Union were anything other than those verified by the Department, the Department must use the actual terms of credit provided and verified in making the appropriate circumstance of sale adjustment.

DOC Position. See DOC Position to Petitioner's Comment 5.

Comment 4. In accordance with the Department's request, Union has reallocated its costs to reflect only those incurred on primary production rather than primary and secondary production. After reallocating its costs, respondent does not believe that its scrap rate was significantly lower than that of any other company.

DOC Position. See DOC Position to Petitioner's Comment 2.

Comment 5. Respondent maintains that home market sales of A-500 tubing are not overrun production. Respondent claims that A-500 is sold to order just as other square and rectangular tubing is sold to order.

DOC Position. Pipe and tube products are produced according to country-specific engineering specifications, which may differ from country to country. Normally, when pipes and tubes are produced according to the engineering standards of a particular country, those products are all exported to that country to satisfy specific customer orders. It is not customary commercial practice for a pipe and tube producer to manufacture products according to the engineering specifications of another country in excess of the quantities for which that producer had received orders. Therefore, to the extent that a company under investigation sells products in the home market manufactured according to foreign engineering specifications and cannot demonstrate that they were made to satisfy a home market customer's order, we consider these products to be production overruns not sold in the ordinary course of trade.

At verification we asked respondent for documents and/or information to

show that home market sales of A-500 tubing were made to order and not sold as product overruns. Respondent was not able to provide documents showing that A-500 tubing sold in the home market was made to order. Therefore, we determine that the home market sales of A-500 tubing were not made in the ordinary course of trade, pursuant to section 353.3(a)(2) of the Commerce regulations, and we have not included these sales in our determination of foreign market value.

Comment 6. In order to make appropriate comparisons, the weight for each U.S. sale should be converted to actual weight from the standard weight in which it was reported, since home market sales were reported by actual weight. The purpose for the conversion is quite simply so that comparisons can be made on the basis of "apples to apples."

DOC Position. See DOC Position to Petitioner's Comment 7.

Suspension of Liquidation

In accordance with section 733 (d) of the Act, on October 31, 1983, we instructed the U.S. Customs Service to suspend liquidation of all entries of RWPT from Korea, which were entered, or withdrawn from warehouse, for consumption.

As of the date of publication of this notice in the *Federal Register*, the Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturers/producers/exporters	Weighted-average margins (percent)
Union Steel Manufacturing Co., Ltd.	1.47
All other manufacturers/producers/exporters	1.47

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our final 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 on whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all 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 an antidumping order, directing Customs officers to assess an antidumping duty on RWPT from Korea entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: March 12, 1984.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-7120 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-065]

Viscose Rayon Staple Fiber From Belgium; Final Results of Administrative Review and Revocation of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review and revocation of antidumping finding.

SUMMARY: On October 3, 1983, the Department of Commerce published the preliminary results of its review and tentative determination to revoke the antidumping finding on viscose rayon staple fiber from Belgium. The review covers the one known exporter of this merchandise to the United States and the period December 1, 1981 through November 30, 1982. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative revocation. We also determined that there were no shipments of this merchandise to the United States from Belgium during the period December 1, 1982 through the date of the tentative revocation. We advised the petitioner that there were no

shipments and we provided an additional opportunity to comment. Again, we received no comments.

Accordingly, these final results cover up to the date our tentative revocation and we revoke the antidumping finding on viscose rayon staple fiber from Belgium.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Ron Nichols or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR 45141-45142) the preliminary results of its last administrative review and a tentative determination to revoke the antidumping finding on viscose rayon staple fiber from Belgium (43 FR 55240, November 27, 1978). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Belgian viscose rayon staple fiber to the United States, Fabelta Zwijsaarde N.V., and the period December 1, 1981 through November 30, 1982. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries. The Department has also determined that there were no shipments of this merchandise to the United States from Belgium during the period December 1, 1982 through the date of publication of the tentative revocation.

Final Results of Review and Revocation

We invited interested parties to comment on the preliminary results and tentative determination to revoke. We received no comments or requests for a hearing. The Department provided the petitioner further preliminary results for the period up to the date of the tentative revocation, and gave the petitioner an additional opportunity to comment.

Based on our analysis, the final results of our review are the same as those presented in the preliminary results. As a result of this review, in accordance with § 353.54(c) of the Commerce Regulations, we determine on our own initiative to revoke the antidumping finding on viscose rayon staple fiber from Belgium.

This administrative review, revocation, and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: March 5, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-7122 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-079]

Viscose Rayon Staple Fiber From Italy; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of preliminary results of administrative review of antidumping finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on viscose rayon staple fiber from Italy. The review covers the one known exporter of this merchandise to the United States, Snia Fibre S.p.A., and the period June 1, 1982 through May 31, 1983. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

As a result of the review, the Department has preliminarily determined to require cash deposits of estimated antidumping duties on future entries equal to the margin calculated on the last known shipments. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 16, 1984.

FOR FURTHER INFORMATION CONTACT: Ron Nichols or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On January 21, 1983, the Department of Commerce ("the Department") published in the *Federal Register* (48 FR

2809-10) the final results of its last administrative review of the antidumping finding on viscose rayon staple fiber from Italy (44 FR 33878-9, June 13, 1979) and announced its intent to conduct immediately the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments), currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of Italian viscose rayon staple fiber to the United States, Snia Fibre S.p.A., and the period June 1, 1982 through May 31, 1983. There were no known shipments of this merchandise during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 18.6 percent, based on the margin calculated on the last known shipments, shall be required on all shipments of Italian viscose rayon staple fiber entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: March 6, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-7123 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DS-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held April 3, 1984, 9:30 a.m., Herbert C. Hoover Building, Room 1851, 14th Street and Constitution Avenue NW., Washington, D.C. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) maintenance of the processor performance tables and further investigation of total systems performance; and (2) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information contact, Mrs. Margaret A. Cornejo, (202) 377-2583.

Dated: March 12, 1984.

Milton M. Baltas,

Director of Technical Programs Office of Export Administration.

[FR Doc. 84-7131 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DT-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held April 5, 1984, at

9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Report on the changes to the Distribution License.
4. Review of membership status.
5. Committee assignments for the MCTL implementation project.
6. Acceptance of the Committee's annual plan.
7. New business.
8. Action items underway.
9. Action items due at next meeting.

Executive Session

10. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: March 14, 1984.

Milton M. Baltas,
Director of Technical Programs, Office of
Export Administration.

[FR Doc. 84-7129 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held April 4, 1984, 11:00 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, N.W., Washington, D.C. The Licensing Procedures Subcommittee was formed to review the procedural aspects of

export licensing and recommended areas where improvements can be made.

Agenda

1. Opening remarks by the Subcommittee Chairman.
 2. Presentation of papers or comments by the public.
 3. Report on raising the threshold levels for export to the Free World.
 4. Cost benefit study of alternate strategies.
 5. OEA response to:
 - a. Implementation of the procedures for exhibits.
 - b. Acceleration of post-COCOM procedures.
 6. New Business.
 7. Action items underway.
 8. Action items due at next meeting.
- The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: March 12, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of
Export Administration.

[FR Doc. 84-7130 Filed 3-15-84; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1984 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: April 18, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1984, October 18, 1983 (48 FR 47415):

Class 4730

Fitting Kit, 4730-00-470-6625

Class 7920

Cloth, Wiping (Lint Free 15" x 15" w/ Lanyard) 7920-LL-L03-6134 (Requirements for Pearl Harbor Naval Shipyard, Pearl Harbor, Hawaii only)

Class 8415

Cover, Helmet, Desert Camouflage, 8415-01-103-1349, 8415-10-103-1350

SIC 7349

Janitorial Service, Federal Aviation Administration, Air Traffic Control Tower, Atlanta, Georgia

C. W. Fletcher,

Executive Director.

[FR Doc. 84-7081 Filed 3-15-84; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1984 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additional to procurement list.

SUMMARY: This action adds to Procurement List 1984 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: March 16, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 30, 1983, October 28, 1983 and December 23, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (48 FR 44878, 48 FR 49904, and 48 FR 56819) of proposed additions to Procurement List 1984, October 18, 1983 (48 FR 48415).

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

- a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.
- c. The actions will result in authorizing small entities to produce or provide commodities and services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1984:

CLASS 1330

Tape Stiffener Assembly, 1330-01-051-1533,
(13 million each annually)

CLASS 2920

Cable Assembly, Electrical 2920-01-027-0125
(50% of Government Requirements)

SIC 0782

Grounds Maintenance, Internal Revenue
Service Center, 310 Lowell Street, Andover,
Massachusetts

SIC 7349

Janitorial Service, Federal Building and U.S.
Post Office, 40 Western Avenue, Augusta,
Maine.

C. W. Fletcher,
Executive Director.

[FR Doc. 84-7062 Filed 3-15-84; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER84-306-000]

Consumers Power Co., Filing

March 12, 1984.

The filing Company submits the following:

Take notice that Consumers Power Company (Consumers) on February 29, 1984, tendered for filing Consumers' Amendment No. 25 to Indiana & Michigan Electric Company (Indiana Company) dated as of March 1, 1966. This is Indiana Company's Rate Schedule FERC No. 68.

Consumers states that Amendment No. 25 increases the transmission rate for weekly Short Term Power that is purchased by the Michigan Companies from another system delivery to Indiana Company from \$0.24 per kilowatt per week to \$0.35 per kilowatt per week and for Daily Short Term Power that is purchased by the Michigan Companies

from another system for delivery to Indiana Company from \$0.048 per kilowatt per day to \$0.070 per kilowatt per day. Also, the transmission rate for Limited Term Power that is purchased by the Michigan Companies from another system for delivery to Indiana Company increases from \$1.00 per kilowatt per month to \$1.50 per kilowatt per month. The transmission rates presently in effect for power purchased by Indiana Company from another system for delivery to the Michigan Companies remains unchanged and are already on file with the FERC.

Consumers further states that the extent and use of short term capacity during the 12 months beginning February 15, 1984 is not possible to predict at this time, since there were no sales by the Michigan Companies to Indiana Company under these existing rates during the past 12 months. Therefore, it is not practical to estimate the transactions and revenues for that future period.

Consumers requests an effective date of February 15, 1984.

Copies of this filing have been served on the American Electric Power Service Corporation, Indiana & Michigan Electric Company, the Detroit Edison Company, Public Service Commission of Indiana and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 23, 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. 84-7011 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-363-006]

Delmarva Power & Light Co.; Compliance Filing

March 12, 1984.

Take notice that on February 29, 1984, Delmarva Power & Light Company

(Delmarva) submitted for filing its preliminary Compliance Report of cost of service and related workpapers pursuant to Commission Orders dated October 5, 1983, December 2, 1983 and January 16, 1983.

Delmarva believes it is premature to develop "compliance rates" at this time because filings submitted on October 28, 1983 have not been acted on by the Commission.

Delmarva contends that many issues in ER80-363-006 are dependent upon the decision in the prior case, ER78-414; therefore, final compliance rates cannot be adequately determined.

Any person desiring to be heard or to protect this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 21, 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. 84-7012 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-31-000]

El Paso Electric Co.; Application

March 12, 1984.

Take notice that on February 29, 1984, El Paso Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than \$50 million of Preferred Stock, without per value, via negotiated placement.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before March 21, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-7013 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-523-000]

Florida Power & Light Co.; Compliance Filing

March 12, 1984.

Take notice that on March 5, 1984, Florida Power & Light Company (FPL) submitted for filing its Compliance Report pursuant to the Commission Order dated February 14, 1984 as to the status of settlement negotiations.

FPL and Seminole Electric Cooperative, Inc. ("Seminole") have agreed to submit an offer of settlement that will contain, *inter alia*, an amended Transmission Agreement in issue in this docket and amendments to the Interconnection Agreement between FPL and Seminole.

FPL requests that the proceedings be held in abeyance for an additional thirty (30) days.

Copies of this filing have been served upon the parties designated on the official service list.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before March 21, 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. 84-7014 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-302-000]

Kansas Gas and Electric Co.; Filing

March 22, 1984.

The filing Company submits the following:

Take notice that on February 28, 1984, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed change in its FPC Electric Service Tariff No. 155. The proposed Amending Agreement changes the minimum and maximum amounts of power for the City of La Harpe, Kansas.

KG&E states that the Amending Agreement is necessary because the present demands are being exceeded.

Copies of this filing were served upon the City of La Harpe, Kansas and the State Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., 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 motions or protests should be filed on or before March 23, 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. 84-7015 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-55-000]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 9, 1984.

Take notice that that Northern Border Pipeline Company (Northern Border) on March 8, 1984, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1.¹ By this filing, Northern Border proposes to reduce its transportation charges to Northern Natural Gas Company, Division of InterNorth, Inc., Panhandle Eastern Pipe Line Company and United Gas Pipe Line Company (U.S. Shippers). The reduction would be for a period commencing January 1, 1984, and terminating October 31, 1984 (Temporary Period). It is stated that Northern Border's cost of service would be reduced by approximately \$51 million by implementing the proposed reduction.

Northern Border indicates that the instant filing results from requests made by the U.S. Shippers for a reduction in their respective Maximum Receipt Quantity (MRQ) set forth in the Exhibit A's to their U.S. Shippers Service Agreements in order to reduce their transportation costs through Northern Border. By reducing the aggregate MRQ level, the amount of depreciation and amortization expense computed pursuant to subsection 4.42 of Rate Schedule T-I would be reduced from present levels it is stated.

Northern Border proposes to implement this reduction by applying a credit in the monthly bill following the Commission's approval of such

¹ This instant application incorporates a "Filing Withdrawal Agreement" entered into by Northern Border and the U.S. Shippers. The applicant states that under this agreement, the instant filing is "deemed to be withdrawn, null, void and without any effect in the event that the filing is suspended or not approved in its entirety without amendments, modifications or conditions."

implementation. The difference between (i) the previously charged cost of service from January 1, 1984, to the end of the billing month in which this filing is implemented and (ii) the revised cost of service for the same period will be credited to the U.S. Shipper invoices for that month of implementation with appropriate carrying charges. Therefore, to the extent that the revised depreciation has not been included in Northern Border's estimated cost of service, Shipper's monthly invoice would reflect the impact of the proposed reduction. Commencing with the billing month of November, 1984, depreciation and amortization expense would be computed based upon a return to an aggregate MRQ level of 800,000 Mcf per day.

As an integral part of this proposal to reduce depreciation expense, Northern Border proposes to amortize through a direct charge to each of the U.S. Shippers the amount of the depreciation reduction over the one year period November 1, 1987, through October 31, 1988. It is stated that this amortization will recognize the fact that the presently effective import authorization of Northwest Alaskan Pipeline Company (Northwest Alaskan) terminates as of October 31, 1988, and will result in Northern Border's net plant being the same as of October 31, 1988, as if the depreciation reduction had not occurred. This amortization feature also assures that there will be no material and adverse effect on the repayment of Northern Border's loan. A volumetric amount reflecting the amortization through the monthly direct charge shall be deducted from the denominator of the depreciation formula of subsection 4.42 of Rate Schedule T-I.

The U.S. Shippers obligation to pay the above described direct charge shall be terminated on the date that (i) Northwest Alaskan receives authorization under section 3 of the Natural Gas Act to import natural gas volumes consistent with the authorization granted to Pan-Alberta in License No. GL-66 issued on March 8, 1983, by the National Energy Board of Canada (NEB) and any conditions with respect to such authorizations have been satisfied, or (ii) the NEB and U.S. regulatory authorities authorize for export and import in contract years following October 31, 1988, volumes previously authorized for export under the Gas Sales Contract during the period prior to October 31, 1988, but not delivered during that period and any conditions with respect to such authorizations have been satisfied. In the event of (ii) above, the obligation of

the U.S. Shippers to pay the direct charge shall terminate as of the date of the last received authorization. The U.S. Shippers direct charge obligation shall also be reduced to the extent that Northern Border is authorized to transport pursuant to Rate Schedule T-I volumes of gas, other than those volumes referred to in (i) and (ii) above which are in excess of the volumes authorized for transportation by Northern Border as of January 1, 1984, and such volumes will be included in the numerator of the depreciation formula set forth in subsection 4.42 of Rate Schedule T-I.

It is proposed that during the Temporary Period any volumes transported pursuant to Article 2 of a U.S. Shippers Service Agreement would first be used to offset volumes not tendered by a U.S. Shipper in satisfaction of its Daily Receipt Quantity during this period.

Copies of this filing have been served upon Northern Border's Shippers.

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 St., NE., 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 March 23, 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. 84-7009 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP83-279-012, CP83-340-013 and CP83-428-013]

**Producer-Suppliers of
Transcontinental Gas Pipe Line Corp.,
et al.; Petition To Amend**

March 9, 1984.

Take notice that on March 2, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP83-279-012, Transco Gas Supply Company (Gasco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP83-340-013, and Gasco and Transco filed in Docket No. CP83-428-013 a petition to amend the orders issued November 11, 1983, December 20,

1983, and January 16, 1984, pursuant to Section 7 of the Natural Gas Act. Petitioners request and extension of the term of the authorizations for an indefinite period, either until such date as may be provided in any orders of general applicability with respect to pipeline special marketing programs or until such expiration date as the Commission subsequently may determine after notice and opportunity for comment. The proposal is more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that the Commission's prior orders, among other things, authorize producers which sell gas to Transco and Gasco pursuant to certificates of public convenience and necessity to abandon their sales to Transco and Gasco and to sell such gas directly to customers of Transco. These programs are called the Industrial Sales Program (ISP) and the Contract Carriage Program (CCP). Petitioners state that the instant petition for a further extension of the term of these authorizations is necessary at this time because the present authorizations will expire March 31, 1984.

Petitioners state that it is imperative that all of their producer-suppliers continue to have the opportunity to participate and that the special marketing programs be kept in place in order that Transco and its customers may continue to receive the benefits which have been achieved under the programs and that, otherwise, Transco's throughput is expected to decline dramatically during the 1984 summer, causing its unit cost of transmission to increase significantly.

The transportation services to be rendered with respect to the authorizations sought herein would be performed under Transco's Rate Schedules T-I and T-II which are scheduled to become effective, subject to refund, on April 1, 1984, in Docket No. RP83-137-000. The revenues collected for such services are proposed to be collected subject to refund pending the determination in Docket No. RP83-137-000. Petitioners also state that Transco has filed in that case to perform certain "unspecified" transportation during the first twelve months the rates therein are in effect and, upon the grant of authorizations as requested herein, Transco would amend its filing in that docket to reflect a representative level of special marketing program transportation and the overall rate reduction resulting therefrom.

Petitioners further state that the terms and conditions applicable to the authorizations sought to be extended are

those which have been set forth in the Commission's initial orders in each of the above-referenced certificate dockets, and in the November 10, 1983, order in Docket Nos. RP83-11-000, *et al.*, as clarified by order of December 20, 1983, and as modified on rehearing by order of January 16, 1984. The petition states that Transco proposes to extend the special marketing programs subject to all existing conditions as established by the Commission and also under additional terms and conditions which were not expressly set forth in the aforementioned Commission's orders, but which are set forth in the instant petition, as follows:

A. CCP Conditions

1. For a customer which is able to show that there exists in its service territory a market which cannot be served from Transco either because there are insufficient ISP quantities available to it or because the posted price for such ISP quantities as are available will not permit the market economically to be served, Transco agrees to transport within the authorized firm level of service for such customer such quantities of gas as the customer arranges for delivery into Transco's system.

2. For a customer to which Transco has sold and transported a quantity of gas equal to Transco's authorized firm sales level for such customer, Transco agrees that it will transport on a best efforts basis such additional quantities of gas as the customer arranges for delivery into Transco's system.

3. The Contract Carriage Program shall apply to gas reserves otherwise dedicated to Transco's system as well as off-system gas. A preference shall be given to available on-system supplies so long as the material terms and conditions of such on-system arrangements are at least as favorable as the terms of off-system arrangements.

4. During any period when ISP is not available, CCP service shall be available to serve loads that would have been served under the ISP if such service had been available.

B. ISP Conditions

1. Transco's part of its customers' markets having installed capability to use residual fuel oil, as set forth on Appendix B (covering the summer period) to its April 13, 1983, Settlement Agreement and Amended Appendix B (covering the winter period) to its October 7, 1983, Amendment to Settlement Agreement in Docket No. RP83-11-000 shall be eligible for ISP service. Transco's part of such markets

is based on the customer's annual firm purchase quantities available from Transco relative to the customer's total annual firm purchase quantities available from all of the customer's pipeline suppliers; the market data reflected on Appendix B are based upon affidavits of the customers reflecting actual sales generally during the seven-month period ending October 31, 1981, and the data on Amended Exhibit B are based generally upon reported sales by customers during the 1981-82 or 1982-83 winter periods.

2. No deliveries of ISP quantities shall be made during any month unless the arithmetic average, as determined on or about the 15th day of the prior month, of the 2.1% sulfur No. 6 residual fuel oil posting at Wilmington, NC and the 2.9% sulfur No. 6 residual fuel oil posting at Charleston, SC, is less than \$26.75 per barrel based on the average of the postings for Exxon Company, U.S.A. and Amerada Hess Corp., as reported in the Journal of Commerce. The available ISP quantities shall be allocated ratably based on upon each customer's total qualifying markets as set forth in Appendix B. In no event shall the sum of (a) purchases under the customer's firm sales rate schedule service agreement, and (b) deliveries to the customer pursuant to ISP service, exceed on any day the customer's firm entitlement under its sales rate schedule service agreement.

3. Transco shall cause to be established each month a posted price for ISP purchases, giving consideration to the price level which is required to enable its customers to compete with alternative fuels in the market.

4. For all ISP gas delivered to Transco during a month for the participating customer's account, the participating customer shall pay to Transco, as agent, the posted price in effect for such month. Transco shall retain 6.1 percent of the ISP purchase quantities to compensate for system fuel requirements. For all quantities delivered by Transco, the ISP customer shall pay to Transco, as transporter, the transportation charge referenced in the petition.

5. Monthly reports will be provided as follows:

(a) From Transco, a monthly report setting forth pertinent information concerning the acquisition of ISP supplies and transportation thereof. The report shall identify the seller, the source, the NGPA category, the quantity, and the price of all ISP supplies. For those ISP supplies for which partial abandonment authority has been granted, the monthly report shall also set forth, where applicable, the docket under which the producer's sale was

authorized, the date of the basic contract, and identification of the rate schedule. The report shall also identify the customers receiving ISP deliveries and their respective quantities; and

(b) From the participating customers, a monthly report identifying, by customer (or the class of customers if no specific customers within a class can be identified), the alternative fuel and the quantity sold.

The foregoing monthly reports shall be filed with the Commission and served on all parties to this proceeding. In addition, participating customers shall submit to Commission staff a supplement to the monthly report required in section (b) hereof, such supplement to include prices charged to customers or classes of customers.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before March 23, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-7010 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-303-000]

Public Service Company of Oklahoma; Filing

March 12, 1984.

The filing Company submits the following:

Take notice that on February 29, 1984, Public Service Company of Oklahoma (PSO) tendered for filing a Letter Agreement (Agreement) dated January 24, 1984, between PSO and West Texas Utilities Company (WTU). The Letter Agreement provides for the sale of twenty-five (25) megawatts of capacity, without reserves, from PSO to WTU during the calendar year 1984.

PSO requests an effective date of January 1, 1984, and therefore requests

waiver of the Commissioner's notice requirements.

Copies of the filing have been sent to WTU, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

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 385.211, 385.214). All such motions or protests should be filed on or before March 23, 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. 84-7016 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-304-000]

Public Service Company of Oklahoma; Filing

March 12, 1984.

The filing Company submits the following:

Take notice that on February 29, 1984, Public Service Company of Oklahoma (PSO) tendered for filing an Amended Interconnection Agreement dated September 27, 1983, between PSO and Southwestern Public Service Company (SPS) in which SPS has concurred. The Amended Interconnection Agreement supersedes the Interconnection Agreement between PSO and SPS, dated January 22, 1971. The Amended Interconnection Agreement also provides for a second point of interconnection between the parties' systems of the Tuco Substation (near Abernathy, Texas) to the Oklahoma PSO Substation (near Oklahoma, Texas) 345 kV line.

PSO requests an effective date of September 27, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been sent to SPS, the Kansas Corporation Commission, the New Mexico Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

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 385.211, 385.214). All such motions or protests should be filed on or before March 23, 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. 84-7017 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

Determination Under the Natural Gas Policy Act for OCS Leases Issued on or After April 20, 1977

March 12, 1984.

On September 27, 1983, the Federal Energy Regulatory Commission (Commission) issued Order No. 336 under Docket Nos. RM83-3 and RM81-12 (48 FR 44508 September 29, 1983). In that order, the Commission amended its regulations relating to filing requirements for well category applications under the Natural Gas Policy Act of 1978 (NGPA). The determination process for natural gas produced from a new lease, i.e., a lease entered into on or after April 20, 1977, on the Outer Continental Shelf (OCS), and qualifying as new natural gas under Section 102 of the NGPA, was amended in two respects. First, the Commission eliminated the requirement that a determination be made for each well producing gas from a new OCS lease. Second, in lieu of filing an application for each well, the Commission now permits the grant of a new OCS lease to constitute the requisite jurisdictional agency determination that the gas is produced from a new OCS lease.

Under the new procedures, the U.S. Department of Interior, Minerals Management Service (MMS), must file within 60 days of the grant of the lease a notice of determination which includes the lease number, the area and block number, and the date on which the OCS lease was issued by the Secretary of the Interior. This determination is subject to Commission review in the same manner as other jurisdictional agency determination.

On February 28, 1984, the Commission received notice from MMS, Pacific OCS Region, that on November 30, 1983, MMS conducted a lease offering for the Pacific Outer Continental Shelf region. Included in this offering were lease numbers OCS-P-0503 through OCS-P-0510. The legal description for these leases is:

Lease No.	Legal description	Effective date
OCS-P-0503	NI 10-3 Blk 949	Feb. 1, 1984
OCS-P-0504	NI 10-3 Blk 992	Do.
OCS-P-0505	NI 10-6 Blk 023	Do.
OCS-P-0506	NI 10-6 Blk 112	Do.
OCS-P-0507	NI 10-6 Blk 239	Do.
OCS-P-0508	NI 10-6 Blk 263	Do.
OCS-P-0509	NI 10-6 Blk 373	Do.
OCS-P-0510	NI 10-6 Blk 375	Do.

Pursuant to Order No. 336, these leases have been determined to qualify under NGPA Section 102(c)(1)(A), as new OCS leases granted on or after April 20, 1977. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of this notice in the Federal Register.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-7018 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 7545-000, et al.]

Hydroelectric Applications (Brownsville Associates, et al.; Applications Filed With the Commission)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

- Type of Application: Preliminary Permit.
- Project No: 7545-000.
- Date Filed: August 22, 1983.
- Applicant: Brownsville Associates.
- Name of Project: Brownsville Power Project.
- Location: On Green River in Edmonson County, Kentucky.
- Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).
- Contact Person: Mr. Joel Kirk Rector, Brownsville Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.
- Comment Date: May 14, 1984.
- Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Green River Lock and Dam No. 6 and would consist of: (1) a new penstock and intake

structure; (2) a new powerhouse containing two turbine-generator units rated at 2,500 kW each for a total rated capacity of 5,000 kW; (3) a tailrace returning flow to the Green River; (4) a new 69-kV transmission line, approximately 1,000 feet long; and (5) appurtenant facilities. The Applicant estimates the average annual energy output would be 21,900,000 kWh. Project energy would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$125,000.

2a. Type of Application: Preliminary Permit.

b. Project No. 7964-000.

c. Date Filed: January 9, 1984.

d. Applicant: JDJ Construction Company, Inc.

e. Name of Project: Dam 3 Spring River.

f. Location: on the Spring River, near Mammoth Spring, in Fulton County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Doyle W. Jones, P.O. Box 225, Jones Mill, Arkansas 72105.

i. Comment Date: May 7, 1984.

j. Description of Project: The proposed project would consist of: (1) the existing concrete dam, 20 feet high and 150 feet long; (2) an impoundment covering 51 acres and having a storage capacity of 380 acre-feet at an elevation of 477 feet m.s.l.; (3) a renovated powerhouse measuring 20 by 30 feet and containing two 300-kW turbine/generator units operating under a head of 20 feet; (4) two sections of 69-kV transmission line, one 1200 feet long and one 2300 feet long; and (5) appurtenant electrical and mechanical facilities.

The dam is owned by the Arkansas Power & Light Company (AP&L) and is rented to the Kroger Company for use in a trout farm.

The estimated average annual generation of 2.0 million kWh would be sold to AP&L.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction.

Applicant seeks issuance of a preliminary permit for a period of 12 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$10,000.

3a. Type of Application: Preliminary Permit.

b. Project No: 7581-000.
c. Date Filed: September 6, 1983.

d. Applicant: Seiad Valley Associates.
e. Name of Project: Walker Creek,

Siskiyou Power Project.

f. Location: On Walker Creek, near town of Seiad Valley, within Klamath National Forest, in Siskiyou County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Tom Forbes, P.O. Box 421, Mercer Island, Washington 98040.

i. Comment Date: May 7, 1984.

j. Description of Project: The proposed project would consist of: (1) a 5-foot-high, 72-foot-long concrete diversion structure; (2) a 46-inch-diameter, 6,000-foot-long diversion conduit or a 5-foot-wide and 2.5-foot-deep, 6,000-foot-long channel; (3) a 34-inch-diameter, 800-foot-long penstock; (4) a powerhouse with a total installed capacity of 1,900 kW; and (5) a 0.5-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Power and Light Company (PP&L) transmission line. The Applicant estimates the average annual energy generation at 7.4 million kWh to be sold to PP&L.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of \$140,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, & D 2.

4a. Type of Application: Preliminary Permit.

b. Project No: 7361-001.

c. Date Filed: January 9, 1984.

d. Applicant: Charles W. Cole, Jr.

e. Name of Project: Cagle Mill Hydro Project.

f. Location: On Mill Creek near Poland, Putnam County, Indiana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Charles W. Cole, Jr., 501 East Monroe Street, Suite 350, South Bend, Indiana 46601.

i. Comment Date: May 7, 1984.

j. Description of Project: The proposed Cagle Mill Hydro Project would be located on the U.S. Army Corps of Engineer's Dam and Reservoir. The proposed project would consist of: (1) an existing outlet conduit; (2) a proposed penstock; (3) a proposed powerhouse with an installed capacity of 1,250 kW; (4) a proposed tailrace channel which would connect with the existing outlet channel; (5) a proposed transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7.6 GWh. The power generated at the proposed project would be sold by the Applicant to a local utility company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.

Applicant estimates that the cost of the studies under permit would be \$110,000.

5a. Type of Application: Preliminary Permit.

b. Project No: 7884-000.

c. Date Filed: November 28, 1983.

d. Applicant: City of Des Moines, Iowa.

e. Name of Project: Saylorville.

f. Location: On the Des Moines River, near Johnston, in Polk County, Iowa.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Richard Wilkey, City Manager, City Hall, East First & Locust Streets, Des Moines, Iowa 50307.

i. Comment Date: May 16, 1984.

j. Competing Application: Project No. 7691-000; Date Filed: October 5, 1983.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Saylorville Dam and Reservoir and would consist of: (1) a new 40-foot-square screened intake

structure built into the west abutment; (2) a new penstock 20 feet in diameter and approximately 1,100 feet long; (3) a new powerhouse measuring 60 by 82 feet and housing two 3,250-kW turbine/generator units operating under a head of 31 feet; (4) a new 69-kV transmission line leading to a switchyard and then extending an additional three quarters of a mile to an existing line; and (5) appurtenant electrical and mechanical facilities.

The estimated average annual generation of 20.9 million kWh would be sold to the Iowa Power and Light Company.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$12,000.

6 a. Type of Application: Preliminary Permit.

b. Project No: 7890-000.

c. Date Filed: December 1, 1983.

d. Applicant: Matthew J. Bonaccorsi.

e. Name of Project: Wendell Dam Project.

f. Location: On the Sugar River near the Town of Sunapee, Sullivan County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Matthew J. Bonaccorsi, Box 206, RFD 3, Newport, New Hampshire 03773.

i. Comment Date: May 11, 1984.

j. Description of Project: The proposed project would consist of: (1) the existing Wendell Dam, a concrete gravity structure 13 feet high and 45 feet long; (2) a reservoir having a surface area of 11.4 acres, a storage capacity of 20 acre-feet, and normal water surface elevation of 979.5 feet msl; (3) a new 5-foot-diameter steel penstock 40 feet in length; (4) the existing gate house; (5) a new powerhouse containing one generating unit having a capacity of 140 kW; (6) a new tailrace 80 feet long and 15 feet wide; (7) a proposed 4.16-kV transmission line 200 feet long; and (8) appurtenant facilities. The existing dam and project facilities are owned by the

State of New Hampshire. The Applicant estimates that the average annual generation would be 610,000 kWh.

k. Purpose of Project: All project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time Applicant would investigate the engineering, economic, and environmental aspects of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for license or exemption from licensing. Applicant estimates that the cost of the studies under the permit would be \$9,200.

7 a. Type of Application: Preliminary Permit.

b. Project No: P-7983-000.

c. Dated Filed: January 16, 1984.

d. Applicant: Ralston Hydro Associates.

e. Name of Project: Ralston Hydropower.

f. Location: On Red Run, in Lycoming County, in Ralston, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Richard D. Mase, Antrim Mining Company, 248 Main Street, Blossburg, Pennsylvania 16912.

i. Comment Date: May 7, 1984.

j. Description of Project: The proposed project would consist of: (1) a proposed earthfill dam with a concrete spillway, approximately 15 feet high and 100 feet long; (2) a proposed reservoir with 3 acres of water surface area and approximately 20 acre-feet of storage capacity at normal maximum water surface elevation of 1,600 feet m.s.l.; (3) a proposed gated intake, 2.5 feet by 4 feet; (4) a proposed penstock 7,000 feet long and 18 inches in diameter; (5) a proposed powerhouse 20 feet square, housing one turbine/generator with an installed capacity of 500 kW; (6) a proposed 12,500 kW transmission line, approximately 50 feet in length; and (7) appurtenant facilities. Applicant estimates that the average energy generation would be 2,000,000 kWh.

k. Purpose of Project: Project energy would be sold to the Pennsylvania Electric Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction.

Applicant seeks issuance of a preliminary permit for a period 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for a FERC license.

Applicant estimates the cost of the studies under the permit would be \$67,000.

8a. Type of Application: Preliminary Permit.

b. Project No: 7999-000.

c. Date Filed: January 26, 1984.

d. Applicant: Timothy F. and Pamela L. Holt and Ben J. Barbot.

e. Name of Project: Woodfords Power Plant.

f. Location: On West Fork Carson River in Alpine County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Timothy F. and Pamela L. Holt, 290 Galena Pines Road, Reno, Nevada 89511.

i. Comment Date: May 11, 1984.

j. Description of Project: The proposed project consists of: (1) a 1.5-foot-high diversion structure at elevation 5,560 feet; (2) a 6-foot-deep, 8,000-foot-long open channel; (3) a 10-inch-diameter, 4,000-foot-long penstock; (4) a powerhouse containing generating units with a combined rated capacity of 3,300 kW, operating under a head of 310 feet; and (5) a 300-foot-long, 26-kV transmission line connecting the powerhouse with the existing Sierra Pacific Power Company (SPPC) transmission line, south of the powerhouse.

k. Purpose of Project: The estimated 18 million kWh of annual project energy would be sold to SPPC.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9a. Type of Application: Exemption (5MW or Less).

b. Project No: 7931-000.

c. Date Filed: December 20, 1983.

d. Applicant: Larry Hensley.

e. Name of Project: 29 Mile Creek.

f. Location: On an unnamed tributary of the South Fork American River, within El Dorado National Forest in El Dorado County, California.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Larry Hensley, 9240 Central Avenue, Orangevale, California 95662.

i. Comment Date: April 20, 1984.

j. Description of Project: The proposed project consists of: (1) a 2-foot-high diversion structure at elevation 4,400

feet; (2) a 6-inch-diameter, 1,500-foot-long penstock; (3) a powerhouse at elevation 3,850 feet containing a generating unit with a rated capacity of 30 kW; and (4) a 200-foot-long transmission line tying into an existing Pacific Gas and Electric Company line. The average annual energy generation is estimated to be 130,000 kWh. Pursuant to Section 4.103(d)(2) of the Commission's regulations, the Applicant has requested a waiver of Section 4.102(1)(2)(iii)(A) of the regulations (height limitations).

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

10a. Type of Application: Exemption (5MW or Less).

b. Project No: 7930-000.

c. Date Filed: December 20, 1983.

d. Applicant: Larry Hensley.

e. Name of Project: Fry Creek.

f. Location: On Fry Creek, a tributary of the South Fork American River, within El Dorado National Forest in El Dorado County, California.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Larry Hensley, 9240 Central Avenue, Orangevale, California 95662.

i. Comment Date: April 20, 1984.

j. Description of Project: The proposed project would consist of: (1) a 2-foot-high diversion structure at elevation 4,040 feet; (2) a 6-inch-diameter, 2,500-foot-long penstock; (3) a powerhouse at elevation 3,640 feet containing a generating unit with a rated capacity of 30 kW; and (4) a 400-foot-long transmission line tying the project into an existing Pacific Gas and Electric Company line. The average annual energy generation is estimated to be 130,000 kWh. Pursuant to § 4.103(d)(2) of the Commission's regulations, the Applicant has requested a waiver of § 4.102(1)(2)(iii)(A) of the regulations (height limitations).

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

11a. Type of Application: Small Conduit Exemption.

b. Project No: 6467-001.

c. Date Filed: October 11, 1983.

d. Applicant: Washington County Water Conservancy District.

e. Name of Project: Quail Creek Hydroplant.

f. Location: On Quail Creek, Washington County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. R. Steve Creamer, 435 East Tabernacle, P.O. Box 1094, St. George, Utah 84770.

i. Comment Date: April 23, 1984.

j. Description of Project: The proposed project would consist of: (1) a proposed 70-foot-high and 60-foot-long concrete diversion structure; (2) a proposed 7.5-mile-long buried steel conduit pipeline, with 66-inch and 48-inch-diameter sections; (3) a proposed reinforced concrete powerhouse with a single generating unit of 2,500 kilowatt (kW) capacity; (4) a proposed 54-inch-diameter discharge conduit approximately 1 mile in length; (5) a proposed 40,000 acre-foot off-stream storage reservoir created by the construction of an earthfill dam, approximately 200 feet high and 900 feet long, and a 70-foot-high and 2,200-foot-long earthfill dike; and (6) appurtenant facilities.

k. Purpose of Project: The estimated average annual energy generation of 10.0 MWh would be sold to nearby local electric utilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

12a. Type of Application: Exemption (5 MW or Less).

b. Project No: 7506-000.

c. Date Filed: August 3, 1983.

d. Applicant: Calaveras Public Utility District.

e. Name of Project: CPUD Middle Fork Dam.

f. Location: At the Applicant's Middle Fork Dam, on the Mokelumne River in Calaveras County, California.

g. Filed Pursuant to: Energy Security Act of 1980, section 408 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: David C. Auslam, Jr., Auslam & Associates, Inc. 3327 Longview Drive, Suite 250, North Highlands, California 95660.

i. Comment Date: April 20, 1984.

j. Description of Project: The proposed project would consist of: (1) the existing Calaveras Public Utility District's 95-foot-high by 900-foot-long Middle Fork Dam and outlet works; (2) a 490-foot-long, 24-inch-diameter penstock; (3) a powerhouse containing a generating unit with a total rated capacity of 230 kW; and (4) a 1000-foot-long transmission line connecting the project to an existing Pacific Gas and Electric Company line. The average annual energy generation is estimated to be 992,000 kWh.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

13a. Type of Application: Exemption for Small Conduit Facility.

b. Project No: 7592-000.

c. Date Filed: September 9, 1983.

d. Applicant: Faulkner Land and Livestock Co., Inc.

e. Name of Project: Faulkner Hydro Plant.

f. Location: On Northside "Y" Canal, near town of Bliss, in Gooding County, Idaho.

g. Filed Pursuant to: Energy Security Act, 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Severt Swenson, Jr., 122 Fourth Avenue West, Gooding, Idaho 83330.

i. Comment Date: April 23, 1984.

j. Description of Project: The proposed project would divert water from the Northside "Y" Canal and would consist of: (1) a 1400-foot-long, 15-foot-wide diversion canal; (2) a powerhouse containing a single 400-kW generating unit; and (3) a 700-foot-long exit canal, which would discharge water back into the Northside "Y" Canal. The average annual energy output would be 173,321 kWh.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: The project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3b.

14a. Type of Application: Exemption—5 MW or Less.

b. Project No: 3858-003.

c. Date Filed: December 21, 1983.

d. Applicant: Idaho Renewable Resources, Inc. and City of Ashton.

e. Name of Project: Dietrich Dood.

f. Location: On the Milner Gooding Canal on the Snake River, near the Town of Dietrich, in Lincoln County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Jay R. Bingham, 165 Wright Brothers Drive, Salt Lake City, Utah 84116.

i. Comment Date: April 23, 1984.

j. Description of Project: The project would consist of: (1) a concrete box flume intake structure at elevation 4,063 feet; (2) the modification of the existing check structure; (3) a 1,800-foot-long, 11.5-foot-diameter steel penstock; (4) a powerhouse containing one generating unit rated at 4,800 kW; and (5) a 3.4-

mile-long, 46-kV transmission line. The average annual energy generation is estimated to be 22.3 million kWh.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Power would be sold to the local utility.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

15a. Type of Application: Preliminary Permit.

b. Project No: 7781-000.

c. Date Filed: October 28, 1983.

d. Applicant: Usdan Associates.

e. Name of Project: Vermont Tissue.

f. Location: On the Walloomsac River near North Bennington, in Bennington County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Martin Usdan, Heller & Usdan, Inc., 7 Caesar Place, Moonachie, New Jersey 07074.

i. Comment Date: May 7, 1984.

j. Description of Project: The proposed project would consist of: (1) and existing reinforced concrete dam, 70 feet long by 16 feet high; (2) a reservoir with negligible storage capacity, and a normal maximum water surface elevation of 540 feet m.s.l.; (3) a concrete block powerhouse (to be converted from an existing waste treatment plant), 50 feet in length by 40 feet in width, housing two generating units with a total installed capacity of 300 kW; (4) a proposed steel penstock, 8 feet in diameter and 43.5 feet in length; (5) a steel draft tube, approximately 5 feet in length, discharging directly into the tailwater; (6) a proposed substation; (7) a proposed 4160-volt transmission line approximately 60 feet in length; and (8) appurtenant facilities. Applicant estimates that the average annual energy generation would be 1,617,000 kWh. The dam is owned by Vermont Tissue Corporation.

k. Purpose of Project: Project energy will be sold to Central Vermont Public Service Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permits: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic,

construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$12,000.

16a. Type of Application: Amendment of License.

b. Project No: 2839-002.

c. Date Filed: November 18, 1983.

d. Applicant: Village of Lyndonville Electric Department.

e. Name of Project: Great Falls.

f. Location: On the Passumpsic River, near Lyndonville in Caledonia County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ken Mason, Manager, Village of Lyndonville Electric Department, Lyndonville, Vermont 05851.

i. Comment Date: April 16, 1984.

j. Description of Project: The project as licensed consists of: (a) a 160-foot-long and 32-foot-high curved concrete dam with 2-foot-high flashboards; (b) a reservoir extending approximately one mile upstream and having a water surface area of 12 acres at a normal water surface elevation of 668.38 feet msl; (c) a 290-foot-long canal leading from headwork gates to a penstock; (d) a 7-foot-4-inch-diameter penstock, which extends 200 feet to: (i) a 40-foot-square cast-in-place concrete powerhouse (retired); and (ii) a new 25 by 47 foot powerhouse addition; (e) a 1,200-kW turbine-generator; (f) the 2.4-kV generator leads, the 2.4/12.5-kV step-up transformers of Substation No. 1, and a 1.75-mile-long, 12.5-kV transmission line from Substation No. 1 to Substation No. 2; and (g) other appurtenant facilities.

The Applicant proposes to reactivate two existing turbines at the project to increase the installed capacity from 1,200 kW to 1,900 kW. The project would be operated run-of-river, as originally licensed. There would be no new construction. The Applicant estimates that the total average annual energy generation for the project would be 9,500,000 kWh upon reactivation of the two older units.

l. Purpose of Project: Project energy will be utilized by the Applicant for municipal purposes.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

17a. Type of Application: 5 MW Exemption.

b. Project No: 3227-002.

c. Date Filed: July 29, 1983.

d. Applicant: The City of Philadelphia.

e. Name of Project: Fairmount Dam Project.

f. Location: On the Schuylkill River in Philadelphia City, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: William J. Marrazzo, Commissioner, Water Department, The City of Philadelphia, 1180 Municipal Services Building, Philadelphia, Pennsylvania, 19107.

i. Comment Date: April 16, 1984.

j. Applicant submitted an application for license for this project on July 29, 1983, and on November 4, 1983, it requested that its application be treated initially as an application for exemption from licensing.

k. Description of Project: The proposed project would consist of: (1) the 1,025-foot-long and 35-foot-high Fairmount Dam owned by the Applicant; (2) a new forebay at the eastern side of the dam; (3) intake structures; (4) a powerhouse within the New Mill House with 2 new turbine-generator units with a total installed capacity of 2,000 kW (the New Mill House is one of nine historic masonry buildings forming the Fairmount Waterworks Buildings which Applicant would rehabilitate as part of this project); (5) a 100-foot-long tailrace; (6) a 300-foot-long transmission line; (7) fish passage facilities; and (8) other appurtenances. Applicant estimates an annual generation of 10,800,000 kWh. This application was filed during the term of Applicant's preliminary permit for Project No. 3227.

l. Purpose of Project: Project energy would be delivered to the existing facilities of the Philadelphia Electric Company.

m. This notice also consists of the following standard paragraphs: B and D3a.

n. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of this application. Any of the above named documents must be filed by providing the original and the numbers of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent or motion to intervene must also be served upon the representative of the Applicants specified herein.

o. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

18a. Type of Application: Preliminary Permit.

b. Project No: 7768-000.

c. Date Filed: October 25, 1983.

d. Applicant: Union City Associates.

e. Name of Project: Union City.

f. Location: The Corps of Engineers' Union City Dam on French Creek in Erie County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Joel Kirk Rector, Union City Associates, 4832 Colony Circle, Salt Lake City, Utah 84117.

i. Comment Date: May 7, 1984.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' Union City Dam and Reservoir and would consist of: (1) a proposed 10-foot-diameter, 200-foot-long penstock; (2) a proposed powerhouse containing two turbine/generator units with a total installed capacity of 5.48 MW; (3) a proposed 8-foot-wide, 70-foot-long tailrace; (4) a proposed 100-foot-long transmission line; and (5) appurtenant facilities. The estimated average annual generation would be 21,800 MWh.

k. Purpose of Project: Project energy would be sold to the following Pennsylvania municipalities: (1) Union City; (2) Mill Village; (3) Le Boeuf Gardens; and (4) Erie.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$125,000.

19a. Type of Application: 5 MW Exemption.

b. Project No: 7480-001.

c. Date Filed: September 12, 1983.

d. Applicant: Great Northern Hydro Corp.

e. Name of Project: Antwerp.

f. Location: On the Indian River in the Village and Town of Antwerp, Jefferson County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*), and Part I of the Federal Power Act.

h. Contact Person: Paul G. Carr, P.E., 1103 Myrtle Avenue, Watertown, New York 13601.

i. Comment Date: April 16, 1984.

j. Description of Project: The proposed run-of-river project would utilize existing facilities consisting of: (1) a 12-foot-high and 100-foot-long concrete gravity-type dam; (2) a reservoir having a surface area of 34 acres at spill way crest elevation 494.75 feet msl; (3) an intake structure; (4) a forebay; (5) a powerhouse; and (6) a tailrace.

Applicant propose to rehabilitate the existing facilities and would: (1) replace the headgates; (2) construct a concrete intake structure; (3) install a 72-inch-diameter steel penstock; (4) rebuild the powerhouse; (5) install two generating units having a total rated capacity of 260-kW operated under a 14-foot head and at a flow of 288 cfs; (6) construct a substation; and (7) install a 40-foot-long 13.2-kV transmission line.

k. Purpose of Project: Project energy would be sold to the Niagara Mohawk Power Corporation. Applicant estimates that the average annual energy output would be 1,600,000-kWh.

1. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

m. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

20a. Type of Application: Minor License.

b. Project No.: 7301-000.

c. Date Filed: May 19, 1983.

d. Applicant: Double O Hydro Company.

e. Name of Project: Upper Squaw Creek.

f. Location: On Squaw Creek, near Riggins, in Idaho County, Idaho, and affecting BLM and Nezperce National Forest land.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Deward Gill, P.O. Box 2, Riggins, Idaho 83549.

i. Comment Date: May 4, 1984.

j. Description of Project: The proposed project would consist of: (1) a 2-foot-high, 15-foot-long concrete diversion structure; (2) an intake structure; (3) a 10,700-foot-long, 18-inch-diameter steel

pipeline; (4) a powerhouse containing one generating unit rated at 608 kW; and (5) a transmission line. The average annual energy generation is estimated to be 2.6 million kWh and the construction cost is estimated at \$1 million.

k. Purpose of Project: Power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

4a. Type of Application: Small Conduit Exemption.

b. Project No.: 7297-001

c. Date Filed: November 14, 1983.

d. Applicant: The City of Buena Park.

e. Name of Project: OC-17 Hydroelectric Generating Facility.

f. Location: On West Orange County Feeder Station 423 + 63, Town of Buena Park, in Orange County, California.

g. Filed Pursuant to: Section 30 of the Federal Power Act [16 U.S.C. 823(a)].

h. Contact Person: Mr. William J. O'Neil, Director of Engineering Services, City of Buena Park, 6650 Beach Boulevard, Buena Park, California 90620.

i. Comment Date: April 20, 1984.

j. Description of Project: The proposed project would be located on an existing 12-inch water line at West Orange County Feeder Station 423 + 63 and consist of an 18.5-foot-long, 14-foot-wide, under-ground concrete powerhouse containing appurtenant under-ground and above-ground electrical installations and a generator with a rated capacity of 118 kW. The Applicant estimates that the average annual energy generation would be 0.87 million kWh.

The power generated by the project will be sold to Southern California Edison Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of

intent to file such an application.

Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or after the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing

applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33(a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to

file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit

exemption application, and be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission

within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal. State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

D3b. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an

agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 13, 1984.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-7084 Filed 3-15-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59150; BH-FRL 2545-3]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemptions (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by April 2, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-59150]" and the specific TME number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

TME 84-37

Close of Review Period. April 19, 1984.

Manufacturer. Confidential.

Chemical. (G) Alkyl triester.

Use/Production. (G) Softener for textile printing. Prod. range: Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture and processing: dermal, a total of 12 workers, up to 6 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 7 kg released to water. Disposal by publicly owned treatment works (POTW) and company waste treatment plant.

PMN 84-38

Close of Review Period. April 20, 1984.

Manufacturer. Confidential.

Chemical. (G) Polyester urethane polymer.

Use/Production. (S) Industrial magnetic tape binder. Prod. range: 100,000 kg/yr.

Toxicity Data. No data on the TME substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

TME 84-39

Close of Review Period. April 21, 1984.

Manufacturer. Georgia Pacific Corporation.

Chemical. (G) Lignosulfonate, reaction product with a phenolic monomer and an oxidant.

Use/Production. Confidential. Prod. range: Less than 120,000 lbs/yr at 50 percent final solids in aqueous solution of the material.

Toxicity Data. No data on the TME substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: March 9, 1984.

Linda A. Travers,

Acting Director, Information Management
Division.

[FR Doc. 84-7066 Filed 3-15-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51510; BH-FRL No. 2545-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice announces receipt of fifteen PMNs and provides a summary of each.

DATES:

Close of Review Period:
PMN 84-327, 84-469 and 84-470—May 30, 1984.
PMN 84-471, 84-472 and 84-473—June 2, 1984.
PMN 84-474, 84-475 and 84-476—June 3, 1984.
PMN 84-477, 84-478, 84-479, 84-480 and 84-481—June 4, 1984.
PMN 84-482—June 5, 1984.
Written comments by:
PMN 84-327, 84-469 and 84-470—April 30, 1984.
PMN 84-471, 84-472 and 84-473—May 3, 1984.
PMN 84-474, 84-475 and 84-476—May 4, 1984.
PMN 84-477, 84-478, 84-479, 84-480 and 84-481—May 5, 1984.
PMN 84-482—May 6, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51510]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm.

E-216, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-327

Manufacturer: C. J. Osborn Chemicals, Inc.

Chemical: (G) Epoxy ester resin.
Use/Production: (S) Industrial protective coating. Prod. range: 3636 kg/yr.

Toxicity Data: No data submitted.
Exposure: Manufacture: dermal, a total of 4 workers, up to 2 hrs/da.
Environmental Release/Disposal: No release.

PMN 84-469

Manufacturer: Confidential.
Chemical: (G) Polyalkyl ester.
Use/Production: (G) Lubricant additive. Prod. range: Confidential.
Toxicity Data: No data on the PMN substance submitted.

Exposure: Manufacture: dermal, a total of 10 persons/shift, up to 2 hrs/da.
Environmental Release/Disposal: Release to land. Disposal by publicly owned treatment works (POTW) and approved landfill.

PMN 84-470

Manufacturer: Confidential.
Chemical: (G) Salt of aminoethylethanolamine phosphonic acid.

Use/Production: (G) Scale inhibitor. Prod. range: 20,000-30,000 kg/yr.
Toxicity Data: No data submitted.
Exposure: Manufacture: dermal, a total of 3 workers, up to 4 hrs/da, up to 2 da/yr.

Environmental Release/Disposal: 200 lbs released to water. Disposal by POTW and waste water treatment system.

PMN 84-471

Manufacturer: Confidential.
Chemical: (G) Alkyl copolyether.
Use/Production: (G) Textile auxiliary. Prod. range: Confidential.

Toxicity Data: No data on the PMN substance submitted.
Exposure: Manufacture: dermal, a total of 4 workers, up to 8 hrs/da, up to 5 da/yr.

Environmental Release/Disposal: 10 kg/batch released to water with 90 kg/batch to land. Disposal by POTW and approved landfill.

PMN 84-472

Manufacturer: PPG Industries, Inc.
Chemical: (G) Acrylic copolymer.
Use/Production: (G) Open, nondispersive use as a component in coating. Prod. range: Confidential.
Toxicity Data: No data submitted.
Exposure: Confidential.
Environmental Release/Disposal: Confidential.

PMN 84-473

Manufacturer: Confidential.
Chemical: (G) Isocyanate modified phenolic resin.
Use/Production: (G) Coating on an industrial article. Prod. range: Confidential.

Toxicity Data: No data on the PMN substance submitted.

Exposure: Manufacture and processing: dermal, a total of 10 workers, up to 8 hrs/da, up to 5 da/yr.
Environmental Release/Disposal: 0.5-100 kg/batch released to land. Disposal by incineration and landfill.

PMN 84-474

Manufacturer: Milliken and Company
Chemical: (G) Chromophore substituted poly(oxyethylene).
Use/Production: (G) Water soluble colorant. Prod. range: Confidential.
Toxicity Data: No data submitted.
Exposure: Confidential.
Environmental Release/Disposal: Confidential.

PMN 84-475

Importer: Confidential.
Chemical: (G) Complex of a substituted oxazoline and a metal substituted pyrazol.
Use/Import: (S) Industrial and consumer light stabilizer for paint. Import range: Confidential.
Toxicity Data: Irritation: Skin—Primary irritant, Eye—Primary irritant; Ames Test: Non-mutagenic.
Exposure: Processing: dermal.
Environmental Release/Disposal: No data submitted.

PMN 84-476

Manufacturer: Confidential.
Chemical: (G) Alkyl triester.
Use/Production: (G) Softener for textile prints. Prod. range: Confidential.
Toxicity Data: No data on the PMN substance submitted.
Exposure: Manufacture and processing: dermal, a total of 12 workers, up to 6 hrs/da, up to 53 da/yr.
Environmental Release/Disposal: 7 kg released to water. Disposal by POTW and company waste treatment plant.

PMN 84-477

Manufacturer. S. C. Johnson and Son, Inc.

Chemical. (G) Styrene, alpha olefin, 2,5-furandione copolymer.

Use/Production. (G) Water resistant coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-478

Manufacturer. S. C. Johnson Company, Inc.

Chemical. (G) Ammonium salt of styrene, alpha olefin, 2,5-furandione polymer.

Use/Production. (G) Water resistant coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-479

Manufacturer. Fairfield Chemical Company, Inc.

Chemical. (S) p-(Methylthio) aniline.

Use/Production. (S) Industrial chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Disposal by incineration.

PMN 84-480

Importer. Grau Aromatics GmbH and Co. KG.

Chemical. (G) Monocyclic acetate.

Use/Import. (S) Perfume for soaps and detergents for industrial, commercial and consumer use. Import range: 5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import: dermal, a total of 2 workers, up to 2 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No release.

PMN 84-481

Manufacturer. Confidential.

Chemical. (G) Polyester urethane polymer.

Use/Production. (S) Industrial magnetic tape binder. Prod. range: 150,000-1,000,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-482

Manufacturer. Texaco Chemical Company.

Chemical. (S) Urea, condensate with poly[oxy(methyl-1,2-ethanediyl)], alpha-

(2-aminomethylethyl)-omega-(2-aminomethylethoxy).

Use/Production. (S) Epoxy formulations. Prod. range: Confidential.

Toxicity Data. Acute oral: 0.263 ml/kg, 0.55-1.42 g/kg; Acute dermal: 0.566 ml/kg, > 3-6.4 g/kg; Irritation: Skin-Mild-Moderate, Eye-Irritating-Severe.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 18 da/yr.

Environmental Release/Disposal. No release.

Dated March 9, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-7065 Filed 3-15-84; 8:45 am]

BILLING CODE 6560-S0-M

[A-2-FRL 2545-5]**Prevention of Significant Deterioration of Air Quality (PSD); Final Permit Decision**

AGENCY: Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that on February 6, 1984, the U.S. Environmental Protection Agency, Region II, issued a final permit decision to the New York Power Authority denying its application for a coal and refuse-fired steam generating facility (Arthur Kill Station) in Staten Island, New York. This final action was issued pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21 (45 FR 52676) and the Consolidated Permit Regulations codified at 40 CFR 124 (45 FR 33405).

DATES: The effective date for the above PSD decision is February 6, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy & Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4711. This notice contains a copy of the final PSD decision. Copies of this decision and related materials are available for public inspection at the above office.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this decision is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit, May 15, 1984. Under Section 307(b)(2) of the Clean Air Act, this decision shall *not* be subject to later

judicial review in civil or criminal proceedings for enforcement.

Dated: February 6, 1984.

Jacqueline E. Schafer,
Regional Administrator.

Dr. John Blake, Director
Environmental Programs, New York Power Authority, 123 Main Street, White Plains, New York 10601

Dear Dr. Blake: On December 6, 1983, the Administrator of the United States Environmental Protection Agency (EPA), issued an order (copy enclosed) concerning the New York Power Authority's (NYPA's) Prevention of Significant Deterioration of Air Quality (PSD) permit for a new 700 megawatt coal and refuse-fired steam electric generating plant (Arthur Kill Station) in Staten Island, New York. This order remanded to the EPA Region II Administrator the final permit decision to deny the PSD permit. This letter serves as official notification to the NYPA that its application for a PSD permit for the Arthur Kill Station is hereby denied.

On February 22, 1982, the EPA Region II Office issued the NYPA a final PSD permit decision pending the administrative appeal procedures codified at 40 CFR 124. Pursuant to 40 CFR 124.19, petitions were submitted by Congressman Guy V. Molinari, Commissioner Joseph T. McGough of the New York City Department of Environmental Protection, and Kevin Sheehy. These petitions urged the Administrator to overturn the Region II permit decision of February 22, 1982. On October 22, 1982, the Administrator issued an order granting review of one condition of the permit. The condition related to the treatment of the cooling tower make-up water and whether the requirements should be more stringent. The petitions were denied in all other respects. Subsequently, comments, briefs and reply briefs were submitted by various parties.

During EPA's review of the aforementioned appeals, it was learned through public reports that the NYPA had decided to "indefinitely postpone" construction of the Arthur Kill Station. This postponement was a result of a decision by the Governor of New York not to sign a contract for the sale of power from the facility if one were presented to him. Such an action would preclude the NYPA from obtaining financing for the project. On May 16, 1983, EPA sent a letter to the NYPA inquiring about these public reports and whether the NYPA intended to withdraw its PSD application. Although the NYPA confirmed that the project had been postponed, they requested that EPA continue its review to "confirm" the technical design of the project. The NYPA was completely silent on whether the project had any chances of being built.

The Administrator of the EPA reviewed all of the available information on this project. He determined that the PSD permit issued to the NYPA should be denied. The Administrator's decision to deny the permit was based upon his judgment that the NYPA had no realistic prospect of commencing construction on the project within 18 months of the date of issuance of the final permit

decision as required by the PSD regulations (40 CFR 52.21(r)(2)). Also, approving a permit that had no realistic prospect of completion would unreasonably tie up the available increments allotted to the proposed facility thus possibly delaying or even preventing other permit applicants from obtaining permits for projects under no bar to timely construction. In accordance with the Consolidated Permit regulations (40 CFR 124.19(f)), the final decision to deny the permit was remanded to the Regional Administrator for execution.

This denial of the NYPA PSD permit for the Arthur Kill Station is final agency action and will be published in the *Federal Register*. Under Section 307(b)(1) of the Clean Air Act (the Act), judicial review of this final action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of the date of the *Federal Register* notice. Under Section 307(b)(2) of the Act, this final determination shall not be subject to later judicial review in civil or criminal proceedings for enforcement. This denial is without prejudice to the NYPA's right to reapply for PSD permit if the proposed project again becomes viable. Any such application will be subject to applicability requirements in effect at that time.

If you have any questions, please call Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch at (212) 264-4711.

Sincerely yours,

Jacqueline E. Schafer,
Regional Administrator.

(FR Doc. 84-7068 Filed 3-15-84; 8:45 am)

BILLING CODE 6560-50-M

[ER-FRL-2544-4]

Availability of Environmental Impact Statements Filed March 5 Through March 9, 1984 Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 840094, DSUPPL, COE, OH, Cleveland Harbor Navigation Project, Lake Erie, Cuyahoga County, Due: May 7, 1984.

EIS No. 840095, Draft, COE, LA, West Bank Hurricane Protection, Levee Construction, Permit, Jefferson parish, Due: Apr. 30, 1984.

EIS No. 840096, Final, EPA, REG, Metallic Mineral Processing Plants, Emission Standards, Due: Apr. 16, 1984.

EIS No. 840097, Draft, SCS, TX, Big Creek Watershed Multiple Purpose Project, Falls, Limestone and McLennan Cos., Due: May 4, 1984.

EIS No. 840098, Draft, COE, KS, Arkansas City Flood Control Plan, Arkansas and Walnut Rivers, Cowley County, Due: Apr. 30, 1984.

EIS No. 840099, Draft, USA, NC, Sunny Point Military Ocean Terminal,

Navigation Basins/Access Channels Reconfiguration, Brunswick County, Due: Apr. 30, 1984.

EIS No. 840100, Draft, UAF, NM, Melrose Air Force Bombing Range Expansion, Curry and Roosevelt Counties, Due: Apr. 30, 1984.

EIS No. 840101, Final, FHW, OH, LUC, Buckeye Greenbelt Parkway Const., Cherry St. to Manhattan Blvd., Lucas County, Due: Apr. 16, 1984.

EIS No. 840102, Final, REA, CO, NM, Rifle to San Juan 345 kV Transmission Line/Associated Facilities, C/O, Grant, Due: Apr. 16, 1984.

EIS No. 840103, Final, FRC, ID, Eagle Rock Hydroelectric Project, C/O/M, License, Power Co. Due: Apr. 16, 1984.

EIS No. 840104, Draft, FHW, KS, Southern Arterial Const., Ft. Riley/KS-18 to Tuttle Creek Blvd./US 24, Riley County, Due: May 1, 1984.

EIS No. 840105, Draft, EPA, AK, Red Dog Mine Project, Permits, Red Dog Creek (EPA/DOI) Due: May 14, 1984.

EIS No. 840106, Draft, DOI, AK, Red Dog Mine Project, Permits, Red Dog Creek (DOI/EPA) Due: May 14, 1984.

Amended Notices:

EIS No. 840088, Final, FHW, NV, US 395 Construction, Winters Ranch North to South Virginia/I-580, Washoe County, Correction: This EIS should have been included in the Notice of Availability of Environmental Impact Statements filed Feb. 27 through Mar. 2, 1984. Published FR 03/09/84, Due: Apr. 09, 1984.

Dated: March 13, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

(FR Doc. 84-7146 Filed 3-15-84; 8:45 am)

Billing Code 6560-50-M

[FR-FRL-2544-4]

Availability of Draft Environmental Impact Statement for the Red Dog Mine Project

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of draft environmental impact statement for the Red Dog Mine project.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and implementing Federal Regulations, the U.S. Environmental Protection Agency (EPA) and U.S. Department of the Interior (DOI) have prepared a Draft Environmental Impact Statement (DEIS) on the proposed Red Dog Mine Project. The Red Dog mineral prospect (lead, zinc, silver and barite) is located in the De Long mountains of Northwest Alaska on lands owned by

the NANA Regional Corporation. Through an agreement with NANA, Cominco Alaska proposes to develop an open-pit mine, with adjacent ore milling facilities, and to construct a transportation system that would include a regional transportation route and saltwater port on the Chukchi Sea for shipping ore concentrates to foreign and domestic markets.

DATES: The 60-day public comment period will close on May 14, 1984.

ADDRESS: Comments should be addressed to Mr. William M. Riley, EIS Project Officer, Environmental Evaluation Branch M/S 443, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: William M. Riley (see address above); (206) 442-1760 or Paul Gates, Regional Environmental Officer, Department of the Interior, P.O. Box 100120, Anchorage, AK 99510; (907) 271-5011. A limited number of copies are available free-of-charge; multiple order requests will not be honored.

SUPPLEMENTARY INFORMATION: Cominco Alaska has applied to EPA for a National Pollutant Discharge Elimination System (NPDES) permit to discharge pollutants from the mine site to navigable waters pursuant to the provisions of the Clean Water Act (Pub. L. 95-217). The proposed mine and mill facility has been determined to be a New Source under Section 306 of the Clean Water Act and, according to Section 511(c)(1) of the Clean Water Act, is subject to the provisions of the National Environmental Policy Act. The draft New Source NPDES permit has been released for concurrent public review with this EIS (Appendix 4).

As a cooperating agency for the EIS, the Alaska District Corps of Engineers (Corps) under the authority of Section 10 of the River and Harbors Act of 1899 and Section 404 of the Clean Water Act, will evaluate Cominco Alaska's proposed activities in certain waters of the United States in the vicinity of the mine site. Appendix 5 of the EIS contains a complete description of the proposed activities requiring Department of the Army (DA) authorization.

Cominco Alaska has also filed a consolidated Alaska National Interest Lands Conservation Act (ANILCA) Title XI application with the DOI, EPA, and the Corps for Federal permits required for the development of the proposed transportation system. The following permits are covered by the consolidated Title XI application and this DEIS:

- A DOI National Park Service (NPS) Right-of-Way Permit to construct a transportation route through Cape Krusenstern National Monument.

- An EPA NPDES permit for a sanitary waste discharge from the port facility.

- DA permits for proposed activities in certain waters of the United States that would be affected by the transportation system.

The consolidated Title XI application for these permits is included as Appendix 6 of the DEIS.

Substantive comments are invited on the DEIS, Draft NPDES permit, Title XI application and all related permit decisions and will be considered in the preparation of the final EIS and the various permit Records of Decision.

Public hearings on the DEIS, the draft New Source NPDES permit, the Title XI application and DA authorization are scheduled for the following locations and times:

Washington, D.C.: April 24, 1984, Room 7000 B, Main Interior Bldg., 18th & C St. NW., 1:00 PM

Anchorage: May 2, 1984, Nat. Park Serv. Office, Room 110, 2525 Gambel St., 7:30 PM

Kotzebue: May 3, 1984, NANA Museum, 7:30 PM

Participants at the Washington, D.C., public hearing are requested to notify F.T. Daugherty, National Park Service, Section 762, Washington, D.C. 20240; (202) 343-4260 prior to April 11, 1984. Presentations will be limited initially to five minutes. Any written comments to be submitted as part of the record should be submitted to F.T. Daugherty prior to April 11, 1984.

Dated: March 13, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-7149 Filed 3-15-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL 2544-5]

Intent To Prepare a Supplement to the Final Environmental Impact Statement (EIS) for Savannah, Georgia; Charleston, South Carolina; and, Wilmington, North Carolina, Ocean Dredged Material Disposal Sites (DMDS) Designation To Include the Designation of the Ocean DMDS at Georgetown Harbor, South Carolina

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement (FEIS).

SUMMARY: For over 30 years, the Charleston District, Corps of Engineers, has dredged material from the Georgetown Harbor entrance channel and deposited the material on nearby, predominantly sandy substrate. The impacts of harbor maintenance were discussed in the Corps' March 1976 FEIS for Georgetown Harbor. Since 1977 the currently used Georgetown ocean DMDS has been designated by EPA as an interim site, pending study and final designation in accordance with the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). In October 1983 EPA filed a FEIS for the permanent designation of Savannah, Georgia, Charleston, South Carolina; and, Wilmington, North Carolina, ocean DMDS's. Originally, as recorded in the December 1980 Federal Register (Vol. 45, No. 238), the Georgetown ocean DMDS was to have been part of this EIS, and the studies that supported the EIS covered, both geographically and topically, the portion of the South Atlantic Bight in which the Georgetown ocean DMDS is located.

Most of the discussions in the Savannah-Charleston-Wilmington EIS pertaining to legislation, regulation, international considerations and similar topics are applicable to the Georgetown ocean DMDS without change. Maps and descriptions of the fishing areas, "hard-bottom" areas, Mineral Management Service (MMS) oil and gas leases, shelf breaks, climate, currents, wave actions, substrate grains size, water chemistry, biology, and other features cover the Georgetown area as well as the three sites in the FEIS title. The Supplement to the FEIS will expand on specific, local features of the Georgetown ocean DMDS and its environs.

The scope of alternatives to designation of the Savannah, Charleston, and Wilmington sites, as well as the rejection of most of the alternatives, can be similarly applied to the Georgetown ocean DMDS. These alternatives include the no-action alternative (not designating any ocean disposal site for Georgetown Harbor), land based disposal, and designation of another nearshore site, a mid-shelf site, or a shelf break site. The Supplement will examine these alternatives for the Georgetown ocean DMDS in light of the data and arguments presented in the FEIS and in more recent, site-specific studies of the Georgetown DMDS.

The scope of issues that need to be addressed and the scope of alternatives available to designation of the new interim Georgetown ocean DMDS appears to be the same as those already considered in the FEIS to be supplemented. No additional meetings

or other formal scoping procedures are planned.

Significant issues, in addition to those listed three paragraphs above, include marine resources in the vicinity that may be affected by ocean disposal, the impact of the past 30 years' use of the Georgetown ocean DMDS, and a detailed examination of substrate and benthic communities in and around the DMDS.

The Corps of Engineers will participate as a cooperating agency and will prepare a preliminary document setting forth the significant issues, reasonable alternatives, and their impacts. This preliminary document will be supported by detailed surveys of the Georgetown ocean DMDS and nearby areas conducted by the South Carolina Wildlife and Marine Resources Department, and will be revised as necessary by EPA and incorporated into the Draft Supplement to EPA's FEIS.

Section 7 Coordination with the U.S. National Marine Fisheries Service on endangered species and a Determination of Consistency with the South Carolina Coastal Zone Management Program are the only environmental review and consultation requirements (besides NEPA) that will be specifically addressed in the Supplement. Most of the consultation and coordination required by law for major federal actions have been satisfactorily dealt with in the FEIS or are not applicable to this type of decision. (e.g., MPRSA Section 103 Evaluations do not apply to the designation of a site, although they are required for the actual transportation and dumping of material at a site.)

The estimated date when the Draft Supplement to the FEIS will be available to the public is May 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald Rogers, EPA, Region IV, (404 881-7901 or FTS 257-7901).

Dated: March 13, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-7150 Filed 3-13-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

The Conifer/Essex Group, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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 (49 FR 794) 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)).

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 to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than April 9, 1984.

A. Federal Reserve Bank of Boston (Richard F. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *The Conifer/Essex Group, Inc.*, Worcester, Massachusetts; to merger with Charterbank Incorporated, Brockton, Massachusetts, and thereby indirectly acquire Plymouth-Home National Bank, Brockton, Massachusetts.

Board of Governors of the Federal Reserve System, March 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7042 Filed 3-15-84; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

Th company listed in this notice has filed applications under § 225.23(a)(1) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank's Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 6, 1984.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota to engage *de novo* through its subsidiary, Norwest Financial New Jersey, Inc., in selling credit property and credit-related casualty insurance related to its extensions of credit from its branches in New Jersey, serving the state of New Jersey.

2. *Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through its subsidiaries, Norwest Financial West Virginia, Inc., and Norwest Financial Industrial West Virginia, Inc., in selling credit property and credit-related casualty insurance related to their extensions of credit from their branch offices in West Virginia, serving the state of West Virginia.

Board of Governors of the Federal Reserve System, March 12, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-7043 Filed 3-15-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 9.

Health Care Financing Administration

Subject: National Swing-Bed Program Evaluation (0938-0290)—revision

Respondents: Institutions and health care practitioners involved in the national rural swing-bed program

Subject: Outpatient Rehabilitation Provider Cost Report (0938-0037)—revision

Respondents: Health care providers participating in Medicare
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Worksheet for Integrated Aid to Families with Dependent Children (ADFC), Food Stamps and Medicaid Quality Control Review (0960-0176)—revision

Respondents: State AFDC program offices

Subject: Farm Arrangement Questionnaire (0690-0064)—extension/no change

Respondents: Individuals with farm rental income

Subject: Statement by Black Lung Beneficiary Regarding Reportable Events—new

Respondents: Selective black lung and Title II beneficiaries

OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive

Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: March 8, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-7049 Filed 3-15-84; 8:45 am]

BILLING CODE 4150-04-M

1984 Contribution and Benefit Base Under Pre-1977 Amendment Law

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Determination of the "Old-Law" Social Security Contribution and Benefit Base.

SUMMARY: The Social Security Amendments of 1977 set the contribution and benefit base at \$22,900 for 1979, \$25,900 for 1980 and \$29,700 for 1981. After 1981, the base increases as average wage levels rise. The contribution and benefit base is the maximum annual amount of earnings that is subject to Social Security taxes and is creditable toward Social Security benefits. The 1977 amendments also provide for separate annual determinations of the contribution and benefit base that would have been in effect under old law (pre-1977 law). This "old-law" base is used only for certain purposes under the railroad retirement program and the Employee Retirement Income Security Act of 1974 (ERISA) and for computing special minimum Social Security benefits for workers with many years of low earnings. This notice specifies that the amount for 1984 under pre-1977 law is \$28,200.

FOR FURTHER INFORMATION CONTACT: Eli Donkar, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-3365.

SUPPLEMENTARY INFORMATION: The Social Security Amendments of 1977 (Pub. L. 95-216) changed the contribution and benefit base, which is the maximum annual amount of earnings on which Social Security taxes are paid and a person's Social Security benefits are figured. Section 230(c) of the Social Security Act specifies the contribution and benefit base for 1979, 1980, and 1981 and a computation formula to use for years after 1981. Using this computation formula, we determined the contribution and benefit base to be \$37,800 for 1984. We published this information in the Federal Register on November 1, 1983 (48 FR 50414).

"Old-Law" Contribution and Benefit Base

The "old-law" contribution and

benefit base is the base that would have been effective in each year after 1977 under the Social Security Act before the enactment of the 1977 amendments. This "old-law" base is used:

(1) For certain purposes under the railroad retirement program and the Employee Retirement Income Security Act of 1974 (ERISA); and

(2) To compute special minimum Social Security benefits for certain workers with many years of low earnings.

The base is computed under section 230 of the Social Security Act as it read prior to the 1977 amendments.

Computation

Under section 230 of the Social Security Act as in effect before the 1977 amendments, we would determine the contribution and benefit base for 1984 by multiplying the "old-law" 1983 base by the ratio of average wages reported for 1982, \$14,531.34, to average wages reported for 1981, \$13,773.10 or 1.055052. We previously explained in the Federal Register how we computed these average wages on November 1, 1983 (48 FR 50414).

Multiplying the "old-law" 1983 contribution and benefit base of \$26,700 by the above ratio results in the amount of \$28,169.89, which must be rounded to the nearest multiple of \$300. Therefore, we determine the "old-law" base for 1984 to be \$28,200.

Railroad Retirement Uses

The railroad retirement program will use the \$28,200 base to determine:

(1) Employee and employer tax liability under sections 3201(a) and 3221(a) of the Internal Revenue Code of 1954;

(2) The portion of the employee representative tax liability under section 3211(a) of the Internal Revenue Code of 1954 which results from the application of the 12.75 percent rate specified in that section; and

(3) Average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974, but not annuity amounts determined under sections 3(a) or 3(f)(3) of that act.

These uses are stated in section 230(c) of the Social Security Act.

Employee Retirement Income Security Act (ERISA) Use

Under section 230(d) of the Social Security Act, ERISA will use the 1984 "old-law" base of \$28,200 to determine the maximum pension benefit guaranteed by the Pension Benefit Guaranty Corporation for pension

benefit plans terminating in 1984.

Social Security Use

Special minimum Social Security benefits are payable to workers with many years of low earnings. If, in 1984, a worker's earnings amount to at least 25 percent of the "old-law" base of \$28,200, we will credit the worker with a "year of coverage" for 1984. Years of coverage are used to compute the special minimum benefit payable under section 215(a) of the Social Security Act.

(Catalog of Federal Domestic Assistance Program Nos. 13.803, Social Security—Retirement Insurance; 57.001, Social Security Insurance for Railroad Workers)

Dated: March 13, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-7095 Filed 3-15-84; 8:45 am]

BILLING CODE 4190-11-M

Health Care Financing Administration

Utilization and Quality Control Peer Review Program; Solicitation of Comments on Proposed Scope of Work for Waivered and Exempt PRO Areas

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice does not constitute a request for proposal (RFP). The purpose of this notice is to solicit comments on the Scopes of Work prepared as part of the RFPs for Utilization and Quality Control Peer Review Organizations (PROs) for PRO areas waived or exempted from the Medicare prospective payment system. These areas include Maryland, Massachusetts, New Jersey, New York, Guam, Puerto Rico, and the Virgin Islands.

DATE: Comment date: To assure consideration, written comments must be received by March 30, 1984.

ADDRESS: Address requests for copies of the Scope of Work as well as comments on the Scope of Work to: Health Care Financing Administration, DHHS, Attention: Allan Lazar, Director, Office of Medical Review, Health Standards and Quality Bureau, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207.

Specify which waived or exempt PRO area Scope of Work is requested.

FOR FURTHER INFORMATION CONTACT: Allan Lazar, (301) 594-1432.

SUPPLEMENTARY INFORMATION: The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, Pub. L. 97-248) (Act) repealed the

Professional Standards Review Organization (PSRO) program and replaced it with the Utilization and Quality Control Peer Review Program, commonly referred to as the PRO program. The Act requires the Secretary to enter into contracts with private Utilization and Quality Control Peer Review Organizations (PROs) for the review of the quality, necessity, and appropriateness of health care services furnished under Medicare. The Act further requires the Secretary to establish geographic areas for the purpose of entering into contracts for PRO review. These areas are called PRO areas. (Refer to 49 FR 7209, February 27, 1984 that lists designated PRO areas.)

The review by PROs will include Medicare services furnished by hospitals in PRO areas including those areas that are subject to and those that are waived or exempt from the prospective payment system (PPS) mandated by the Social Security Amendments of 1983 (Pub. L. 98-21). Regulations on the prospective payment system were published on September 1, 1983 (48 FR 39752) and were amended on January 3, 1984 (49 FR 234). The prospective payment system applies to most hospitals approved by the Federal government to provide Medicare (Part A) services. However, HCFA has the authority to grant approval for waivers from PPS to those States that have approved cost control systems or are operating under demonstration projects. Maryland, Massachusetts, New Jersey, and New York are presently operating under demonstration projects and HCFA has approved waivers for those States. Additionally, hospitals outside the 50 States and the District of Columbia are excluded from PPS. Thus, Guam, Puerto Rico, and the Virgin Islands are exempt from PPS. The waived and exempt PRO areas, therefore, include Maryland, Massachusetts, New Jersey, New York, Guam, Puerto Rico, and the Virgin Islands.

The review for hospitals subject to PPS will differ from the review for other hospitals. As part of the contracting process for PROs, we are preparing separate Requests for Proposals (RFPs) for waived and exempt PRO areas that include a description of the Scope of Work to be performed. We are requesting comments on the preliminary version of the Scope of Work portion of these RFPs. The waived and exempt areas present unique reimbursement incentives for providers. Our goal is to tailor the work effort to the characteristics and incentives in effect in each of these areas. In providing these Scopes of Work for public

comment, we are especially interested in comments that address those aspects of reimbursement, demographics, etc., that are unique to each waived and exempt area. Requests for a specific copy of the Scope of Work and comments on the Scope of Work should be mailed to the address shown above.

All written comments received by the Health Care Financing Administration will be considered, but the Federal government is not obligated to incorporate particular comments into the scope of work which will be included in the RFP. The final version of the RFP is the responsibility of the Federal government.

(Sec. 1153 (b), (c), and (e) of the Social Security Act (42 U.S.C. 1320c-2 (b), (c), and (e))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: March 2, 1984.

Carolyn K. Davis,
Administrator, Health Care Financing
Administration.

[FR Doc. 84-7098 Filed 3-15-84; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the months of April and May 1984:

Name: National Advisory Council on Health Professions Education.

Date and Time: April 30–May 2, 1984, 9:00 a.m.

Place: Conference Room M, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Closed on April 30, and May 1 until 1:00 p.m., open for remainder of the meeting.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover: welcome and opening remarks; report of the Administrator; budget update; discussion of review process; progress report on Council group dealing with prospective reimbursement of clinical education costs, shortage areas

designation report; discussion on health professions student loans; and future agenda items. The meeting will be closed to the public on April 30, and May 1, 9:00 a.m. to 12:00 noon, for the review of grant application for General Internal Medicine General Pediatrics, Predoctoral Training in Family Medicine, Area Health Education Center Special Initiatives, Podiatric Medicine Training, Health Careers Opportunity Program, Residency Training in the General Practice of Dentistry and Graduate Programs in Health Administration. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mr. Robert L. Belsley, Executive Secretary, National Advisory Council on Health Professions Education, Bureau of Health Professions, Health Resources and Services Administration, Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Agenda items are subject to change as priorities dictate.

Dated: March 12, 1984.

Jackie E. Baum,
Advisory Committee Management Officer,
HRSA.

[FR Doc. 84-7036 Filed 3-15-84; 8:45 am]

BILLING CODE 4160-15-M

Proposed Redesignation of Three Health Service Areas in Illinois

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

ACTION: General notice.

SUMMARY: This notice is issued to inform all interested parties that the Governor of Illinois has requested that the boundaries of three health service areas in Illinois be revised. Written and oral comments are invited, as set forth below.

DATE: Hearings will be held on May 7-8, 1984 at 9:00 a.m. at the Chicago HHS Regional Office, 300 South Wacker Drive, Chicago, Illinois 60606, unless no requests are received.

ADDRESS: Copies of the redesignation requests are available for public inspection during normal working hours at the office of the Regional Health Administrator, HHS Regional Office V,

300 South Wacker Drive, Chicago, Illinois 60606, 312-353-1385.

FOR FURTHER INFORMATION CONTACT:

Z. Erik Farag, Ph.D., Director, Division of Planning Assistance and Assessment, Office of Health Planning, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Room 9A-19, Rockville, Maryland 20857, 301-443-6680.

SUPPLEMENTARY INFORMATION: Under Title XV of the Public Health Service Act, as amended (the "Act"), the Secretary of Health and Human Services has designated health service areas throughout the United States. Health systems agencies were then designated for each of these areas to carry out health planning activities specified in Title XV. Under section 1511(b)(4) of the Act, any Governor may request that the boundaries of the health service areas in his or her state be revised. On December 22, 1983, Governor Thompson of Illinois submitted to the Secretary three health service area redesignation requests. They are: (1) To realign the boundaries of two northeastern Illinois health service areas by transferring DuPage County from the Suburban-Cook/DuPage health service area (IL-07) to the health service area now covering Kane, Lake, and McHenry Counties (IL-08); (2) to permit the portion of the county of Cook that is located outside the City of Chicago, known as Suburban Cook, to become a separate health service area; and (3) to designate a health service area for southwest Illinois, to include Clinton, Madison, Monroe and St. Clair Counties, which were previously part of the Greater St. Louis Health Service Area before Missouri was granted a section 1536 designation.

Title XV of the Act requires that health service areas have certain characteristics (section 1511(a)). The boundaries of the areas are to be established pursuant to those characteristics. The regulations for Revision of Health Service Area Boundaries (at 42 CFR 122.702), published July 15, 1982, provide that health service areas may be revised if: (1) The boundaries no longer meet the requirements of the Act, or (2) the proposed new boundaries meet the requirements of the Act in a significantly more appropriate manner in terms of the efficiency and effectiveness of health planning efforts.

This notice is published to give interested persons: (1) The opportunity to comment in writing on whether the Governor's proposals should be approved, and (2) the opportunity to

present oral comments at hearings on the proposed redesignations. Written comments will be accepted if received by the Acting Associate Director for Health Planning by April 16, 1984. Hearings will be held at the Chicago HHS Regional Office, 300 South Wacker Drive, Chicago, Illinois, 60606 on May 7, 1984 at 9:00 a.m. to hear public comments on the proposal to transfer DuPage County from the Suburban-Cook/DuPage HSA to the Kane, Lake, and McHenry HSA. Immediately following, testimony will be heard on the proposal to designate Suburban Cook County as a separate health service area.

A hearing on the proposal to designate a health service area for southwest Illinois composed of Clinton, Madison, Monroe and St. Clair Counties will be held on May 8 at the Chicago HHS Regional Office, unless no requests are received.

Individuals wishing to offer testimony at the hearings must request to do so in writing to the Acting Associate Director for Health Planning by April 16, 1984. The request should specify the proposal on which the individual wishes to offer testimony, the individual's organizational affiliation, and the approximate amount of time needed for the presentation.

We intend to limit the number of individuals testifying on behalf of any one organization. In the event that insufficient time is available to accommodate all speakers who submitted requests to testify, the presiding officer will allocate the available time among the persons making oral presentations.

Comments and/or requests to testify should be submitted to the Acting Associate Director for Health Planning, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Room 13A-56, Rockville, Maryland 20857.

Dated: March 12, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 84-7037 Filed 3-15-84; 8:45 am]

BILLING CODE 4160-17-M

Public Health Service

National Center for Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical

effectiveness and use (indications) of diagnostic thermography. This notice covers all uses of thermography for reasons other than the diagnosis of breast lesions which was addressed in a previous notice of assessment. Of particular interest is the use of thermography in the following three areas:

Peripheral vascular disease (e.g., thrombophlebitis, arterial insufficiency);

Musculoskeletal injury (e.g., low back injury involving muscles, ligaments, soft tissue or herniated disc);

Cervical thermography for diagnosis of extra-cranial vessel disease causing central nervous system symptoms (carotid insufficiency), and for diagnosis of inflammatory, neoplastic, and hyperplastic lesions; examples are: soft tissue injury (e.g., whiplash), or the presence of a foreign body, thyroid nodule, parathyroid adenoma, or tumor of the larynx with metastases to neck lymph nodes.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than June 15, 1984 or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on the clinical acceptability and the effectiveness of this technology is also being sought.

Written material should be submitted to: John R. Farrell, M.D., National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Further information is available from Dr. John Farrell, Health Science Analyst, at the above address or by telephone (301) 443-4990.

Dated: March 2, 1984.

Enrique D. Carter,

Acting Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 84-7048 Filed 3-15-84; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Solar Energy and Energy Conservation Bank

[Docket No. 84-1355; FR-1700]

Tentative Allocation of Funds for Financial Assistance Through the Solar Energy and Energy Conservation Bank; Solicitation of Program Proposals

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Notice of Tentative Allocation of Funds and Notice of Solicitation of Program Proposals.

SUMMARY: A final rule for the financial assistance program of the Solar Energy and Energy Conservation Bank is being published at the same time as this Notice. While legal effectiveness of the rule is delayed, as indicated therein under "Effective Date", this Notice is being issued in anticipation of legal effectiveness for the final rule to enable current and prospective program participants to prepare for operation under the final rule. This Notice sets forth the tentative allocations of funds which will be available for Fiscal Year 1984 under Section 1800.95 of the final rule. It also solicits program proposals to be submitted under § 1800.93 of the final rule by States without current cooperative agreements with the Bank and by interested applicants for designation as Indian Assistance Coordinator for the Bank. The Notice provides guidance for the required contents of the program proposals. It also provides guidance to States with current cooperative agreements concerning continued participation in the Bank program and desired program modifications.

FOR FURTHER INFORMATION CONTACT:

Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Room 7110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: 202-755-7166. (This is not a toll-free number.)

Proposal Due Date

Proposals from States without current cooperative agreements must be

received by the Bank within 30 days after the effective date of the final rule for the Bank. Proposals from interested applicants for Indian Assistance Coordinator must be received by the Bank within 60 days after the effective date of the final rule. All proposals must be received by 5:00 p.m. of the date indicated, and should be submitted to the address indicated above under "For Further Information Contact". Three complete copies of each proposal package are required.

SUPPLEMENTARY INFORMATION:

Tentative Allocations

For Fiscal Year 1984, the tentative allocation of funds under § 1800.95 of the final rule will be as follows:

State	Tentative allocation	Percent of allocation
Alabama	368,000	1.96
Alaska	26,200	0.14
American Samoa	120,000	0.64
Arizona	170,700	0.91
Arkansas	279,900	1.49
California	1,248,700	6.66
Colorado	191,800	1.02
Connecticut	204,700	1.09
Delaware	120,000	0.64
District of Columbia	37,300	0.20
Florida	753,800	4.02
Georgia	446,000	2.38
Guam	120,000	0.64
Hawaii	120,000	0.64
Idaho	89,200	0.48
Illinois	884,700	4.72
Indian Assistance Coordinator	120,000	0.64
Indiana	490,700	2.62
Iowa	271,200	1.45
Kansas	214,500	1.14
Kentucky	354,800	1.89
Louisiana	356,200	1.90
Maine	106,600	0.58
Maryland	258,800	1.38
Massachusetts	410,800	2.19
Michigan	744,000	3.97
Minnesota	320,000	1.71
Mississippi	247,900	1.32
Missouri	491,000	2.62
Montana	75,900	0.40
Nebraska	150,400	0.80
Nevada	62,600	0.33
New Hampshire	66,600	0.36
New Jersey	466,000	2.48
New Mexico	85,100	0.45
New York	1,104,600	5.89
North Carolina	523,800	2.79
North Dakota	62,500	0.33
Northern Mariana Islands	20,000	0.11
Ohio	945,100	5.04
Oklahoma	301,600	1.61
Oregon	223,000	1.19
Pennsylvania	1,008,400	5.38
Puerto Rico	237,600	1.27
Rhode Island	68,100	0.36
South Carolina	249,800	1.33
South Dakota	120,000	0.64
Tennessee	502,300	2.68
Texas	1,077,500	5.75
Trust Territory of the Pacific Islands	120,000	0.64
Utah	110,000	0.59
Vermont	48,900	0.26
Virgin Islands	120,000	0.64
Virginia	381,900	2.04
Washington	363,700	1.94
West Virginia	187,100	1.00
Wisconsin	380,800	2.03
Wyoming	120,000	0.64
Total	18,752,800	100.00

The above tentative allocation results from the formula distribution of funds as required by Section 1800.95(a) of the final rule. The Bank recognizes that some States have a much lower funding allocation level than in 1983, as would be apparent in comparing these levels with funding allocations made in 1983, particularly on a percentage basis. This is an outcome of the change to use of specific criteria for allocation, now required by change to the Bank's statute, rather than on the basis of program merit as in 1983. However, additional funds of approximately \$18,000,000 are available for allocation in Fiscal Year 1984 from a reserve fund in accordance with § 1800.95(c) of the final rule. Such additional funds are available on the basis of performance, rather than a formula, so that the potential exists for any particular State to achieve a funding level in Fiscal Year 1984 comparable to the level in 1983.

How States Receive Tentative Allocations

A. Current State Participants. Each State which executed a cooperative agreement with the Bank prior to October 1, 1983, is considered a current State participant and will receive an unexecuted cooperative agreement amendment from the Bank. A State will have a 60-day period from the date the amendment is provided by the Bank to complete such amendment and return it to the Bank. Failure to do so will cause a current State participant's Fiscal Year 1984 allocation to be added to reserve funds under Section 1800.95(c) of the final rule, but will have no effect on funds awarded to a State prior to October 1, 1983. In order to receive its tentative allocation for Fiscal Year 1984, a current State participant must execute the cooperative agreement amendment that will obligate the tentative allocation to the State.

If a current State participant desires a change to the State program approved in its cooperative agreement, it should incorporate such change in the unexecuted cooperative agreement amendment provided by the Bank for the State to complete. (A program change may be requested at any other time by combining such changes will facilitate Bank operations.) If a State does not elect to receive additional funds but still desires to make such changes with respect to previously-awarded funds, the State may submit a proposed change to the Bank at its convenience. The Bank will prepare cooperative agreement amendments which conform the existing cooperative agreements to the final rule and include

the State's tentative allocation for obligation.

B. New State Participants. Any State which does not have a cooperative agreement with the Bank may receive its tentative allocation for Fiscal year 1984 by submitting a written program proposal which is acceptable to the Bank. The program proposal should contain, as a minimum, the following:

(1) A narrative description of the specific financial assistance program proposed and the techniques to be used to interrelate ongoing energy-related activities with Bank-provided funding and relevant local or private resources available;

(2) A description of the organizational framework of the lead agency for implementing the proposed program including the administrative, managerial or regulatory relationships between the lead agency and any planned local or private agency participants, which identifies the lead agency key personnel, their proposed role(s), and their qualifications for the job;

(3) A statement of program general objectives and specific goals, the rationale for the energy conservation and/or solar program(s) and building eligibility proposed, as well as any geographic areas or income groups targeted for priority attention;

(4) A proposed timetable for implementation and operation of the program, assuming a cooperative agreement with the Bank is in effect six months from the date of this notice;

(5) A proposed budget on the funding for proposed activities based on the Bank's tentative allocation and any planned sources of funding other than the Bank, with a breakdown of planned expenditures and explanation of how they were derived by type of assistance proposed, including estimated administrative and promotional expenses (see section 1800.99 of the final rule for limitations);

(6) A statement on existing financial assistance programs and assurance that the proposed use of Federal funds will not overlap, duplicate, or displace such existing programs;

(7) Proposed quality assurance activities, e.g., random post-installation inspections;

(8) A statement that the proposal is in response to this Notice submitted by an entity eligible under the final rule that is currently not a program participant, which is signed by a duly authorized individual; and

(9) The identification of a person or persons (including telephone numbers and address) who may be contacted to provide further information to the Bank's staff concerning the proposal.

and the name, telephone number and address of the person to whom a cooperative agreement from the Bank would be directed.

If a program proposals acceptable, the Bank will prepare a cooperative agreement for obligation of the State's tentative allocation. If a proposal is unacceptable, the Bank will inform the State of deficiencies which must be corrected before a cooperative agreement can be prepared. A new State participant with an acceptable proposal must execute and return the cooperative agreement to the Bank within 60 days of the time the cooperative agreement is provided by the Bank or by September 1, 1984, whichever is sooner.

Designation of Indian Assistance Coordinator

Before the Bank can obligate the tentative allocation for the Indian Assistance Coordinator (IAC) it must designate an entity as IAC. An IAC for Fiscal Year 1984 will be designated on the basis of the best written program proposal and statement of qualifications received by the Bank from an interested applicant, except that no IAC will be designated for Fiscal Year 1984 if there is no acceptable applicant. The statement of qualifications should explain how the applicant meets the requirements stated in § 1800.93(d) of the final rule. The program proposal should contain, as a minimum, the following:

(1) A narrative description of the specific financial assistance program proposed and the techniques to be used to interrelate ongoing energy-related activities with Bank-provided funding and relevant local or private resources available;

(2) A description of the organizational framework of the IAC for implementing the proposed program which identifies key personnel, their proposed role(s), and their qualifications for the job;

(3) A statement of program general objectives and specific goals, the rationale for the energy conservation and/or solar program(s) and building eligibility proposed, as well as any geographic areas or income groups targeted for priority attention;

(4) A proposed timetable for implementation and operation of the program, assuming a cooperative agreement with the Bank is in effect six months from the date of this notice;

(5) A proposed budget on the funding for proposed activities and any planned sources of funding other than the Bank, based on the Bank's tentative allocation available, with a breakdown of planned expenditures and explanation of how they were derived by type of assistance

proposed, including estimated administrative and promotional expenses (see § 1800.99 of the final rule for limitations);

(6) A statement on existing financial assistance programs and assurance that the proposed use of Federal funds will not overlap, duplicate, or displace such existing programs;

(7) Proposed quality assurance activities, e.g., random post-installation inspections;

(8) A statement of the qualifications of the proposer in response to § 1800.95(d) of the final rule;

(9) A statement that the proposal is in response to this Notice, which is signed by a duly authorized individual; and

(10) The identification of a person or persons (including telephone number and address) who may be contacted to provide further information to the Bank's staff concerning the proposal, and the name, telephone number and address of the person to whom a cooperative agreement from the Bank would be directed.

All proposals for designation of an IAC received by the due date specified in this Notice will be addressed by the Bank as follows:

(1) The statement of qualifications will be reviewed to determine the proposer's eligibility as IAC. All proposers considered ineligible will be so notified and no further consideration will be given in response to this Notice.

(2) The following considerations will be given to eligible proposers:

(a) Innovativeness of program proposed, particularly with regard to proposed use of existing local or private resources of a complementary nature, to maximize effective use of Federal funds.

(b) Extent to which proposal recognizes and accommodates problems and needs of lower-income persons and groups and/or of specific, high priority, geographic areas.

(c) Reasonableness of estimated timetable and staff resources required for implementation of proposed program.

(d) Adequacy of monitoring procedures used to prevent and detect fraud, abuse, or waste of funds or other property.

(e) Qualifications of key personnel to be involved.

(f) Experience in other similar assistance program(s).

(g) Clarity and thoroughness of proposal.

One IAC designation will be made based on overall proposal merit considering the above factors. Factors (a) and (b) have about twice the importance of factors (c), (d) and (e) and

about three times the importance of factors (f) and (g). The Bank will prepare a cooperative agreement for obligation of the Fiscal Year 1984 IAC tentative allocation to the entity designated as IAC. If a tentative allocation is provided for an IAC in Fiscal Year 1985, the final rule will permit the Bank to redesignate as IAC the Fiscal Year 1984 IAC, or to announce a new competitive solicitation in the Federal Register.

Operating Procedures

As stated in the preamble to the final rule, States with current written operating procedures as required by the cooperative agreements must revise their procedures to reflect certain changes based on the final rule. These revisions must be received by the Bank within 30 days after the effective date of the final rule to avoid possible rejection of funding requests for loan subsidies or grants. Any operating procedures prepared under the interim rule provisions will need to be revised to, at a minimum, amend the 7-year simple payback restriction on assistance and, where appropriate, amend the energy audit requirements. Additionally, operating procedures with a passive space cooling program component must be revised (see applicable sections of the final rule for changes required and the preamble discussion on these changes). This requirement applies to all current State participants whether or not they elect to continue participation for the Fiscal Year 1984 allocation of funds. New State participants and applicants for designation as IAC are informed that all cooperative agreements require submission of written operating procedures as a prerequisite to receiving funds for loan subsidies or grants. Minimum requirements for operating procedures are defined in the cooperative agreement and are intended to demonstrate readiness for full implementation of the approved program. Additional information on program operation is available to new program participants upon request from the Bank.

Environmental Review

A Finding on No Significant Impact with respect to the environment under regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) is unnecessary, since approval of State programs and allocation of funds to States is categorically excluded under HUD regulations (24 CFR Part 50) as adopted by the Bank at 24 CFR 1800.135(b). The Indian Assistance Coordinator is treated as a State for this purpose pursuant to 24 CFR 1800.93(d)(2).

OMB Control Number

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by separate notice in the Federal Register.

(Subtitle A, Title V, Energy Security Act of 1980; Pub. L. 96-294; 12 U.S.C. 3601 *et seq.*)

Dated: March 6, 1984.

Richard H. Francis,
Manager, Solar Energy and Energy
Conservation Bank.

[FR Doc. 84-7035 Filed 3-15-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 26850, Virginia]

Proposed Reinstatement of a Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Reinstatement of a Terminated Oil and Gas Lease.

SUMMARY:

1. Federal oil and gas lease ES 26850 terminated automatically by operation of Law on August 1, 1983. (30 U.S.C. 188).
2. A petition for reinstatement of ES 26850 was filed by Yankee, Oil and Gas Inc. (Lessee) under Section 31 D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).
3. The Lessee has met all the following requirements of reinstatement:
 - (a) \$500—Reimbursement of Department Administrative Cost.
 - (b) \$4,020—Back Rental Payments.
 - (c) \$68—Estimated Publication Cost.
4. The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$10 per acre per year, and royalty increased to 16% percent beginning August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Ivy Garcia, Bureau of Land Management, Eastern States Office, 350

South Pickett Street, Alexandria, Virginia 22304, (703) 235-2851.

Pieter J. VanZanden,
Acting Eastern States Director.

[FR Doc. 84-5571 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-GJ-M

Information Collection Submitted for Review

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's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Summer Seasonal Opportunities in Bureau of Land Management.

Abstract: This form allows applicants (respondents) to present necessary information to enable the Bureau of Land Management to judge their qualifications, rating, and ranking for a seasonal position with the Bureau.

Bureau Form Number: 1400-104 (302).
Frequency: Annually.

Description of Respondents: Individuals applying for seasonal employment.

Annual Responses: 10,000.

Annual Burden Hours: 5,000.

Bureau Clearance Officer (alternate): Linda C. Gibbs, telephone 202-653-8853.
March 9, 1984.

Andrew J. Ondrof,
Assistant Director.

[FR Doc. 84-7052 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-84-M

[NM 43765-(Okla.)]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, Ratcliff Exploration Company petitioned for reinstatement of oil and gas lease NM 43765-(Okla.) covering the following described lands located in Woods and Major Counties, Oklahoma:

T. 22 N., R. 13 W., 1 M.

Sec. 8; Accretion and riparian acreage to Lots 1, 2, and 3, further described by metes and bounds.

Containing 37.27 acres, more or less.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of \$500.00 has been paid. Future rentals shall be at the rate of \$5.00 per acre per year and royalties shall be at the rate of 16% percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, April 1, 1983.

Dated: March 7, 1984.

Charles W. Luscher,
State Director.

[FR Doc. 84-7074 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-FB-M

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

[NM 18215]

Under the provisions of Pub. L. 97-451, The Superior Oil Company petitioned for reinstatement of oil and gas lease NM 18215 covering the following described lands located in Eddy County, New Mexico:

T. 26 S., R. 26 E., NMPM

Sec. 8: All;

Sec. 10: E 1/2;

Sec. 15: SE 1/4;

Sec. 18: Lots 3, 4, SE 1/4 NE 1/4, E 1/2 SW 1/4, SE 1/4;

Sec. 19: Lot 1, NE 1/4, E 1/2 NW 1/4, SW 1/4 NW 1/4;

Sec. 20: E 1/2 NW 1/4;

Sec. 34: Lots 3, 4, N 1/2 NW 1/4.

Containing 2,406.82 acres.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of \$500.00 has been paid. Future rentals shall be at the rate of \$5.00 per acre per year and royalties shall be at the rate of 16% percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, May 1, 1983.

Dated: March 7, 1984.

Charles W. Luscher,
State Director.

[FR Doc. 84-7075 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-FB-M

[NM-A 46081-(Okla.)]

New Mexico; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, Tenneco Oil Company petitioned for reinstatement of oil and gas lease NM-A 46081-(Okla.) covering the following described lands located in Roger Mills County, Oklahoma:

T. 14 N., R. 22 W., I.M.

Sec. 35: NE 1/4.

Containing 160.00 acres. U.S. Interest—25%.

It has been shown to my satisfaction that failure to make timely payment of rental was due to inadvertence.

No valid lease has been issued affecting the lands. Payment of back rentals and administrative cost of \$500.00 has been paid. Future rentals shall be at the rate of \$5.00 per acre per year and royalties shall be at the rate of 16% percent. Reimbursement for cost of the publication of this notice shall be paid by the lessee.

Reinstatement of the lease will be effective as of the date of termination, February 1, 1983.

Dated: March 7, 1984.

Charles W. Luscher,
State Director.

[FR Doc. 84-7073 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Alaska Offshore; Availability of a Final Environmental Impact Statement for Proposed Oil and Gas Lease Sale 87 in the Diapir Field Region

Pursuant to section 102(2)(C) of the National Environment Policy Act of 1969, the Minerals Management Service has prepared a final environmental impact statement (EIS) relating to proposed offshore oil and gas lease Sale 87 in the Diapir Field of the northern coast of Alaska.

Single copies of the final EIS can be obtained from the Regional Manager, Alaska Region, Minerals Management Service, P.O. Box 101159, Anchorage, Alaska 99510.

Copies of the final EIS will also be available for inspection in the following public libraries: Alaska Federation of Natives, Suite 304, 1577 O Street, Anchorage, AK 99501; Anchor Point Public Library, Anchor Point AK 99556; Department of the Interior Resources Library, Box 36, 701 C Street, Anchorage, AK 99513; Cordova Public Library, Box 472, Cordova, AK 99574; Kenai Community Library, Box 157, Kenai, AK 99611; Elim Learning Center, Elim, AK 99739; Haines Public Library,

P.O. Box 36, Haines, AK 99827; North Star Borough Library, Fairbanks, AK 99701; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK 99801; Homer Public Library, Box 356, Homer, AK 99603; Z. J. Loussac Public Library, 427 F Street, Anchorage, AK 99801; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK 99824; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK 99811; Ketchikan Public Library, 829 Dock Street, Ketchikan, AK 99901; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK 99501; Kodiak Public Library, P.O. Box 985, Kodiak, AK 99615; Metlakatla Extension Center, Metlakatla, AK 99926; Department of the Interior, Bureau of Mines Library, AF-F.O. Center, P.O. Box 550, Juneau, AK 99802; Petersburg Extension Center, Box 289, Petersburg, AK 99833; Seldovia Public Library, Drawer D, Seldovia, AK 99663; Seward Community Library, Box 537, Seward, AK 99664; University of Alaska Juneau Library, P.O. Box 1447, Juneau, AK 91447; Sitka Community Library, Box 1090, Sitka, AK 99835; Douglas Public Library, Box 469, Douglas, AK 99824; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK 99504; University of Alaska Elmer E. Rasmuson Library, Fairbanks, AK 99701; Wrangell Extension Center, Box 651, Wrangell, AK 99929.

Dated: March 9, 1984.

William D. Bettenberg,
Director, Minerals Management Service.

Bruce Blanchard,
Director, Environmental Project Review.

[FR Doc. 84-7025 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document

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 0310, Blocks 218 and 221, South Marsh 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 March 9, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico 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: Mr. Mike Joseph, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0967.

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: March 9, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-7058 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Indiana Dunes National Lakeshore Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Indiana Dunes National Lakeshore Advisory Commission will be held at 1 p.m., CST, on Monday, April 16, 1984, at the Indiana Dunes National Lakeshore Visitor Center at U.S. Highway 12 and Kemil Road, Chesterton, Indiana.

The Commission was established by the Act of November 5, 1936, 80 Stat. 1309, 16 U.S.C. 460u-7, as amended by the Act of October 18, 1976, 90 Stat. 2530, 2533, to meet and consult with the Secretary of the Interior on matters related to the administration and development of the Indiana Dunes National Lakeshore.

The members of the Commission are as follows:

Mr. John R. Schnurlein (Chairperson)
Mr. Ronald Benz
Ms. Anna R. Carlson
Mr. R. M. Gacki
Mr. James Holland
Ms. Lynne Kaser
Mr. James H. Lahey
Mr. William L. Lieber
Ms. Celia Nealon
Ms. Gail H. Harris
Dr. John A. Rackauskas
Dr. John Tucker
Mr. Norman E. Tufford

Matters to be discussed at this meeting include:

1. Chairman's Quarterly Report.
2. Status of land protection.
3. Quarterly Status Report of 1984 Operations.

The meeting will be open to the public. Any member of the public may file with the Commission prior to the meeting a written statement concerning the matters to be discussed. Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Dale B. Engquist, Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304, telephone 219-926-7561.

Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the office of the Indiana Dunes National Lakeshore located at 1100 North Mineral Springs Road, Porter, Indiana.

Dated: March 9, 1984.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 84-7093 Filed 3-15-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b) (1) that the following named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524 (b).

1. The name of the parent corporation and its address of principal office is: AMERCO, a Nevada corporation, 3111 Bel Air Drive, Las Vegas, Nevada 89109.
2. The wholly-owned subsidiaries which will participate in the operations and their states of incorporation are:

Alabama

U-Haul Co. of Alabama
Kar-Go Repair Center of Birmingham, Inc.
U-Haul Co. of Southern Alabama
Kar-Go Repair Center of Mobile, Inc.

Alaska

U-Haul Co. of Alaska

Arizona

Amform, Inc.
U-Haul Co. of Southern Arizona
Tucson Rental Equipment Repair Shop, Inc.

Arkansas

U-Haul Co. of Arkansas
Little Rock Rental Equipment Repair Shop, Inc.

California

Paramount Mfg. Co., Inc.
U-Haul Co. of Sacramento
Dublin Mfg. Co., Inc.
Sacramento Rental Equipment Repair Shop, Inc.
Redding Rental Equipment Repair Shop, Inc.
U-Haul Co. of East Bay
South Bay Rental Equipment Repair Shop, Inc.
Fremont Rental Equipment Repair Shop, Inc.
Oakland Rental Equipment Repair Shop, Inc.
U-Haul Co. of San Francisco
San Francisco Rental Equipment Repair Shop, Inc.
U-Haul Co. of Fresno
Fresno Rental Equipment Repair Shop, Inc.
Bakersfield Rental Equipment Repair Shop, Inc.
U-Haul Co. of Van Nuys
Van Nuys Rental Equipment Repair Shop, Inc.

U-Haul Co. of Los Angeles
Carson Rental Equipment Repair Shop, Inc.

Covina Rental Equipment Repair Shop, Inc.

U-Haul Co. of Orange County
Placentia Rental Equipment Repair Shop, Inc.

Orange Manufacturing Co., Inc.
U-Haul Co. of San Bernardino
San Bernardino Rental Equipment Repair Shop, Inc.

Indio Rental Equipment Repair Shop, Inc.

U-Haul Co. of San Diego
Lemon Grove Rental Equipment Repair Shop, Inc.

Poway Rental Equipment Repair Shop, Inc.

Colorado

U-Haul Co. of Colorado
Kar-Go Service Center of Denver, Inc.

Connecticut

U-Haul Co. of Connecticut

West Haven Rental Equipment Repair Shop, Inc.

Florida

U-Haul Co. of Northern Florida
Jax Rental Equipment Repair Shop, Inc.
U-Haul Co. of Eastern Florida
Kar-Go Repair Center of Orlando, Inc.
U-Haul Co. of the West Coast of Florida
Miami Rental Equipment Repair Shop, Inc.
Kar-Go Service Center of Tampa, Inc.
U-Haul Co. of Central Florida
Kar-Go Service Center of Pompano Beach, Inc.
South Ft. Myers Rental Equipment Repair Shop, Inc.
U-Haul Co. of Southern Florida

Georgia

Atlanta Mfg. Co., Inc.
U-Haul Co. of Western Georgia
Atlanta Rental Equipment Repair Shop, Inc.
U-Haul Co. of Southern Georgia
Columbus, Ga. Rental Equipment Repair Shop, Inc.
Savannah Rental Equipment Repair Shop, Inc.

Idaho

U-Haul Co. of Idaho, Inc.
Boise Rental Equipment Repair Shop, Inc.

Illinois

U-Haul Co. of Chicago Metroplex
Chicago Rental Equipment Repair Shop, Inc.
South Shore Rental Equipment Repair Shop, Inc.
U-Haul Co. of Central Illinois
Tap-A-Lite, Inc.

Indiana

Hammond Rental Equipment Repair Shop, Inc.
U-Haul Co. of Central Indiana, Inc.
East Gate Rental Equipment Repair Shop, Inc.
Kar-Go Repair Center of Indianapolis, Inc.

Iowa

U-Haul Co. of Eastern Iowa
Kar-Go Service Center of Council Bluffs, Inc.

Kansas

U-Haul Co. of Kansas City, Inc.
Kansas City of Rental Equipment Repair Shop, Inc.

Kentucky

U-Haul Co. of Louisville
Louisville Rental Equipment Repair Shop, Inc.
Lexington Rental Equipment Repair Shop, Inc.

Louisiana

U-Haul Co. of Northern Louisiana
Shreveport Rental Equipment Repair Shop, Inc.
U-Haul Co. of Southern Louisiana
Kar-Go Service Center of New Orleans, Inc.
Tulane Rental Equipment Repair Shop, Inc.

Maine

U-Haul Co. of Maine
Portland Rental Equipment Repair Shop, Inc.

Maryland

U-Haul Co. of Metro D.C., Inc.
U-Haul Co. of Maryland, Inc.
Baltimore Rental Equipment Repair Shop, Inc.

Massachusetts

U-Haul Cop. of Western Massachusetts, Inc.
Chicopee Rental Equipment Repair Shop, Inc.
U-Haul Co. of Boston, Inc.
Somerville Rental Equipment Repair Shop, Inc.
Boston Trailer Manufacturing Company, Inc.

Michigan

U-Haul Co. of Western Michigan
Grand Rapids Rental Equipment Repair Shop, Inc.
U-Haul Co. of Northeastern Michigan
U-Haul Co. of Detroit
East Detroit Rental Equipment Repair Shop, Inc.
Detroit Rental Equipment Repair Shop, Inc.
Novi Manufacturing Co.

Minnesota

U-Haul Co. of Minnesota
Minneapolis Rental Equipment Repair Shop, Inc.

Mississippi

U-Haul Co. of Mississippi
Jackson Rental Equipment Repair Shop, Inc.

Missouri

U-Haul Company of Southern Missouri
U-Haul Company of Eastern Missouri
Overland Rental Equipment Repair Shop, Inc.*

Montana

Billings Rental Equipment Repair Shop, Inc.

Nebraska

U-Haul Co. of Nebraska

Nevada

U-Haul Co. of Las Vegas, Inc.

Amerco Lease Company
Kar-Go Repair Center of Las Vegas, Inc.
Reno Rental Equipment Repair Shop, Inc.

New Hampshire

U-Haul Co. of New Hampshire & Vermont, Inc.
Manchester Rental Equipment Repair Shop, Inc.

New Jersey

U-Haul Co. of Northern New Jersey
Edison Rental Equipment Repair Shop, Inc.
Kar-Go Parts Center of New Jersey, Inc.
Saddle Brook Rental Equipment Repair Shop, Inc.
Jersey City Rental Equipment Repair Shop, Inc.

New Mexico

U-Haul Co. of New Mexico, Inc.
Kar-Go Repair Center of Albuquerque, Inc.

New York

U-Haul Co. of Western N.Y., Inc.
Erie Trailer Repair, Inc.
U-Haul Co. of Central N.Y., Inc.
Carrier Circle Rental Equipment Repair Shop, Inc.
U-Haul Co. of Northeastern New York, Inc.
Capitol Rental Equipment Repair Shop, Inc.
Chelsea Rental Equipment Repair Shop of Manhattan, Inc.
U-Haul Co. of Lower Hudson Valley, Inc.
U-Haul Co. of Metro-New York, Inc.
Grand Concourse Rental Equipment Repair Shop, Inc.
Inwood Rental Equipment Repair Shop, Inc.
U-Haul Co. of Long Island, Inc.
Farmingdale Rental Equipment Repair Shop, Inc.
Movers World, Inc.

North Carolina

U-Haul Co. of Western North Carolina
Charlotte Rental Equipment Repair Shop, Inc.
South Charlotte Rental Equipment Repair Shop, Inc.
U-Haul Co. of Eastern North Carolina
Raleigh Rental Equipment Repair Shop, Inc.

North Dakota

U-Haul Co. of Fargo

Ohio

U-Haul Co. of Northwestern Ohio
U-Haul Co. of Cleveland
Cleveland Rental Equipment Repair Shop, Inc.

U-Haul Co. of Northeastern Ohio
Akron Trailer Mfg. Co.
U-Haul Co. of Southeastern Ohio
Kar-Go Service Center of Columbus, Inc.
U-Haul Co. of Southwestern Ohio
Kar-Go Repair Center of Cincinnati, Inc.
Y-Town Trailer Mfg. Co., Inc.
Dayton Rental Equipment Repair Shop,
Inc.
Dayton Trailer Mfg. Co., Inc.

Oklahoma

U-Haul Co. of Oklahoma, Inc.
Kar-Go Repair Center of Oklahoma, Inc.
Tulsa Rental Equipment Repair Shop,
Inc.

Oregon

U-Haul Co. of Oregon
U-Haul International, Inc.
Southgate Rental Equipment Repair
Shop, Inc.
Tigard Rental Equipment Repair Shop,
Inc.

Pennsylvania

U-Haul Co. of Western Pennsylvania
Kar-Go Repair Center of Pittsburgh, Inc.
U-Haul Co. of Central Pennsylvania
Harrisburg Rental Equipment Repair
Shop, Inc.
Central Pennsylvania Rental Equipment
Repair Shop
U-Haul Co. of Northeastern
Pennsylvania
Scranton Rental Equipment Repair Shop,
Inc.
U-Haul Co. of Delaware Valley
Willow Grove Manufacturing Co.
Kar-Go Decal Company, Inc.
Falls Mfg. Co.
Warrington Equipment Mfg. Co.
Philadelphia Rental Equipment Repair
Shop, Inc.
Kar-Go Supply Company, Inc.

Rhode Island

U-Haul Co. of Rhode Island
Kar-Go Repair Center of Providence,
Inc.

South Carolina

U-Haul Co. of South Carolina, Inc.

Tennessee

U-Haul Co. of Memphis
Memphis Rental Equipment Repair
Shop, Inc.
U-Haul Co. of Nashville
Kar-Go Service Center of Nashville, Inc.
U-Haul Co. of Knoxville
Kar-Go Repair Center of Knoxville, Inc.

Texas

U-Haul Co. of Amarillo
Amarillo Rental Equipment Repair Shop,
Inc.
U-Haul Co. of Abilene
Kar-Go Repair Center of Abilene, Inc.

U-Haul Service Center of El Paso, Inc.
U-Haul Co. of Dallas-Ft. Worth
Kar-Go Service Center of Grand Prairie,
Inc.
U-Haul Co. of San Antonio
Kar-Go Repair Center of San Antonio,
Inc.
DFW Mfg. Co., Inc.
U-Haul Co. of Houston
Eastex Rental Equipment Repair Shop,
Inc.
South Houston Rental Equipment Repair
Shop, Inc.
U-Haul Co. of South Texas
Corpus Christi Rental Equipment Repair
Shop, Inc.

Utah

U-Haul Co. of Utah, Inc.
Salt Lake Rental Equipment Repair
Shop, Inc.

Virginia

Richmond Trailer Mfg. Co., Inc.
U-Haul Co. of Central Virginia
Richmond Rental Equipment Repair
Shop, Inc.
Roanoke Rental Equipment Repair Shop,
Inc.
Arlington Rental Equipment Repair
Shop, Inc.
Alexandria Rental Equipment Repair
Shop, Inc.
U-Haul Co. of Tidewater Virginia
Norfolk Rental Equipment Repair Shop,
Inc.

Washington

U-Haul Co. of Western Washington
Auburn Rental Equipment Repair Shop,
Inc.
Pasco Rental Equipment Repair Shop,
Inc.
U-Haul Co. of Inland Northwest
Spokane Rental Equipment Repair Shop,
Inc.

West Virginia

U-Haul Co. of West Virginia

Wisconsin

U-Haul Co. of Wisconsin, Inc.
Madison Rental Equipment Repair Shop,
Inc.
U-Haul Co. of Wisconsin East, Inc.
North Milwaukee Rental Equipment
Repair Shop, Inc.

1. Parent corporation and address of
principal office: DEKALB AgResearch,
Inc., 3100 Sycamore Road, DeKalb, IL
60115.

2. Wholly-owned subsidiaries which
will participate in the operations, and
State(s) of incorporation:

- (i) DEKALB Swine Breeders, Inc.
(Delaware).
- (ii) Lindsay Manufacturing Company
(Delaware).
- (iii) Heartland Hatcheries, Inc.
(Indiana).

(iv) Pace/Setter Products, Inc.
(Delaware).

(v) DEKALB Mid-South, Inc.
(Delaware).

1. Parent corporation and address of
principal office: Petrolite Corporation,
1900 Boatmen's Tower, 100 North
Broadway, St. Louis, MO 63102.

2. Wholly-owned subsidiaries which
will participate in the operations, and
state(s) of incorporation:

(i) Petrolite Corporation of Canada
Ltd., 1900 Boatmen's Tower, 100 North
Broadway, St. Louis, MO 63102. A
Dominion of Canada Corporation.

I. Parent Corporation and Address of Principal Office

Redman Building Products, Inc., a
Delaware corporation, with its principal
office located at 2550 Walnut Hill Lane,
Dallas, Texas 75229.

II. Wholly Owned Subsidiaries Which Will Participate in the Operations, and State(s) of Incorporation

(i) Gallatin Aluminum Products Co.,
Inc., P.O. Box 469, Gallatin, Tennessee;
State of Incorporation: TN.

(ii) Timber Tech, Inc., P.O. Box 37769,
Jacksonville, Florida 32236; State of
Incorporation: FL.

(iii) RBP TRANS, INC., 2550 Walnut
Hill Lane, Dallas, Texas 75229; State of
Incorporation: DE.

1. The parent corporation is Venco
Industries, Incorporated. Its principal
offices are located at 845 Third Avenue,
New York City, NY 10022. It is a
Delaware corporation.

2. The wholly-owned subsidiaries
which will participate in these
operations and their states of
incorporation are as follows:

(i) Venture Food, Incorporated, a New
York corporation.

(ii) Venex International, Incorporated,
a Delaware corporation.

(iii) Ventec Laboratories,
Incorporated, a Delaware corporation.

(iv) Ventrac, Incorporated, a
Delaware corporation.

1. Parent Corporation and Address at
Principal Office: Virginia Mirror
Company, Incorporated, 300 Moss
Street, P.O. Box 5431, Martinsville,
Virginia 24115.

2. Wholly-owned subsidiaries which
will participate in the operations, and
State(s) of Incorporation: Virginia Glass
Products Corporation, a Delaware
Corporation.

James H. Bayne,
Acting Secretary.

[FR Doc. 84-7047 Filed 3-15-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30412]

Rail Carriers; Trackage Rights Exemption—Southern Pacific Transportation Co. at Houston, TX**AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Southern Pacific Transportation Company from the requirements of prior approval under 49 U.S.C. 11343 *et seq.* regarding its proposed acquisition of trackage rights over a 6-mile line of railroad owned by Galveston, Houston and Henderson Railroad Company in Houston, TX, subject to the standard employee protective conditions.

DATES: This exemption will be effective April 16, 1984. Petitions to stay this decision must be filed by March 26, 1984, and petitions for reconsideration must be filed by April 5, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30412 to:

- (1) Office of the Secretary, Case of Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.
- (2) Petitioners' representative: Richard S. Kopf, One Market Plaza, San Francisco, CA 94105.

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: March 9, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,
Acting Secretary.

[FR Doc. 84-7046 Filed 3-15-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE**Drug Enforcement Administration**

[Docket No. 83-32]

Bourne Pharmacy, Bourne, Massachusetts; Hearing

Notice is hereby given that on October 26, 1983, the Drug Enforcement Administration, Department of Justice, issued to Bourne Pharmacy, Inc., an Order To Show Cause as to why the

Drug Enforcement Administration should not revoke its DEA Certificate of Registration, AB1993991, and deny its application for renewal executed on June 4, 1982 for registration as a pharmacy under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 11:00 a.m. on Monday, March 26, 1984, in Courtroom No. 3, Federal Trade Commission, 2120 L Street NW., Washington, D.C.

Dated: March 12, 1984.

Francis M. Mullen, Jr.,
Administrator, Drug Enforcement Administration.

[FR Doc. 84-7053 Filed 3-15-84; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 82-28]

Coleman Preston McCown, D.D.S., Rockville, Maryland; Hearing

Notice is hereby given that on September 30, 1982, the Drug Enforcement Administration, Department of Justice, issued to Coleman Preston McCown, D.D.S., an Order To Show Cause as to why the Drug Enforcement Administration should not deny, pursuant to 21 U.S.C. 824(a)(2), the application he executed January 7, 1982 for a DEA Certificate of Registration under 21 U.S.C. 823.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, April 3, 1984, in Courtroom No. 3, Federal Trade Commission, 2120 L Street, NW., Lower Level, Washington, D.C.

Dated: March 12, 1984.

Francis M. Mullen, Jr.,
Administrator, Drug Enforcement Administration.

[FR Doc. 84-7054 Filed 3-15-84; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 83-35]

Darrow Drug, Inc., Philadelphia, Pennsylvania; Hearing

Notice is hereby given that on October 26, 1983, the Drug Enforcement Administration, Department of Justice, issued to Darrow Drug, Inc., an Order To Show Cause as to why the Drug

Enforcement Administration should not deny its DEA Certificate of Registration, AD2458140.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Thursday, April 5, 1984, in Courtroom No. 3, Federal Trade Commission, 2120 L Street, NW., Lower Level, Washington, D.C.

Dated: March 12, 1984.

Francis M. Mullen, Jr.,
Administrator, Drug Enforcement Administration.

[FR Doc. 84-7055 Filed 3-15-84; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 83-4]

Cobblestone Pharmacy; Granting of Application

On December 15, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Cobblestone Pharmacy (Respondent), located near Jackson, Mississippi, an Order to Show Cause proposing to deny its application for DEA registration. By letter dated January 13, 1983, James Larry Sneed, the owner and managing pharmacist of Cobblestone Pharmacy requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Jackson, Mississippi on April 26, 1983. Administrative Law Judge Francis L. Young presided. On October 13, 1983, Judge Young issued his opinion and recommended findings of fact, conclusions of law, ruling and decision. No exceptions were filed and on November 8, 1983, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

On August 20, 1980, two officers of the Houston, Texas Police Department's Narcotics Division were introduced to an informant who stated that he could purchase drugs from Mr. Sneed for cash and without a prescription, and that he had been doing so for approximately six months. Mr. Sneed at that time was employed as the pharmacist in charge of the Super X Drug Store #40 in Houston, Texas. The officers were familiar with

Mr. Sneed since earlier that summer he had reported the attempted passing of forged prescriptions at the pharmacy in which he was employed. During a telephone conversation that was monitored by the officers, the informant arranged a purchase of drugs with Mr. Sneed. It was evident to the officers listening to the conversation that Mr. Sneed knew exactly what the informant wanted and that the informant had made such purchases in the past from Mr. Sneed. Later that same day the informant and another officer, Officer Mooring, went to Respondent pharmacy. The informant paid Mr. Sneed \$165. The informant was then directed by Mr. Sneed to another counter containing charcoal lighter fluid or anti-freeze where he found a vial placed there for him containing Percodan and Demerol tablets.

The following day, August 21, 1980, Officer Mooring himself set up a transaction with Mr. Sneed. The officer was to purchase only Percodan for a price of \$150 without a prescription. The officer then went to the pharmacy, paid Mr. Sneed and retrieved the drugs from the shelf containing anti-freeze or lighter fluid. On August 25, 1980, a similar transaction occurred between Officer Mooring and Mr. Sneed.

On August 26, 1980, Mr. Sneed was placed under arrest. On the same day, an audit was conducted of controlled substances in the pharmacy in which Mr. Sneed was employed. The audit covered the period from October 18, 1979 to August 26, 1980. The latter date was the date on which the audit was made. The beginning date was that on which Mr. Sneed became the pharmacist in charge of that pharmacy. With respect to Percodan, the primary drug purchased by the undercover officer, Mr. Sneed's pharmacy showed a shortage of 565 dosage units, an amount equal to 10% of the quantity purchased during the audited period. During the ten-month period covered by the audit, during which Mr. Sneed was pharmacist in charge at this chain drug store, three other pharmacists were employed there full-time and at least five more were employed there on a part-time intermittent basis. Therefore, it cannot be said conclusively that Mr. Sneed caused the entire shortage of Percodan.

On January 5, 1981, following his plea of *nolo contendere*, Mr. Sneed was convicted of unlawfully, intentionally and knowingly delivering a controlled substance, a felony under the Texas Controlled Substances Act. The Texas State Board of Pharmacy subsequently revoked Mr. Sneed's license to practice pharmacy in the State of Texas.

Accordingly, there are lawful grounds under 21 U.S.C. § 824(a)(2) for the denial of the Respondent pharmacy's application for registration. A pharmacy's application for registration may be denied upon a finding that a natural person who is an owner, officer or key employee has been convicted of a felony offense relating to a controlled substance. See *Leonard S. Cohen, t/a Senate Drug Store*, Docket No. 72-5, 38 Fed. Reg. 9522 (1973); *Norman Bridge Drug Co. Inc.*, Docket No. 74-22, 41 Fed. Reg. 3108 (1976); *AG Pharmacy Inc., d/b/a Berson Pharmacy*, Docket 97-12, 45 Fed. Reg. 6868 (1980).

After his conviction, Mr. Sneed returned to his home State of Mississippi. On February 19, 1982, Mr. Sneed entered into an agreement with the Mississippi State Board of Pharmacy concerning his pharmacist license in Mississippi. As a result of this agreement, Mr. Sneed was placed on ten years probation. It was also agreed that his pharmacist license in Mississippi would automatically and immediately be revoked if he is found to have violated any provision, including one for which another pharmacist would receive only a reprimand.

Mr. Sneed purchased Cobblestone Pharmacy on March 1, 1982, and has been operating it since that time. Mr. Sneed and Cobblestone Pharmacy were audited by the Mississippi State Board of Pharmacy five times between March 1982 and April 1983. The Board found no violations of any of its rules or regulations as a result of its audit.

The Administrative Law Judge found that there was no question but that Mr. Sneed unlawfully diverted controlled substances in Texas. However, since returning to Mississippi, Mr. Sneed has successfully attempted to make a new start. His personal and business reputation in the community is excellent according to the pharmacist from whom Mr. Sneed purchased Cobblestone Pharmacy. The pastor of the Wildwood Baptist Church in Clinton, Mississippi stated that Mr. Sneed and his wife have been very active in the church and supportive of the pastor. They have been teaching the sixth grade class in the Sunday school.

Other than the conviction in Texas and a few minor traffic violations when he was a teenager, Mr. Sneed's record is clean. The numerous audits done by the Mississippi State Board of Pharmacy tend to indicate that Mr. Sneed is no longer unlawfully diverting controlled substances.

Judge Young further found that ninety percent of Cobblestone Pharmacy's income is derived from the sale of

prescription drugs. However, Schedule II drugs represent a very small percentage of the total business. Because of the nature of the business, the denial of registration to distribute drugs listed on Schedules III, IV and V would devastate the business and force its closing. The business does not generate enough income to hire another pharmacist full time and also support Respondent, his wife and two children.

In light of the foregoing facts and considerations the Administrative Law Judge recommended that the Administrator grant registration at this time to James Larry Sneed's Cobblestone Pharmacy for all controlled substances in Schedules III, IV and V. Judge Young further recommended that should Mr. Sneed apply for registration as to Schedule II substances three years thereafter, DEA should favorably consider that application provided DEA has not learned of any additional unlawful or other conduct of Mr. Sneed as a pharmacist contrary to the public interest.

The Administrator adopts the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. Therefore, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), thereby orders that the application of Cobblestone Pharmacy for registration in Schedules III, IV and V under the Controlled Substances Act, be, and it hereby is, granted.

Dated: March 12, 1984.

Francis M. Mullen, Jr.,
Administrator.

[FR Doc. 84-7125 Filed 3-15-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 83-9]

James Dell Potter, M.D.; Revocation of Registration

On March 7, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to James Dell Potter, M.D. of 127 Water Street, Henderson, Nevada 89015 (Respondent) proposing to revoke his DEA Certificate of Registration AP1576214 for the reason that Respondent was convicted of felony offenses relating to controlled substances. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Los Angeles, California on August 4, 1983. Administrative Law Judge Francis L. Young presided. On December 16, 1983, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Respondent's counsel filed exceptions to the Judge's opinion and recommended decision. On January 10, 1984, Judge Young transmitted the record of these proceedings including the Respondent's exceptions to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that on November 13, 1978, in the United States District Court for the District of Nevada, Respondent was convicted of 54 counts of unlawfully prescribing controlled substances. The convictions were affirmed by the Ninth Circuit Court of Appeals on December 28, 1979. *United States v. Potter*, 616 F.2d 384 (9th Cir. 1979). The United States Supreme Court denied Respondent's petition for a writ of certiorari on October 6, 1980. 449 U.S. 832, 101 S.Ct. 101. 21 U.S.C. 824(a)(2) provides that a registration may be revoked upon a finding that the registrant has been convicted of felony offenses relating to controlled substances. There is, therefore, a statutory basis for revocation.

In February, 1979, DEA issued an Order to Show Cause proposing to revoke the DEA registration Respondent then held because of his 54 controlled substances felony convictions, pursuant to 21 U.S.C. 824(a)(2). Respondent waived his opportunity for a hearing at that time and submitted a written statement for consideration. A final order was issued in that proceeding on June 16, 1979, revoking the DEA registration Respondent then held. Respondent appealed that final agency order to the Ninth Circuit which affirmed the order in a Memorandum Opinion filed July 24, 1981.

Subsequently, Respondent submitted an application dated March 30, 1982, for a new DEA registration. On it he acknowledged his convictions and the previous revocation of his prior DEA registration. On May 21, 1982, DEA issued a registration as requested. It is that registration, AP1576214, which is the subject of these proceedings.

DEA contends that this registration, issued in 1982, was issued by mistake, due to a severe shortage of adequately trained personnel and that no consideration was given to Respondent's 1978 convictions at the

time it was issued. Respondent has offered no evidence to the contrary. This inadvertence was due to the fact that the Los Angeles Office, which is responsible for handling new applications for registration emanating from several states including Nevada, receives approximately 800 new applications each month. Normally, three people are responsible for processing new applications in Los Angeles. When Respondent's March 30, 1982 application arrived there is to be processed, the Los Angeles office was short-handed and only one clerk was processing the new applications.

On or about February 28, 1983, Respondent executed and submitted the customary annual application for renewal of his registration. At this time, DEA focused on Respondent's record and considered his registration in light of it. After this consideration the Agency staff determined that a show cause order should be issued proposing to revoke Respondent's registration. Such an order was issued on March 7, 1983 giving rise to this proceeding.

Two major issues are raised in this proceeding: first, whether DEA has the authority to revoke Respondent's registration since the application for registration was granted in 1982, after Respondent's conviction in 1978; and second, if DEA has such authority, whether the Administrator in exercising his discretion should revoke Respondent's registration. Regarding the first issue, the Administrative Law Judge concluded that DEA has the authority to revoke Respondent's registration. Respondent has not shown any loss or injury he will likely suffer by virtue of his having received a registration in 1982 should that registration now be revoked. Such a showing is necessary for equitable estoppel to be invoked.

* * * [T]here can be no estoppel where there is no loss, injury, damage, detriment, or prejudice to the party claiming it . . . In other words, to entitle a party to the benefit of an estoppel, he must have been misled and induced to alter his position of status in such a way that he will suffer injury if the estoppel is denied * * * 28 Am Jur 2d, Estoppel And Waiver, §§ 77, 78.

DEA is charged by statute to protect the public.

[P]rinciples of equitable estoppel cannot be applied to deprive the public of the protection of a statute because of the mistaken action, or lack of action, on the part of public officials. * * * Generally, a governmental unit is not estopped when functioning in a governmental capacity * * * 28 Am Jur 2d, Estoppel And Waiver, section 122.

Respondent contends that DEA waived its right to object to the issuance of the registration since the registration

was granted even though Respondent had answered affirmatively the question regarding prior felony convictions. The Administrative Law Judge found that DEA had not waived its right to object to the issuance of the registration. Waiver is defined as a voluntary and intentional abandonment or relinquishment of a known right. The term implies a choice or an election to dispense with something. Voluntary choice is of the very essence of waiver. 28 Am Jur 2d, Estoppel And Waiver, §§ 30, 157. Judge Young found that in this case all of the evidence is to the effect that the granting of the registration in 1982 was inadvertent and done unintentionally, without consideration of the circumstances.

Respondent further argued that *res judicata* and collateral estoppel apply here. The Administrative Law Judge did not agree. These principles, when they are applicable in the field of administrative law as distinguished from court proceedings, require an administrative adjudication which is sufficiently formal. They do not apply to administrative actions other than adjudications. See K. Davis, *Administrative Law Treatise 2d Ed.*, Vol. 4, Sections 21:1, 21:2 (1983). Judge Young found that there was no formal adjudication with respect to the issuance of Respondent's 1982 registration. It was no more than a clerical action and a mistaken one at that. Thus, the Administrative Law Judge concluded that there is no bar to preclude DEA from exercising the power granted it to revoke Respondent's registration under 21 U.S.C. 824(a)(2).

The second issue that was before Judge Young was whether the Administrator, in his discretion, should revoke Respondent's registration. The Administrative Law Judge found that between February and October, 1977, Respondent gave various people prescriptions for Quaalude, Dexedrine and Preludin, all Schedule II controlled substances. Respondent issued these prescriptions without any showing of legitimate medical need. Several women repeatedly obtained prescriptions from the Respondent in return for sexual favors which he demanded.

In 1977, Karen Riberio, an investigator for the State of Nevada, Division of Investigation and Narcotics, visited Respondent in an undercover capacity. During the period from August 12 through October 13, 1977, Ms. Riberio visited Respondent's office several times. On each occasion, she obtained prescriptions for various Schedule II controlled substances including Preludin, Quaalude and Dexedrine.

None of the prescriptions were written for a legitimate medical purpose. Respondent's prescription writing practices led to his conviction in 1978 of 54 counts of unlawfully prescribing controlled substances.

Judge Young found that Respondent went to great lengths to conceal his practices from the authorities. He often wrote prescriptions using a person's middle name. He advised the recipients to have the prescriptions filled at different pharmacies. After observing Respondent during the hearing in this matter, Judge Young opined that Respondent has given no hint of regret. Respondent has not expressed any intent to change his conduct in the writing of prescriptions for controlled substances. Therefore, the Administrative Law Judge recommended revocation of the registration inadvertently issued to Respondent.

After reviewing the record, including Respondent's exceptions, the Administrator adopts the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety. As long as Respondent continues to be authorized to prescribe controlled substances he is a danger to the public health and safety. Accordingly, the DEA registration inadvertently issued to Dr. Potter in 1982 should be revoked.

Having concluded that there is a lawful basis for the revocation of the Respondent's certificate of registration, and having further concluded that under the facts and circumstances presented in this case the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP1576214 previously issued to James Dell Potter, M.D., be, and it hereby is, revoked, effective immediately.

Dated: March 12, 1984

Francis M. Mullen, Jr.,
Administrator.

[FR Doc. 84-7126 Filed 3-15-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the

Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on the list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Women's Bureau
Conference/Workshop Participant
Characteristics Form
WB-3

On occasion
Individuals or households
2,400 responses; 120 hours, 1 form

The information is needed to plan and manage the delivery of job referral and placement services where such services are a planned follow-up to a conference or workshop. Respondents are conference/workshop participants who wish to receive these services

Extension

Employment Standards Administration
Black Lung Compensation Eligibility
Form

CM-913, CM-918, CM-1093; 1215-0056

On occasion

Individual or Households

22,500 responses; 7,500 hours; 3 forms.

These forms are used in helping to determine a living miner or deceased miner's eligibility for benefits under the Act.

Extension

Employment Standards Administration
Application for Continuation of Death
Benefit for Student

On occasion

LS-266; 1215-0073

Individuals or households; small
businesses or organizations

43 responses; 22 hours; one (1) form.

The form LS-266 is used as an application for continuation of death benefits for a dependent who is also a student.

Extension

Employment Standards Administration
Medical Recordkeeping Requirements
CA-37; 1215-0133

Business or other for-profit; small
business or organizations

208,000 recordkeepers; 1 hour.

Medical providers must keep records concerning the examination and/or treatment of claimants under the FECA so that they may furnish medical reports as required under 20 CFR 10.410 (b) and (c).

Extension

Mine Safety and Health Administration
Coal Mine Noise Data Program
1219-0037; MSHA Form 2000-168

Semiannually; annually

5,000 respondents; 9,109 hours

Businesses and other for profit; small
businesses or organizations.

Requires coal mine operators to report to MSHA environmental noise levels to which miners are exposed when noise exposure exceeds permissible levels. The purpose of the reports is to monitor noise levels miners are exposed to so as to prevent a noise induced hearing loss.

Also, noise dosimeters are required to be recalibrated once per year and records kept of when and by whom the recalibrations were done.

Signed at Washington, D.C., this 13th day of March 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-7102 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-81-101-C]

H & M Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

H & M Coal Company, R.D. No. 1, Schuylkill Haven, Pennsylvania 17972 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Little Buck Slope (I.D. No. 36-05891) 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 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.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7110 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-132-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 75.1714 (self-contained self-rescue devices) 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. 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 such person for one hour or longer.

2. The distance from the mine portal to the actual working face is less than 2,000 feet; the mine can be evacuated in less than 15 minutes.

3. The mine is always damp to wet and there is only one piece of electrical equipment, which is a small pump located at the foot of the slope; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape up the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine

conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7114 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-113-C]

Half-Way Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Half-Way Coal Company, 1915 Race Street, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its West Drift (I.D. No. 36-05116) 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 deepest penetration from the mine portal to the actual working face is less than 1,000 feet; the mine can be evacuated in less than 15 minutes.

3. The mine is always damp to very wet and there is no electrical equipment in the mine; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miner could escape out the gangway and up the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7108 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-145-C]

K & D Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

K & D Coal Company, R.D. 1, Herndon, Pennsylvania 17830 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its mine (I.D. No. 36-07274) 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 such person for one hour or longer.

2. The deepest penetration from the mine portal to the actual working face is less than 500 feet; the mine can be evacuated in less than 10 minutes.

3. The mine is always damp to very wet and there is only one piece of electrical equipment, which is a small pump located at the foot of the slope; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine,

it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape out the gangway and up the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7104 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-35-C]

Kocher Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Kocher Coal Company, Box 127, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Porter Tunnel (I.D. No. 36-01892) 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 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. The mine is extremely wet and virtually dust free. The entire area above the active faces has been deep and strip mined, leaving ventilation to the surface by means of cracks and

fissures, which are between 500-600 feet higher than the mine portal. This creates a natural draft that would sweep fumes to the surface away from the miners.

3. Petitioner states that the devices cannot be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7115 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-62-C]

Last Try Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Last Try Coal Company, P.O. Box 324, Minersville, Pennsylvania 17954 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Last Try Slope (I.D. No. 36-06772) 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. 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 such person for one hour or longer.

2. The deepest penetration from the mine portal to the actual working face is less than 2,000 feet; the mine can be evacuated in less than 15 minutes.

3. The mine is always damp to very wet and the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape out the gangway and up the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7103 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-93-C]

Lucas Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Lucas Mining Company, P.O. Box 345, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Primrose Slope (I.D. No. 36-04629) 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 damp to wet. Prior deep and strip mining has caused fissures to the surface, resulting in a chimney effect that would draw off any fume.

3. The distance from the surface to the working areas is approximately 2,500 feet; the mine can be evacuated in less than 10 minutes.

4. Petitioner states that the mine geology, undulation, thin coal and varying pitches make it impractical and dangerous 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.

5. For these reasons, petitioner request 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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7107 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-105-C]

M & M Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

M & M Coal Company, 1115 Market Street, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 1 Stope (I.D. No. 36-07101) located in Columbia 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 such person for one hour or longer.

2. The deepest penetration from the mine portal to the actual working face is

less than 1,000 feet; the mine can be evacuated in less than 8 minutes.

3. The mine is always damp to very wet and the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape out the gangway and up the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7112 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-72-C]

Mercury Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mercury Coal Company, P.O. Box F, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its Eureka Tunnel (I.D. No. 36-01920) 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. The surface area is more than 300 feet higher in elevation than the mine portal. 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 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.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7116 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-68-C]

Metzinger Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Metzinger Coal Company, Cherry Avenue, Lavelle, Pennsylvania 17943 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its West Drift (I.D. No. 36-04703) located in Columbia 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 deepest penetration from the mine portal to the actual working face is less than 2,000 feet; the mine can be evacuated in less than 15 minutes.

3. The mine is always damp to very wet and there is only one piece of electrical equipment, which is a small pump located at the foot of the slope; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miners could escape out the gangway and up the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7109 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-90-C]

R C & R Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

R C & R Coal Company, R.D. No. 1, Box 14-A, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No.

7 Vein Slope (I.D. No. 36-07093) 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 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 such person for one hour or longer.

2. The distance from the surface to the working areas is approximately 700 feet; the mine can be evacuated in less than 10 minutes.

3. The mine is damp to wet, and there is no electricity used in the mine. Prior deep and strip mining has caused fissures to the surface, resulting in a chimney effect that would draw off any fumes.

4. Petitioner states that the devices are impractical and dangerous to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7106 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-24-C]

Talkington Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Talkington Mining Company, Route 1, Box 44, Cookeville, Tennessee 38501 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting

devices) to its ETR No. 4 Mine (I.D. No. 40-02768) located in Rhea 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 permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

- a. Ten detonators with copper leg wires not over 30 feet long;
- b. Ten detonators with iron leg wires 6 and 7 feet long;
- c. Nine detonators with iron leg wires 8 and 9 feet long;
- d. Eight detonators with iron leg wires 10 feet long;
- e. Seven detonators with iron leg wires 12 feet long;
- f. Six detonators with iron leg wires 14 feet long; and
- g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

- a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;
- b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;
- c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. 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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7113 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-13-C]

White Oak Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

White Oak Company, Inc., Route 2, Box 54, Haysi, Virginia 24256 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 3 Mine (I.D. No. 44-05385) located in Dickenson 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 permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable with wires no smaller than No. 18 Brown and Sharp gauge.

3. The unit will be used with not more than:

- a. Ten detonators with copper leg wires not over 30 feet long;
- b. Ten detonators with iron leg wires 6 and 7 feet long;
- c. Nine detonators with iron leg wires 8 and 9 feet long;
- d. Eight detonators with iron leg wires 10 feet long;
- e. Seven detonators with iron leg wires 12 feet long;
- f. Six detonators with iron leg wires 14 feet long;
- g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

- a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;
- b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing

key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable;

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. 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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7117 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-83-C]

Z and Z Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Z and Z Coal Company, 1433 Poplar Street, Kulpmont, Pennsylvania 17834 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescue devices) to its No. 1 Slope (I.D. No. 36-05906) 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. 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 such persons for one hour or longer.

2. The deepest penetration from the mine portal to the actual working face is less than 500 feet; the mine can be evacuated in less than 10 minutes.

3. The mine is always damp to very wet and there is no electrical equipment underground; therefore, the possibility of a fire is remote. However, should a fire occur anywhere on the intake side of the mine, it would be discovered immediately because one miner is always on the gangway level loading and transporting coal. If a fire should occur in the return, the miner could escape out the gangway and up the slope in intake air.

4. Petitioner states that the devices are too heavy, bulky and cumbersome to be worn safely in the heavily pitching anthracite mine. Sections of the mine are subjected to freezing temperatures, making constant availability of the devices questionable. The wet mine conditions make it very difficult to locate a suitable, dry storage location for the devices. The miners are equipped with filter-type self-rescue devices.

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 April 16, 1984. Copies of the petition are available for inspection at that address.

Dated: March 9, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-7111 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefit Programs

[Application No. D-3684 et al.]

Proposed Exemptions; the Pooled Pension Fund Management Corporation (PPFMC) et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Pooled Pension Fund Management Corporation (PPFMC), Located in Baton Rouge, Louisiana

[Application No. D-3684]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

I. If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply effective April 6, 1981, to the acquisition or sale (including a repurchase by PPFMC) by certain employee benefit plans (the Plans) of participation interests in the assets of real estate mortgage pools established and maintained by PPFMC (Pools), provided that:

A. Such acquisition or sale is expressly approved by a fiduciary independent of PPFMC and/or M. L. Bordelon & Associates (MLB) who has authority to manage or control those Plan assets being invested in the participation interest;

B. A Plan pays no more and receives no less for a participation interest than would be paid or received in an arm's length transaction with an unrelated party;

C. No sales commission or similar compensation is paid by an investing Plan to PPFMC and/or MLB with regard to such acquisition or sale by such Plan;

D. At least 50 percent of all participation interests are held by investors independent of PPFMC; and

E. The total value of participation interests purchased by a Plan does not exceed 25 percent of the amount of the issue.

II. If the exemption is granted, the restrictions of section 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply, effective April 6, 1981, until May 2, 1983, to the advance of funds by PPFMC to a Pool on behalf of a Plan, provided that such transactions were effected in accord with the requirements of section IV as detailed below.

III. If the exemption is granted, the restrictions of section 406(b) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (E) and

(F) of the Code shall not apply, effective April 6, 1981, to (A) the receipt of an origination fee by PPFMC from any borrower not to exceed 3 percent of the principal amount of the mortgage loan (the Loan) to such borrower; and, from the date of the grant of this exemption, to (B) the receipt of commissions by Ms. Mary Lou Bordelon (Ms. Bordelon), or an affiliate from borrowers in connection with the placing by borrowers of required insurance coverage on Loans owned by existing or future Pools; provided that with respect to all transactions described in sections I through III above: (i) Such transactions are effected in accordance with the terms of the standard agreement entered into between PPFMC and each investor in the Pool (the Participation Agreement); (ii) the Participation Agreement (and accompanying information describing the mortgages to be included in the Pools) is made available to Plan fiduciaries before they invest in the Pools; (iii) the record-keeping requirements in section IV are satisfied; and (iv) with respect to the receipt of commissions by Ms. Bordelon or an affiliate, all investors receive written disclosure of the commission rate which Ms. Bordelon or the affiliate may receive on insurance voluntarily placed by borrowers, and the amount of such commissions received by Ms. Bordelon and affiliates in connection with previously established Pools.

IV. *General Conditions.* (A) PPFMC shall maintain for six years from the date of any transaction subject to this exemption records necessary to enable the persons described in paragraph (2) of this section to determine whether the conditions of this exemption have been met, except that:

a. A prohibited transaction will not be deemed to have occurred, if, due to circumstances beyond the control of the PPFMC, records are lost or destroyed prior to the end of the six year period and,

b. No party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (2) below.

(B) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) of this section are unconditionally available at their customary location for examination during normal business hours by any: trustee, investment manager, employer of Plan participants, employee organization any of whose members are

covered by a Plan, participant or beneficiary of a Plan, or any duly authorized employee or representative of such person or of the Department or the Internal Revenue Service.

(C) PPFMC must maintain a system for insuring or otherwise protecting the Loans and the property securing the Loans and for indemnifying Pool participants against reductions in pass-through payments due to defaults in Loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balances of all mortgages in a Pool, or the principal balance of the largest covered mortgage in the Pool; and

(D) The sum of all payments made to, retained by, or inuring to PPFMC and/or Ms. Bordelon or affiliates as a result of the administration of the Pools represents not more than adequate consideration for their services with respect to the Pools.

Effective Date: If granted, this exemption will be effective April 6, 1981, except with respect to certain transactions described in section III of the proposed exemption for which the effective date will be the date of grant of this exemption.

Summary of Facts and Representations

1. PPFMC is a Louisiana corporation engaged primarily in the business of establishing, maintaining, and servicing the Pools. PPFMC is licensed by the Louisiana Commissioner of Financial Institutions to make consumer loans, including loans secured by mortgages on real estate. PPFMC is also applying for registration under the Investment Advisers Act of 1940.

2. PPFMC was organized and incorporated in March, 1981, and established its first Pool on April 6, 1981. PPFMC provides consulting or investment advisory services with respect to 200 plans having total assets in excess of \$30 million. PPFMC does not have any discretionary authority with respect to plans to which it renders advice. PPFMC is affiliated with MLB which is a registered investment adviser. MLB has provided financial consulting services to individuals and employee benefit plans on a nondiscretionary basis since 1973. PPFMC is owned and controlled by Ms. Bordelon. Ms. Bordelon is also an independent insurance agent and is licensed to sell insurance products in Louisiana. Stiel Associates, Inc., which is also licensed to sell insurance products in Louisiana is indirectly affiliated with Ms. Bordelon.

3. PPFMC has established 10 Pools since April, 1981, ranging in size from approximately \$200,000 to \$900,000, and expects to establish many more such Pools in the future. Investors in the Pools include individuals and the Plans which are located in Louisiana. The Plans involved are typically tax-qualified pension and profit sharing plans, HR-10 plans, and individual retirement accounts. Plans that participate in one Pool may invest in another Pool maintained by PPFMC. There is no minimum investment requirement for investing Plans.

4. All of the Loans made to date on behalf of the Pools, with the exception of two Loans secured by owner-occupied small commercial property,¹ have been first mortgages or first deeds of trust on owner-occupied residential property. All of the Loans in the Pools are originated by PPFMC and must satisfy the stringent standards established by PPFMC in originating such Loans, such as the credit worthiness, occupation, mobility and income of the borrower, the location and appraised value of the underlying property, and the ratio of debt to equity involved in the Loan transaction. All Loans must be approved by PPFMC's Loan Committee which is comprised of 5 persons who are otherwise unaffiliated with PPFMC, and who are knowledgeable in real estate or financial matters. No Loan may be made to any person who is a party in interest with respect to any Plan that has invested in a Pool.

5. The Pools are organized as PPFMC simultaneously locates Pool investors and appropriate Loan opportunities. While investors express an intention for future investment, or actually deposit funds for future investment, PPFMC is developing an inventory of Loans for closing. The coordination of available funds and loan opportunities result in the establishment of a Pool consisting of Loans in the amount of available funds provided by investors. All of the PPFMC Pools are closed-end pools meaning that once a Pool is formed, no new Loans may be added to the Pool.

6. A prospective investor is not bound to invest in a Pool until such investor executes a Participation Agreement. Any deposit made by an investor in connection with an intention to invest in a Pool may be returned on request at

¹ No Plans participate in the Pools in which mortgages on these properties are held. The applicant requests prospective exemptive relief for transactions involving Pools consisting of mortgages and deeds of trust (including second mortgages and deeds of trust) on both residential and nonresidential properties.

any time prior to the execution of the Participation Agreement. The Participation Agreement sets forth the rights, responsibilities, and obligations of both PPFMC and the participant, and provides that each participant acquires an undivided participation interest in each Loan in the Pool. Prior to the execution of a Participation Agreement each prospective investor is provided information which identifies the Pool in which the investor is investing and includes a list of each Loan in the Pool, including for each Loan the address of the mortgaged property and the principal amount, maturity date, and interest rate of the Loan. Therefore, an investor has detailed information on each Loan in the Pool before such investor is obligated to invest in a Pool. Following the closing of all of the Loans in the Pool, each investor is provided a participation certificate which also includes all of the information described above for each Loan in the Pool.

7. PPFMC does not receive any fee or other compensation from its Pools or Pool participants for establishing or operating the Pools. Neither PPFMC nor MLB receive any commissions on the sale of interests in the Pools to investors or any fees in connection with advice that MLB or PPFMC may give an investor to participate in a Pool. PPFMC receives compensation for establishing and maintaining the Pools by receiving an origination fee of 3% (the Points) of the principal amount of every Loan originated on behalf of a Pool from the borrower with respect to the Loan. An additional two Points on every Loan is allocated to participants in the Pool.²

8. PPFMC may also assess the borrowers in a Pool on a pro rata basis for any expenses incurred by PPFMC in connection with a Loan default and may retain any charges imposed on borrowers for the collection of late payments. All borrowers are required to carry fire and extended property coverage, including flood insurance where applicable and obtainable, on all property, including improvements, life insurance in the amount of the Loan, and accident and health insurance to indemnify the Pool for missed loan payments. These insurance coverages may be, and infrequently are, placed through Ms. Bordelon or Stiel Associates, Inc. It has never been, nor is it proposed that borrowers be required to place insurance coverage through Ms. Bordelon or an affiliate. With respect to Pools to be established in the future, PPFMC may impose a small annual

administration fee to be deducted from such Pools to defray the costs of maintaining and administering the Pools.

9. PPFMC represents that it may become a fiduciary to an investing Plan by virtue of such Plan having made an investment in a previously organized Pool, or where a Plan has deposited assets with PPFMC for short-term investment in anticipation of participating in a Pool. Accordingly, the receipt of commissions by Ms. Bordelon or an affiliate from borrowers, and the receipt by PPFMC of origination fees from borrowers, may constitute acts as described in section 406(b) (1) and (3) of the Act. PPFMC represents that the amount of income resulting from the receipt of origination fees has been and will continue to be disclosed to investors in the Participation Agreement. With respect to Ms. Bordelon's receipt of commissions, investors have been orally advised of such receipt. The applicant notified the Department that all investors in Pools after the date of the granting of the exemption will receive written disclosure of the commission rate which Ms. Bordelon or an affiliate may receive on insurance voluntarily placed by borrowers, and the amount of such commissions which have been received by Ms. Bordelon or affiliates in connection with previously established Pools. To the extent such past receipt of commissions by Ms. Bordelon constitute acts as described in section 406 of the Act, the Department is not herein proposing exemptive relief for the transactions. The applicant believes that the past receipt of commissions by Ms. Bordelon do not constitute prohibited transactions. However, the applicant has represented that the disqualified person will pay within 30 days from the date of the grant of a final exemption all excise taxes which are applicable under section 4975(a) of the Code as a result of the past receipt of commissions.

10. The Participation Agreements provide that all monthly principal and interest payments are allocated by PPFMC to the account of each participant in a Pool based on the participant's percentage interest in the Pool. These amounts, as well as origination fees allocated to participants in the Pools, and payments by borrowers in a Pool to PPFMC that are to be held in escrow for tax, assessment or insurance premium payments, as well as prepayment penalties allocated to a Pool, are invested by PPFMC in short-term investments such as money market funds, U.S. Treasury Bills, etc., and are

allocated to the accounts of Pool participants.³

11. The Participation Agreements provide that participants have the right to withdraw their investment from a Pool prior to the liquidation of the Pool upon the giving of 90 days prior written notice to PPFMC. If such notice is given to PPFMC within 5 years of the initial transfer of funds by the participant, the participant will receive the amount of his investment, plus the participant's pro rata share of all interest received to date on the Loans in the Pool and all Points allocated to the Pool. The withdrawing participant forfeits any share of the interest earned on the reinvestment of the Points and any escrow funds held by PPFMC with respect to the Loans in the Pool. If the participant withdraws after such 5 year period, the participant forfeits only the interest on the escrow funds. When a participant elects to withdraw, PPFMC seeks to locate a substitute investor who will automatically be allocated the amounts forfeited by the withdrawing participant. If a substitute investor cannot immediately be found PPFMC will serve as temporary substitute investor until a permanent substitute is found.⁴

12. PPFMC may also temporarily invest in a Pool when the Pool is being established and sufficient investor funds are not immediately available to acquire all of the percentage interests in the Pool. In these cases, PPFMC provides the needed funds for the Pool on an interim basis until the additional participant funds are invested. PPFMC retains its pro rata share of interest payments on the Loans in the Pool for the temporary period of its investment in the Pool. PPFMC does not, however, share in any of the Points allocated to the Pool or any of the interest accrued on the Points or escrow funds.

13. Section 11.2 of the Participation Agreements provide that in the event either party to the agreement fails to promptly provide funds as required for any purpose, the other party is authorized to advance such funds and to be reimbursed from the first available funds with interest at a rate not to exceed 21% per annum. Because PPFMC may be deemed to be exercising authority in connection with the advances with respect to a Plan to which it is a fiduciary, such advances may constitute acts as described in section 406(b)(1) and 406(b)(2) of the

² PPFMC receives no fees, commissions or other compensation in connection with making these short-term investments.

⁴ To date, there have been only six participant withdrawals and in each case a substitute investor was found.

³ In connection with the first two Pools established by PPFMC, only these latter two Points were charges.

Act. The applicant represents that exemptive relief is appropriate for such transactions because the advance provisions are detailed in the Participation Agreement and reviewed by a fiduciary of an investing Plan before a commitment to invest in a Pool is made. Additionally, no interest has been charged with respect to the few transactions which have been effected under the advanced provisions. The applicant notified the Department on May 2, 1983, that advances have been discontinued, and that no such transactions will be effected in the future.

14. Since April 6, 1981, all assets in the Pools were held in the name of PPFMC as nominee for investors in the Pools. PPFMC has represented that it will establish effective on or before the date of the final granting of the exemption, trusts for all existing Pools and has represented that all future Pools will hold their assets in trust. The applicant has secured an opinion from counsel in Louisiana in order to determine whether the absence of trust arrangements with respect to existing Pools may have enabled creditors of PPFMC to attach or execute upon assets held in the Pools to the detriment of investing Plans. Mr. Peter J. Losavio, Jr. of the law firm Losavio & Weinstein, located in Baton Rouge, Louisiana, opined by letter dated July 25, 1983, that the mortgage notes held by the Pools are not subject to seizure or attachment by creditors of PPFMC, its subsidiaries, or any shareholder of PPFMC. Mr. Losavio based his determination upon an analysis of Louisiana law which governs the transfer of notes as found in Chapter 3 of Title 10 of the Louisiana Revised Statutes. These provisions are drawn from the Official Uniform Commercial Code which was adopted in Louisiana in 1979. Mr. Lasavio represented that because the mortgage notes were endorsed to the order of the Pools by PPFMC and effectively delivered to the Pools, the mortgage notes were duly negotiated so as to not be subject to attachment. Ms. M. L. Bordelon, president of PPFMC has represented that the mortgage notes have been endorsed and effectively delivered since the inception of the Pools.

15. The trust arrangements will provide for PPFMC, as settlor, to convey all right, title, and interest in the mortgage notes to the trustees, Ms. Bordelon and Ms. Patricia S. Demouy. The Loans will therefore be held and administered as trust property. The investors will be the income and principal beneficiaries of the trusts. Each investor will be entitled to the

same percentage of income and principal of the trust as his or her percentage interest stated in the participation certificate. The applicant represents that Ms. Bordelon and Ms. Demouy's serving as trustees of the trusts will not result in any conflicts of interest because the trustees sole function will be to hold and disburse the assets in the Pools. As well, their serving as trustees will enable the trusts to operate without charging additional fees to the Pools.

16. The applicant seeks an exemption retroactively to April 6, 1981, and prospectively, to allow Plans to invest in the Pools. The applicant represents that the structure and operation of the Pools, as discussed above, is of such a nature that class relief granted by the Department [Prohibited Transaction Exemption 83-1 (PTE 83-1)] for Mortgage Pool Investment Trusts [48 FR 8950, January 7, 1983; which amended a previous class exemption dated January 23, 1981 (PTE 81-7, 46 FR 7520)] is not applicable. Specifically, the Department refers to the notice of proposed class exemption to PTE 81-7, at 45 FR 29938-41, where the structure of various mortgage pool programs, which are the subject of the proposed class exemption, are discussed. A participating Plan would invest in the program under the same terms and conditions as any other participant. As described, a Plan invests in a Pool only after receiving full written disclosure of the operation and structure of the Pool from the Participation Agreement and participation certificate. PPFMC does not have discretionary authority or control over the assets of any investing Plan prior to the Plan's investment in a Pool, as all decisions to invest plan assets in a Pool are made by fiduciaries who are independent of PPFMC.⁵

17. PPFMC reports to each investor at least annually (and gives investors the option of receiving statements monthly, quarterly, or semi-annually) regarding the status of his investment in the Pool and keeps its books and records open

⁵ To the extent that, in the ordinary course of business, PPFMC provides "investment advice" to a plan within the meaning of regulation 29 CFR 2510.3-21(c)(1)(ii)(B) and recommends an investment of the plan's assets in a pool that it is establishing, the presence of an unrelated second fiduciary acting on the consultant/investment adviser's recommendations on behalf of the plan is not sufficient to insulate PPFMC from fiduciary liability under 406(b) of the Act. (See Advisory Opinions 84-03A and 84-04A, issued by the Department on January 4, 1984.) The Department is unable to conclude that fiduciary self-dealing of this type (if present) is in the interests or protective of the plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition or sales of participation interests in the pool to section 406(a) violations only.

for inspection by all investors. The books of records of PPFMC, and all investor accounts, are also audited each year by independent certified public accountants. Additionally, PPFMC provides to investors many of the protections provided in PTE 83-1, such as no investor may acquire more than a 25% interest in a Pool, at least 50% of the interests in a Pool must be acquired by persons who are independent of PPFMC, and a system of insurance is maintained by PPFMC covering Loan defaults similar to systems of insurance for provided for in PTE 83-1.

18. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) of the Act because: (a) The decision to invest Plan assets in the Pools has been and will be made by unrelated, independent Plan fiduciaries; (b) Plans invest pursuant to detailed written instruments, the Participation Agreement and participation certificate, which fully disclose the operation and structure of the Pools; (c) all assets held in existing and future Pools will be held in trust; (d) many of the protections afforded to investors in PTE 83-1 are provided to investors in the Pools; and (e) all transactions have been and will continue to be effected at fair market value.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The MFA Employees Retirement Plan (the Plan), Located in Columbia, Missouri

[Application No. D-4375]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed purchase by the Plan of certain real property (the Property) from the First Missouri Corporation (FMC), a party in interest with respect to the Plan, for cash in the amount of \$900,000, provided that this amount is not more than the fair market value of the Property at the time of such purchase; and (2) the proposed leasing of portions of the Property to MFA, Inc.

(MFA), MFA Oil Company (MFA Oil), Global Travel Service, Inc. (Global) and MFA Employees Credit Union (the Credit Union; collectively, the Lessees), parties in interest with respect to the Plan, provided that the terms and conditions of such leasing are at least as favorable to the Plan as those which the Plan could receive in similar transactions with unrelated parties; (3) the guarantee by MFA of the lease payments of MFA Oil and Global for a period of 5 years; and (4) the guarantee by MFA of the rental of the portion of the Property that will be occupied by MFA Oil and Global for an additional 5 years at the conclusion of the 5 year Leases of MFA Oil and Global.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which is sponsored by MFA. The Plan has also been adopted by a number of affiliated corporations and cooperatives (the Adopting Employers) for the benefit of their employees. As of December 31, 1982, the Plan had 2,594 participants and assets of \$33,454,466. The retirement board (the Board) of the Plan is responsible for the general management and administration of the Plan. The Board consists of nine members who are designated as the trustees of the Plan and who are empowered with general investment authority for the Plan. Three members of the Board are elected by and from the Adopting Employers, three members are elected by and from Plan participants and three members are appointed by MFA.

2. The applicant represents that the terms and conditions of the proposed transactions are as follows: The Plan will purchase the Property for cash in the amount of \$900,000. The Property consists of two adjacent lots which are improved with two attached office buildings. The Property is presently owned by FMC and for the past twenty years has been leased to MFA and/or MFA Oil. The Property was appraised on March 26, 1982 by an independent appraiser, Teddy J. Blaylock, M.A.I. (Blaylock) whose office is located in Columbia, Missouri. On February 11, 1982, Blaylock updated (the Updated Appraisal) his March 26, 1982 appraisal of the Property and represents that the fair market value of the Property on February 11, 1983 was \$968,750.

3. The Property is currently leased to the Lessees. The applicant represents that if the subject exemption is granted the Lessees will enter into new leases (the Leases). The rent on the Leases will be established at the rate indicated in the Updated Appraisal. The applicant represents that by using the rental rate established in the Updated Appraisal

the Plan will receive an estimated return on their investment based on current rents and anticipated expenses of approximately 11 1/2%. MFA, which will lease approximately 37% of the Property, will enter into a 10 year Lease, with a fair market increase in rent after five years. MFA Oil and Global will enter into 5 year Leases. In addition, MFA with total assets as of February 28, 1983 of over \$275,000,000 has agreed to guarantee the payment to the Plan on the Leases of MFA Oil and Global. The Leases of MFA, MFA Oil and Global represent 100% of the Leases as the Credit Union leases space pursuant to a sublease from MFA. MFA subleases such space to the Credit Union at a rentable rate lower than the rental rate which it pays in the Lease. In addition, MFA will guarantee the payment in full to the Plan of Lease payments for a 10 year period on the portion of the Property that will be occupied by MFA Oil and Global. Such guarantee will include a rental adjustment to the fair market rental value at the conclusion of the five year leases of MFA Oil and Global.

4. The proposed transactions have been reviewed by an independent party, Mr. Larry Niedergerke (Niedergerke). Niedergerke is an attorney who is the head of the trust department of the First National Bank of Columbia, Missouri (the Bank) located in Columbia, Missouri. Niedergerke represents that he is an independent fiduciary of the Plan and is aware of his duties, liabilities and responsibilities as an independent fiduciary under the Act. The applicant represents that the only relationship that exists among Niedergerke, the Bank and the parties to the proposed transaction is that the commercial side of the Bank handles an insignificant payroll account for MFA. Niedergerke represents that the proposed transactions will be in the best interests of the participants and beneficiaries of the Plan because the Plan will be acquiring an investment at a below market purchase price, an investment with attractive current and anticipated rates of return and an investment with a reasonable likelihood of capital appreciation. Niedergerke will also have the responsibility of approving any renewals of the Leases. Niedergerke further represents that he will monitor and enforce the terms of the Leases on behalf of the Plan and will have the responsibility for approving any rental adjustments to the Leases. In addition, the members of the Board have unanimously recommended the proposed transactions.

5. In summary, the applicant represents that the proposed

transactions will satisfy the criteria of section 408(a) of the Act as follows: (1) The transactions have been approved by an independent party; (2) the members of the Board have unanimously recommended the transactions; (3) the payments on the Leases will be monitored by an independent party; (4) the Plan will be acquiring the Property at a price below the fair market value as determined by an independent appraiser; (5) the Plan will be receiving the fair market rent on the Property as determined by an independent appraiser; (6) the payments on the Leases of MFA Oil and Global will be guaranteed by MFA an organization with assets of over \$275,000,000; and (7) the Plan will receive an investment with an attractive current and anticipated rate of return.

For Further Information Contact: Richard Small of the Department, telephone (202) 523-7222. (This is not a toll-free number.)

SUHRCO Real Estate Advisors, Inc.
(SUHRCO Advisors), Located in Seattle, Washington

[Application No. D-4454]

Proposed Exemption

The Department is considering granting the following exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I. Exemption for Certain Transactions Involving the Fund (as defined in Section IV(a))

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transaction Between Parties-In-Interest and the Fund: General.* Any transaction between a party-in-interest with respect to a plan participating in the Fund (Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not SUHRCO Advisors or one of its affiliates and if, at the time of the transaction, acquisition or holding, the interest of the plan, together with the interests of any other plans maintained by the same employer or employee organization in the Fund, does not

exceed 5 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

(A) The interest of the multiemployer plan in the Fund does not exceed 10 percent of the total assets in the Fund, and the employer is not a substantial employer with respect to the plan, or

(B) The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a substantial employer with respect to the plan and would not be a substantial employer if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to SUHRCO Advisors or to the employer, or any affiliate of SUHRCO Advisors or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of the employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants; and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither SUHRCO Advisors nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation: (a) Not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and (b) at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. SUHRCO Advisors, its affiliates and any collective investment fund maintained by SUHRCO Advisors or its affiliates shall be considered to be persons independent of the issuer if SUHRCO Advisors is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which SUHRCO Advisors or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which SUHRCO Advisors or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1) (A) through (D) and section 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party-in-interest and the incident furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not SUHRCO Advisors, any affiliate of SUHRCO Advisors, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of \$25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of SUHRCO Advisors and any of its affiliates, and the applicable conditions of Section III are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if: (1) The acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of SUHRCO Advisors or its affiliate, the terms of the

transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) SUHRCO Advisors or its affiliate maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SUHRCO Advisors or its affiliate, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of SUHRCO Advisors or its affiliate, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purposes of this exemption, (a) The term "the Fund" shall include SUHRCO Real Estate Fund I (the SUHRCO Fund) and any collective investment fund that may hereafter be established, operated and managed by SUHRCO Advisors or its affiliate in

essentially the same manner as the SUHRCO Fund.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a holding exempt by virtue of Section

I(a)(1) at such time as the interest of the Participating Plan exceeds the percentage interest limitation of Section I(a)(1), unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80-51 (PTE 80-51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicant has requested relief are those which are the subject of PTE 80-51.

The Department stated in PTE 80-51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

On December 21, 1982 (47 FR 56945), the Department proposed a class

exemption for plan asset transactions managed by independent qualified professional asset managers (QPAMs). The proposed class exemption would permit, among other things, various parties who are related to employee benefit plans to engage in transactions involving plan assets if such assets are managed by OPAMs. The class exemption states, at 47 FR 56947, that exemptive relief will be available for, among other entities, collective trust funds and pooled separate accounts maintained for a number of plans who may not qualify for relief under, respectively, PTE 80-51 or Prohibited Transaction Exemption 78-19, (43 FR 59915, December 22, 1978). Part V of the proposed class exemption provides that QPAMs must meet certain financial and net worth requirements. The applicant represents herein that SUHRCO Advisors does not qualify as a QPAM as defined in Part V of the proposed class exemption, and therefore requests individual exemptive relief for the subject transactions.

Summary of Facts and Representations

1. SUHRCO Advisors is a Washington corporation located at 1818 Westlake Avenue North, No. 406, Seattle, Washington 98109. SUHRCO Advisors became a registered investment adviser under the Investment Advisers Act of 1940 on September 27, 1982. SUHRCO Advisors was formed for the purpose of managing and operating real estate investments owned by the real estate fund described below. It is contemplated that the company will also perform similar investment management functions for additional funds to be established in the future. The stock of SUHRCO Advisors is owned entirely by Suhrbier Management & Development Co.

2. The SUHRCO Fund is a closed-end group trust under Revenue Ruling 81-100, which was organized in 1983. The purpose of the SUHRCO Fund is to offer to trusts forming part of pension or profit sharing plans for employees, which are exempt from federal income taxation under sections 501(a) and 401(a) of the Code, a vehicle to make equity investments in diversified parcels of improved real property. It is perceived that such investments would enable plan fiduciaries to meet the Act's mandate for diversification of investments, under section 404(a)(1)(C) of the Act. The investors in SUHRCO Fund, all qualified employee benefit trusts, will adopt the group trust as part of their individual trusts and their interests in the group trust will be evidenced by units of beneficial interest. SUHRCO Fund expects to obtain a

determination letter from the Internal Revenue Service as to its tax exempt status under section 501(a) of the Code.

3. The SUHRCO Fund will engage in the business of acquiring, improving, operating and holding for investment, income-producing real property (as well as personal or mixed property connected therewith) and making convertible mortgage loans secured by real property. The SUHRCO Fund will not invest in unimproved land, agricultural properties or special use buildings. The SUHRCO Fund may enter into agreements to purchase property under development where the close of escrow is contingent upon completion of construction according to approved plans, achievement of specialized pre-leasing levels and satisfaction of other conditions specifically designed to protect the SUHRCO Fund from the development and construction risks normally associated with the purchase of to-be-built projects. The SUHRCO Fund may also make quasi-equity investments in real properties in the form of convertible mortgage loans which combine a mortgage with an option to purchase the properties, thereby enabling the SUHRCO Fund to convert its mortgage interest in a property to an ownership interest in all or a portion of the property. During the life of the SUHRCO Fund, there will be times at which the Fund has uncommitted funds to invest on behalf of the Participating Plans. During these periods, the investment manager must have the ability to make short-term investments in order to provide a continuous return to the Participating Plans. Thus, the SUHRCO Fund may seek to invest in employer securities as a short-term investment. As of this date, SUHRCO Fund has no operating history. It does not presently own any properties or loans or options to acquire properties or make loans.

4. The SUHRCO Fund may leverage its investments through borrowings, if in the judgment of the investment manager, the earning capacity of the Fund will be increased thereby. The SUHRCO Fund may also borrow money for other purposes, such as to finance improvements to real property held by the trust, or to provide cash for payments due on redemption of beneficial units. The SUHRCO Fund may encumber its properties by mortgages or deeds of trust to secure repayment of such indebtedness. However, at no time will borrowed capital exceed 50% of the total value of property interests of the SUHRCO Fund, nor will the encumbrance on any single property acquired by the SUHRCO Fund

exceed 60% of such property's market value.

5. Each unit in SUHRCO Fund will be sold for \$50,000.00. The minimum number of units which may be purchased by an investor is two (\$100,000.00). The SUHRCO Fund will not begin business until subscriptions for at least 60 units (\$3,000,000.00) have been received and accepted by the trustees. If at least 60 unit subscriptions have not been accepted by August 31, 1984, all proceeds received for units will be refunded to the investing trusts with interest earned thereon. The maximum number of units which will be issued by the SUHRCO Fund is 600 (\$30,000,000.00), except that it may issue an additional 400 units (\$20,000,000.00) if it has received commitments for the original 600 units (\$30,000,000.00) by August 31, 1984.

6. Some of the trustees of the SUHRCO Fund are officers, directors, or employees of the investment manager, SUHRCO Advisors. However, none of such trustees, officers, directors or employees serve as fiduciaries to any plan which will invest in the SUHRCO Fund or future funds. Further, none of the trustees of the SUHRCO Fund, and none of the officers, directors, and employees of the investment manager, will own any equity interest in the SUHRCO Fund or in future funds. The initial decision to invest in the SUHRCO Fund will be made by independent plan trustees.

7. No underwriting or sales commissions will be deducted from the sales price paid by subscribers for the units. All gross proceeds resulting from such sales will be received by the SUHRCO Fund. The SUHRCO Fund will pay all direct expenses incurred in establishing and operating it. This will include custodian fees incurred in the safekeeping of its cash and other properties, audit and accounting fees, legal fees, management fees to be paid the investment manager, broker's commissions, taxes and assessments, interest fees and other charges connected with borrowings by the SUHRCO Fund, appraisal, contractor, engineering, and consulting fees in connection with the acquisition, sale, appraisal or evaluation of Fund property, property management costs to the investment manager or others, insurance costs, and all costs and expenses connected with the acquisition, disposition, improvement, maintenance, repair and ownership of assets of the SUHRCO Fund.

8. All subscribers to the SUHRCO Fund will complete and execute an adoption agreement. This agreement

will contain representations made by the purchaser, including: (i) The subscriber is exempt from federal income tax under section 501(a) of the Code as a pension or profit sharing plan under section 401(a) of the Code, (ii) the subscriber has net assets of at least \$500,000.00 and (iii) the subscriber's total ownership of equity interests in real estate (including its investment in the Fund) does not exceed 20% of its total net assets.

9. The investment and management of SUHRCO Fund assets will be performed by SUHRCO Advisors which will be appointed by the Fund trustees as the SUHRCO Fund's investment manager. As investment manager for the SUHRCO Fund, SUHRCO Advisors will acquire and operate selected income properties with the principal objectives of attaining capital appreciation, cash flow and preservation and protection of capital. This will be accomplished by investment in high quality and functionally diverse properties, including shopping centers, office and industrial buildings, and residential apartment units.

10. SUHRCO Advisor's principal officers have extensive experience in real property acquisition and development, financing, leasing, management, trust and real estate administration, mortgage banking, investment planning, accounting, auditing and compliance with the Act. The real estate experience of the principals has been in both the private and public sectors. Professional designations held by the principals include a Certified Public Accountant, several Certified Property Managers and Certified Shopping Center Managers, a Certified Financial Planner, and General Principal and Registered Agent Securities Licenses. One of the principals was formerly the manager of the real estate trust department and a vice-president of one of the nation's largest banks.

11. To achieve its goals, SUHRCO Advisors will undertake continual analysis of the operating performance of each SUHRCO Fund property, comprehensive market surveys concerning leasing, and ongoing maintenance and repair programs. The specific duties of SUHRCO Advisors will be to: (i) Develop a suitable overall investment strategy and financial policy for the SUHRCO Fund; (ii) direct the investment and liquidation of the assets of the SUHRCO Fund; (iii) administer the overall operations of the SUHRCO Fund; (iv) establish and maintain accounting records of the SUHRCO Fund and produce quarterly reports

relating to the overall financial position and operating results of the SUHRCO Fund (including account balances of each beneficiary's interest); (v) develop economic, demographic and marketing information to be used in investment strategy and analysis of specific investments; (vi) select and supervise those individuals or entities providing services to the SUHRCO Fund, such as consultants, engineers or other agents; (vii) manage the cash and cash equivalents of the SUHRCO Fund; and (viii) provide periodic reports to beneficiaries concerning property acquisitions and the operation of the SUHRCO Fund.

12. In connection with providing the foregoing services to the SUHRCO Fund, SUHRCO Advisors will receive investment management fees and compensation for services rendered in property management. In connection with its services as investment manager for the SUHRCO Fund, SUHRCO Advisors will receive monthly fees computed at the rate of one-twelfth ($\frac{1}{12}$)th of one and three quarters ($1\frac{3}{4}$ %) percent of: (i) The net value of the assets of the Fund, as of the last day of the preceding month, plus (ii) the amount of any subscription proceeds not received by the Fund as of such date. This rate shall be effective for the first \$10,000,000.00 of value as described above. With respect to the next \$10,000,000.00 in value, the monthly rate for investment management fees paid to SUHRCO Advisors shall be one-twelfth of one and one-half ($1\frac{1}{2}$ %) percent. Management fees for values in excess of \$20,000,000.00 will be charged at a monthly rate of one-twelfth of one and one quarter ($1\frac{1}{4}$ %) percent.¹ In determining value for purposes of computing the aforementioned fees, all real property interests owned by the SUHRCO Fund will be valued pursuant to an independent MAI appraisal conducted annually. However, property which has not been owned for at least six months by the Fund will not be appraised. In such cases, the investment manager will utilize the most recent appraisal done of the property and may reduce but not increase the value indicated therein. All property other than real property shall be valued at fair market as determined in good faith by the trustees of the SUHRCO Fund. For services rendered in connection with property management, the compensation paid to SUHRCO Advisors and its affiliates will not exceed the cost of services provided. Except for the

¹ The Department is not proposing an exemption for the provision of services beyond that provided by section 408(b)(2) of the Act.

investment management fees and the property management fees described herein, SUHRCO Advisors will not receive any other compensation from the SUHRCO Fund or from other parties.

13. Prior to making a decision to invest in the SUHRCO Fund, the independent trustees of potential Participating Plans will be supplied with a copy of the Private Placement Memorandum for the Fund, and a copy of the Group Trust Agreement. These documents describe completely to potential investors the management of the Fund which is to be performed by SUHRCO Advisors. The documents fully describe the operation of the SUHRCO Fund, the income tax consequences thereof, and the investment objectives which will govern the investment decisions made by the investment manager. In addition, these documents completely describe the compensation which will be paid to the investment manager, and also describe in detail potential conflicts of interest and risks inherent in the operation of the SUHRCO Fund. To enable the independent trustees to make fully informed investment decisions, the investment manager and the trustees of the SUHRCO Fund will also make available to prospective investors such additional information concerning the Fund and the investment manager as the independent trustees may reasonably require in making investment decisions.

14. The trustees of the SUHRCO Fund will prepare and distribute to each Participating Plan various audited and unaudited financial reports, appraisals and other information. Within 120 days after the end of each trust fiscal year, the SUHRCO Fund trustees will prepare and distribute the following financial reports, each of which will be audited by independent certified public accountants: (1) Balance sheet for the SUHRCO Fund as of the end of the fiscal year; (2) profit and loss statement for the fiscal year; (3) statement of changes in financial position for the fiscal year; (4) statement of source and application of funds; and (5) statement of fees paid to the investment manager. Within 60 days after the end of each fiscal quarter (except the last fiscal quarter of the year), the SUHRCO Fund trustees will prepare and distribute to each Participating Plan an unaudited quarterly financial report which will consist of a balance sheet and a profit and loss statement for the Fund as of the end of the quarter.

15. Beginning in the fiscal year 1984, the trustees of the SUHRCO Fund will have all of the real property interests owned by the Fund annually appraised

by an independent MAI appraiser. The results of the appraisals, the valuation of other assets held by the Fund, and the value of a Fund unit based upon these valuations will be reported by the SUHRCO Fund trustees to the Participating Plans at the same time that the audited annual report is made. In addition to the foregoing reports, the trustees of the SUHRCO Fund will also prepare and distribute, to each Participating Plan, a report detailing all real property acquired by the Fund during the preceding quarter. These reports will continue until such time as all of the funds of the SUHRCO Fund have been fully invested or set aside as reserves. The trustees of the SUHRCO Fund will also prepare and distribute from time to time such other information as may be reasonably requested by the independent fiduciaries on behalf of the Participating Plans, including any information which may be necessary to comply with the reporting requirements of the Act, the Department and the Internal Revenue Service.

16. In summary, the applicant represents that the subject transactions meet the criteria of section 408(a) of the Act because: (1) SUHRCO Advisors can provide property management services to the Fund at less expense and more effectively than outside property management companies; (2) the Fund will enable Participating Plans to diversify their investments through the acquisition of real property; (3) each of the protections provided to Participating Plans and their participants and beneficiaries by PTE 80-51 will be satisfied for the subject transactions, except that the Fund is privately maintained; and (4) the decisions to invest in the Fund are made by independent fiduciaries of employee benefit plans who have been provided with a detailed private placement memorandum, a group trust agreement, and other supporting information and documents. Such fiduciaries are unrelated to SUHRCO Advisors and any of its affiliates.

FOR FURTHER INFORMATION CONTACT:

Gary H. Lefkowitz of the Department, telephone 202 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code,

including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is subject of the exemption.

Signed at Washington, D.C., this 13th day of March 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-7069 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-29-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering Committee for 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:

- River assessment proposal.
 - Proposed site ranking criteria.
 - Section 201 goals study.
 - Cumulative impact assessment proposal.
 - Proposed work schedule.
 - FERC update.
 - Other.
 - Public comment.
- Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee.

DATE: March 22, 1984. 9:30 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-7097 Filed 3-15-84; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23243; 70-6954]

Georgia Power Co.; Proposal

March 12, 1984.

Georgia Power Company, ("Georgia") 333 Piedmont Avenue NE., Atlanta, Georgia, 30308, a subsidiary of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to section 6(b) and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 thereunder.

Georgia proposes to issue and sell up to \$450 million aggregate principal amount of its first mortgage bonds ("Bonds") in one or more series from time to time not later than December 31, 1984 under an indenture dated as of March 1, 1941, as supplemented. Each series of new Bonds will have a term of not less than five nor more than 30 years and will be sold for the best price obtainable but not less than 98% nor more than 101¼% of the principal amount thereof, plus accrued interest.

Georgia may provide that the Bonds will not be redeemed for up to a five-year period at a regular redemption price if such redemption is to refund the Bonds at a lower effective interest cost to Georgia. Georgia may covenant that it

will not, in any calendar year, redeem more than 1% of the initial aggregate principal amount of the Bonds of a particular series through the operation of the maintenance and replacement provisions. Georgia may also covenant that for five years it will not redeem, through the sinking or improvement fund provisions of the indenture more than 1% of the initial aggregate principal amount of each series of the Bonds annually.

Georgia also proposes to issue and sell at competitive bidding up to \$100 million of preferred stock, without par value, but with a stated value of up to \$100 per share ("Preferred Stock") in one or more series from time to time not later than December 31, 1984, for the best price obtainable, but not less than 100% nor more than 102% of the stated value per share.

Georgia may provide for a mandatory cumulative sinking fund for the benefit of a particular series of the Preferred Stock which would, after five years, retire a certain number of shares of such series annually. In connection therewith, Georgia may have the non-cumulative option of redeeming up to an additional like number of shares of such series annually.

Georgia may provide that no share of a particular series of the Preferred Stock will be redeemed for five years if such redemption is to redeem the Preferred Stock at a lower effective interest cost to Georgia.

Georgia may determine that, in light of current market conditions at the time the Preferred Stock is offered, it is in the best interest of Georgia and its investors and consumers that the terms of the Preferred Stock provide for an adjustable dividend rate to be determined on a periodic basis, subject to fixed maximum and minimum rates, rather than a fixed rate dividend. In such event, it is proposed that the rate of dividends on the Preferred Stock for an initial period would be a fixed amount per annum. Periodically thereafter, the rate would be adjusted in accordance with a formula which is based upon certain reference rates and which may also reflect the market price of the Preferred Stock in relation to the stated value thereof.

Georgia proposes to use the proceeds from the sale of the Bonds and the Preferred Stock, along with other funds, to pay a portion of its cash requirements to carry on its electric utility business. Georgia may request by amendment that the proposed sale of the Bonds and

Preferred Stock, or any part thereof, be excepted from the competitive bidding requirements of Rule 50 under the Act should circumstances develop which, in the opinion of Georgia's management, make such exception in the best interest of Georgia and its investors and consumers. Unless previously so excepted, Georgia proposes to comply with the requirements of Rule 50, as modified by HCAR No. 35-22623.

The application-declaration 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 April 2, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-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 application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-7096 Filed 3-15-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #3010; Amdt. #4]

Kansas; Declaration of Physical Disaster Loan Area Pursuant to Pub. L. 98-166

The above numbered declaration (48 FR 55797 and Amendments #1-48 FR 57396, #2-49 FR 1958, and #3-49 FR 7322) is amended pursuant to the Secretary of Agriculture's designation authorizing Farmers Home Administration (FmHA) to accept emergency loan applications in the following area:

State of Kansas

FmHA	Incident and date		Counties
	Number	Date	
S103	02/22/84	Drought beginning June 1, 1983, and continuing through Sept. 30, 1983.	Harvey, Trego, Osborne, ¹ Wichita, ¹ and Stafford ² .

¹ Also, freeze occurring in September 1983 and hailstorms occurring on May 6, 1983, and August 21, 1983, in Osborne County and June 9, 18 and 17, 1983, in Wichita County.

² Also hail occurring on September 12, 1983.

As a result of this designation, I have determined the above counties in the State of Kansas constitute a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status; corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns.

The interest rates for eligible applicants under this designation are as follows:

	Percent
Agricultural Enterprises With Credit Available Elsewhere.....	10.5
Agricultural Enterprises Without Credit Available Elsewhere.....	8.0
Non-farm Small Businesses (Economic Injury).....	8.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic Injury for non-farm small businesses may be filed until the close of business on August 22, 1984. The number assigned to this disaster is 3010 for Physical damage to eligible agricultural enterprises and is 610801 for Economic Injury. Eligible enterprises may file applications for loans for physical damage or economic injury at: Small Business Administration, Area 3 Disaster Office, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, (800) 527-7735 and in Texas (800) 442-7206 or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: March 9, 1984.

Bernard Kulik,
Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-7133 Filed 3-15-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #3029; Amdt. #4]**Minnesota; Declaration of Physical Disaster Loan Area Pursuant to Pub. L. 98-166**

The above numbered declaration (48 FR 55798 and Amendments #1—48 FR 57396, #2—49 FR 7178, and #3—49 FR 8517) is amended pursuant to the Secretary of Agriculture's designation authorizing Farmers Home Administration (FmHA) to accept emergency loan applications in the following area:

STATE OF MINNESOTA

FmHA		Incident and date	County
Number	Date		
S105	02/28/84	Damages and losses to crops caused by high winds occurring on July 2, August 29, and September 8, 1983, and excessive rainfall beginning August 15, 1983, and continuing through September 21, 1983.	Clearwater.

As a result of this designation, I have determined the above county in the State of Minnesota constitutes a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status; corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns.

The interest rates for eligible applicants under this designation are as follows:

	Percent
Agricultural Enterprises With Credit Available Elsewhere.....	10.5
Agricultural Enterprises Without Credit Available Elsewhere.....	8.0
Non-farm Small Businesses (Economic Injury).....	8.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic Injury for

non-farm small businesses may be filed until the close of business on August 28, 1984. The number assigned to this disaster is 3029 for Physical damage to eligible agricultural enterprises and is 610901 for Economic Injury. Eligible enterprises may file applications for loans for physical damage or economic injury at: Area 2 Disaster Office, 75 Spring Street SW., Suite 822, Atlanta, Georgia 30303, (800) 554-3455 and in Georgia (800) 241-5625 or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: March 9, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-7135 Filed 3-15-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #3025; Amdt. #5]**Texas; Declaration of Physical Disaster Loan Area Pursuant to Pub. L. 98-166****STATE OF TEXAS**

FmHA		Incident and date
Number	Date	
S082	02/10/84	Drought beginning May 1, 1983, and continuing through September 30, 1983; *also, an early frost on September 30, 1983; **also hailstorms occurring on May 19, 1983 and June 6, 1983.

Counties

Haskell, *LaSalle and **Zavala.

As a result of this designation, I have determined the above Counties in the State of Texas constitute a disaster loan area for agricultural enterprises which are ineligible for disaster assistance from the FmHA because of alien status; corporations, partnerships and cooperatives not being primarily engaged in farming; farm owners who do not operate their farms; etc., and for Economic Injury Disaster loans for non-farm small business concerns. The interest rates for eligible applicants under this designation are as follows:

	Percent
Agricultural Enterprises With Credit Available Elsewhere.....	10.5
Agricultural Enterprises Without Credit Available Elsewhere.....	8.0
Non-farm Small Businesses (Economic Injury).....	8.0

Loan applications for Physical Disaster Loans from eligible agricultural enterprises may be filed for a period not

to exceed thirty days from the date of the letter of referral from FmHA, provided that the application for EM assistance from FmHA or the formal written request for a letter of referral by FmHA was filed within the time limits set forth in the FmHA designation. Loan applications for Economic Injury for non-farm small businesses may be filed until the close of business on August 10, 1984. The number assigned this disaster is 3025 for Physical damage to eligible agricultural enterprises and is 605801 for Economic Injury. Eligible enterprises may file applications for loans for physical damage or economic injury at: U.S. Small Business Administration, Area 3 Disaster Office, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, (800) 527-7735 and in Texas (800) 442-7206 or other locally announced locations.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: February 29, 1984.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-7134 Filed 3-15-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-5281]**Chen's Financial Group, Inc.; Issuance of a License To Operate as a Small Business Investment Company**

On December 27, 1983, a notice was published in the *Federal Register* (48 FR 57013), stating that Chen's Financial Group, Inc., 1616 West Loop, Suite 200, Houston, Texas 77027, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1984), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on January 11, 1984, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 06/06-5281 to Chen's Financial Group, Inc.

Dated: March 12, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-7138 Filed 3-15-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0274]

Equity Capital Corporation; Issuance of a License To Operate as a Small Business Investment Company

On November 22, 1983, a notice was published in the *Federal Register* (48 FR 52796), stating that Equity Capital Corporation located at 231 Washington Avenue, Suite 2, Santa Fe, New Mexico 87501, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1983), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on December 7, 1983, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 06/06-0274 to Equity Capital Corporation.

Dated: March 12, 1984.

Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

[FR Doc. 84-7137 Filed 3-15-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0342]

GC & H Partners; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)), for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

Applicant: GC & H Partners

Address: One Maritime Plaza, 20th Floor, San Francisco, California 94111
Proposed Private Capital: \$1,002,000
Area of Operations: Principally in the State of California.

The proposed general partners of the Applicant are as follows:

		Percent
James C. Gaither, One Maritime Plaza, 20th Floor, San Francisco, CA 94111.	General partner.....	3.6
Edwin E. Huddleston, Jr., One Maritime Plaza, 20th Floor, San Francisco, CA 94111.	do.....	3.6

		Percent
C. Bradford Jeffries, One Maritime Plaza, 20th Floor, San Francisco, CA 94111.	do.....	3.6

Of the 28 partners, no one owns as much as 10 percent of the applicant.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice should be published in a newspaper of general circulation in the San Francisco, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 12, 1984.

Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

[FR Doc. 84-7136 Filed 3-15-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Advisory Circular on Small Aircraft Control System Locks**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft Advisory Circular (AC) availability and request for comments.

SUMMARY: This AC provides design guidance information on methods of providing an unmistakable warning to the pilot when the control lock is engaged.

DATE: Commenters must identify file AC 23.679-XX, Subject: Control System Locks, and comments must be received on or before April 30, 1984.

ADDRESS: Send all comments on the draft AC to: Federal Aviation Administration, Attn: Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Stogsdill, Central Region,

Regulations and Policy Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. Commercial telephone 816-374-6941 or FTS 758-6941.

SUPPLEMENTARY INFORMATION:

Interested persons may obtain a copy of this draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Background

Several accidents have occurred because the pilot did not remove the control system lock prior to takeoff. Many such accidents relate to internally applied locks, mostly pins, installed at the control wheel column. Misuse and alterations of these installed locking devices, together with the neglect by the pilot to perform a control freedom check before takeoff, contributed to such accidents. Design guidance is contained in FAA Order 8110.24, which will be canceled by this AC. Conversion of FAA Order 8110.24 to an AC is part of the FAA's effort to convert internal FAA orders which contain certification guidance to ACs.

Comments Invited

Interested parties are invited to submit comments on the draft AC. Comments received on the draft AC may be inspected at the Regulations and Policy Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4 p.m. on weekdays, except Federal holidays.

Issued in Kansas City, Missouri, March 3, 1984.

Barry D. Clements,
Acting Director, Central Region.

[FR Doc. 84-7023 Filed 3-15-84; 8:45 am]

BILLING CODE 4910-13-M

Active Flight Controls Advisory Circular

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: Notice announces the issuance of Advisory Circular (AC) 25.672-1, Active Flight Controls, which sets forth an acceptable means of compliance with the provisions of Part 25 of the Federal Aviation Regulations pertaining to the certification requirements of active flight controls.

This notice also announces where a copy of AC 25.672-1 may be obtained.

DATE: Advisory Circular 25.672-1 was issued by the Transport Airplane Certification Directorate in Seattle, Washington, on November 15, 1983.

SUPPLEMENTARY INFORMATION: An announcement of the availability of the draft AC was published in the *Federal Register* on February 22, 1983 (48 FR 7464). Due to requests from industry to allow additional time for review of the draft, an additional notice was published on April 16, 1983 (48 FR 16499), reopening the comment period until May 18, 1983. The procedures described in the AC apply to load alleviation systems, stability augmentation systems, and flutter suppression systems.

How to obtain Copies: Interested parties may obtain a copy of AC 25.672-1 by writing to the U.S. Department of Transportation, Publications Section, M-442.32, Washington, D.C. 20590.

Issued in Seattle, Washington, on February 28, 1984.

D. L. Riffin,

Manager, Regulations and Policy Office,
Northwest Mountain Region.

[FR Doc. 84-7021 Filed 3-15-84; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSRM-84-1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad

Administration, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before May 2, 1984 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Seaboard System Railroad (Waiver Petition Docket No. RSRM 84-1) Rear End Marking Device

The Seaboard System Railroad (Seaboard) seeks relief from the requirements of 49 CFR 221.15(d). Section 221.15(d) provides that after June 30, 1978, marking devices displayed in compliance with this part shall be inspected by the train crew at each crew change point to assure that they are in proper operating condition. Given the sometime unavailability of a crew member at the rear of a train to provide the inspection, the Seaboard System Railroad proposes to implement an operating rule to designate other responsible employees such as the yardmaster, car inspectors and other to perform the required inspection in the absence of the crew member. The Seaboard System Railroad's petition requests that it be granted the authority to deviate from the exclusivity of the rule by allowing an accommodation of the proposed.

Escanaba and Lake Superior Railroad (Waiver Petition Docket No. RSRM 84-2) Rear End Marking Device

The Escanaba and Lake Superior Railroad seeks relief from the requirements of 49 CFR 221.13. Section 221.13 provides that after June 30, 1978, each train that occupies or operates on a main track shall be equipped with marking devices located on the trailing end of the rear car of the train. The Escanaba and Lake Superior Railroad's petition requests that it be granted authority to operate trains on four segments of track totaling 214 miles without a rear end marking device when only one train is to be operated in the affected territories at any given time. Under the Escanaba and Lake Superior Railroad's proposal, following movements will be prohibited by train orders.

Issued in Washington, D.C. on March 6, 1984.

Philip Olekszyk,

Acting Deputy Associate Administrator for Safety.

[FR Doc. 84-7092 Filed 3-15-84; 8:45 am]

BILLING CODE 4910-05-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 9, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980 Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and/or to the Treasury Department Clearance Officer, Room 7227, 1201 Constitution Avenue NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: New

Form Number: None

Type of Review: Existing Collection

Title: Regulations Under Tax

Conventions—Japan.

OMB Number: New

Form Number: None

Type of Review: Existing Collection

Title: Regulations Under Tax

Conventions—Norway.

OMB Number: New

Form Number: None

Type of Review: Existing Collection

Title: Regulations Under Tax

Conventions—Canada.

OMB Number: New

Form Number: None

Type of Review: Existing Collection

Title: Regulations Under Tax

Conventions—Netherlands.

OMB Number: New

Form Number: None

Type of Review: Existing Collection

Title: Regulations Under Tax

Conventions—Ireland.

OMB Number: New

Form Number: None

Type of Review: Existing Collection

Title: Regulations Under Tax

Conventions—Germany.

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Regulations Under Tax
Conventions—Sweden.

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Regulations Under Tax
Conventions—Italy.

OMB Number: 1545-0236
Form Number: IRS Form 11-C
Type of Review: Revision
Title: Special Tax Return and
Application for Registry-Wagering
OMB Reviewer: Norman Fumkin, (202)
395-6880, Office of Management and
Budget, Room 3208, New Executive
Office Building, Washington, D.C.
20503.

United States Customs Service

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Marking Serially Numbered
Substantial Holders or Containers.

Office of the Secretary

OMB Number: New
Form Number: None
Type of Review: Existing Collection
Title: Maintenance of Use Report and
Supporting Documentation for Public
Inspection
OMB Reviewer: Judy McIntosh (202)
395-6880, Office of Management and
Budget, Room 3208, New Executive
Office Building, Washington, D.C.
20503.

Gary Kowalczyk,
Departmental Reports Management Office.
[FR Doc. 84-7101 Filed 3-15-84; 8:45 am]
BILLING CODE 4810-25-M

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 1983

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Publication of inflation
adjustment factor and reference price
for calendar year 1983 as required by
section 44D(d)(2)(A) of the Internal
Revenue Code (26 U.S.C. 44D(d)(2)(A)).

SUMMARY: The inflation adjustment
factor and reference price are used in
determining the availability of the tax
credit for production of fuel from
nonconventional sources under section
44D of the Internal Revenue Code.

DATE: The 1983 inflation adjustment
factor and reference price apply to

qualified fuels produced and sold during
calendar year 1983.

INFLATION FACTOR: The inflation
adjustment factor for calendar year 1983
is 1.3197.

PRICE: The reference price for all
qualified fuels is \$26.19 per equivalent
barrel for the 1983 calendar year.

The special reference price for gas
produced from Devonian shale expired
on December 31, 1982. For calendar year
1983 the credit for gas produced from
Devonian shale is to be figured from the
reference price shown above which is
based on the price of crude oil is defined
in section 44D(d)(2)(C) of the Internal
Revenue Code.

Because the above reference price
does not exceed \$23.50 multiplied by the
inflation adjustment factor, the phaseout
of credit provided for in section
44D(b)(1) of the Internal Revenue Code
does not occur for any qualified fuel
based on the above reference price.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor—Robert O'Keefe,
PM:PFR:R, Room 3144, Internal
Revenue Service, 1111 Constitution
Avenue NW., Washington, D.C.,
20224, Telephone Number (202) 566-
7541 (not a toll-free number)

For the reference price—Noel J.
Sheehan, CC:C:E:E:2, Room 5232,
Internal Revenue Service, 1111
Constitution Avenue NW.,
Washington, D.C., 20224, Telephone
Number (202) 566-4463 (not a toll-free
number).

William H. Connert,
Associate Chief Counsel (Technical)
[FR Doc. 84-7127 Filed 3-15-84; 8:45 am]
BILLING CODE 4830-01-M

Performance Review Board

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Notice of Members of Senior
Executive Service Performance Review
Board.

DATE: Performance Review Board
effective March 1, 1984.

FOR FURTHER INFORMATION CONTACT:
DiAnn Kiebler, PM:HR:P:X, Room 3213,
1111 Constitution Avenue NW.,
Washington, DC 20224, Telephone No.
(202) 566-4633 (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant
to section 4314(c)(4) of the Civil Service
Reform Act of 1978, the members of the
Internal Revenue Service's Senior
Executive Service Performance Review
Board for executives other than
Assistant Commissioners, Regional
Commissioners and executives in
Inspection are as follows:

James I. Owens, Chairman, Deputy
Commissioner
Richard C. Wassenaar, Assistant
Commissioner, Criminal Investigation
Larry G. Westfall, Assistant
Commissioner, Collection
Charles H. Brennan, Regional
Commissioner, North Atlantic Region
William D. Waters, Regional
Commissioner, Mid-Atlantic Region
Stanley Goldberg, Assistant
Commissioner, Returns and
Information Processing (Alternate)
Thomas A. Cardoza, Regional
Commissioner, Southeast Region
(Alternate)

This document does not meet the
criteria for significant regulations set
forth in paragraph 8 of the Treasury
Directive appearing in the **Federal
Register** for Wednesday, November 8,
1978 (43 FR 52122).

Roscoe L. Egger, Jr.,
Commissioner.

[FR Doc. 84-7128 Filed 3-15-84; 8:45 am]
BILLING CODE 4830-01-M

FEDERAL RESERVE SYSTEM

Wesbanco, Inc.; Acquisition of Bank Shares by Bank Holding Companies

The company listed in this notice has
applied for the Board's approval under
section 3(a)(3) of the Bank Holding
Company Act (12 U.S.C. 1842(a)(3)) to
acquire voting shares or assets of a
bank. The factors that are considered in
acting on the applications are set forth
in section 3(c) of the Act (12 U.S.C.
1842(c)).

The application may be inspected at
the offices of the Board of Governors, or
at the Federal Reserve Bank indicated
for that application. With respect to the
application, interested persons may
express their views in writing to the
address indicated for that application.
Any comment that requests a hearing
must include a statement of why a
written presentation would not suffice in
lieu of a hearing, identifying specifically
any questions of fact that are in dispute
and summarizing the evidence that
would be presented at a hearing.

A. Federal Reserve Bank of Cleveland
(Lee S. Adams, Vice President) 1455 East
Sixth Street, Cleveland, Ohio 44101:

1. Wesbanco, Inc., Wheeling, West
Virginia; to acquire 80 percent or more
of the voting shares or assets of Citizens
National Bank of Fallonsbee,
Fallonsbee, West Virginia. Comments
on this application must be received not
later than March 26, 1984.

Board of Governors of the Federal Reserve
System, March 15, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-7393 Filed 2-15-84; 11:48 am]
BILLING CODE 6210-01-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 53

Friday, March 16, 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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	Items
Commodity Futures Trading Commission	1
Federal Deposit Insurance Corporation	2, 3
Federal Maritime Commission	4
Federal Reserve System	5, 6
National Credit Union Administration	7

1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 9046.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Friday, March 16, 1984.

CHANGES IN THE MEETING: The Preliminary Report of Dealer Options Sales Practice Auditing has been changed to Tuesday, March 27, 1984 at 10:00 a.m.

Jane K. Stuckey,
Secretary of the Commission.

[FR Doc. 84-7276 Filed 3-14-84; 3:27 pm]
BILLING CODE 6351-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

NOTICE OF CHANGES IN SUBJECT MATTER OF AGENCY MEETING

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, March 12, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Issac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Request of Universal Trust Company, San Juan Puerto Rico, an operating noninsured

bank, for modification of a previous Order granting Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation, pursuant to section 10(b) of the Federal Deposit Insurance Act, that the Corporation make special examination of a certain State member bank to determine the condition of such bank for insurance purposes: Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Discussion re: Corporation procedures for paying off insured deposits in closed banks.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to the public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 13, 1984.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84-7227 Filed 3-14-84; 1:19 pm]
BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

NOTICE OF CHANGE IN SUBJECT MATTER OF AGENCY MEETING

Pursuant to the provisions of subsection (3)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, March 12, 1984, the Corporation's Board of Directors determined, on motion of Chairman William M. Issac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the

Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Bank of Guam, Agana, Guam, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Palau and Ponape Branches of American Savings and Loan Association, Tamuning, Guam, a non-FDIC-insured institution, and for consent to establish those two offices as branches of Bank of Guam.

By the majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: March 13, 1984.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84-7226 Filed 3-14-84; 1:19 pm]
BILLING CODE 6714-01-M

4

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m., March 21, 1984.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portion open to the public:

1. Agreement No. 9502-14: Modification of the United States/South and East Africa Conference Agreement to provide for the establishment of and independent action with respect to intermodal rates.

Portions Closed to the public:

1. Docket No. 83-23: Central Navigation Corporation, Nantucket Navigation, Inc. and T. Smith & Son (Texas), Inc. v. Port of Houston Authority—Consideration of the record.

2. Docket No. 78-32: Pacific Westbound Conference—Equalization and Absorption Rules and Practices—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.
Francis C. Hurney,
Secretary.

[FR Doc. 84-7147 Filed 3-14-84; 9:24 am]
BILLING CODE 6730-01-M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, March 21, 1984, following a recess at the conclusion of the open meeting.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: March 13, 1984.

William W. Wiles,
Secretary of the Board.

[FR Doc. 84-7099 Filed 3-13-84; 4:36 pm]

BILLING CODE 6210-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, March 21, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed interagency policy statement regarding delayed funds availability practices.

Discussion Agenda:

2. Proposed one-time household survey of currency and transactions account usage.
3. Proposed amendments to Regulation K (International Banking Operations) prescribing uniform rules for the accounting of fees associated with international lending by bank institutions. (Proposed earlier for public comment; Docket No. R-0509)
4. Proposed interagency policy statement regarding advertising practices for IRA deposits.
5. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: March 13, 1984.

William W. Wiles,
Secretary of the Board.

[FR Doc. 84-7100 Filed 3-13-84; 4:36 pm]

BILLING CODE 6210-01-M

7

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 2:00 p.m., Thursday, March 22, 1984.

PLACE: Double Tree Hotel, 445 So. Alvernon Way, Tucson, Arizona 85711, (602) 881-4200.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Final Rule: Section 703, Investments and Deposits.
4. Proposed Rule: Section 701.20, Surety Bond and Insurance Coverage.
5. Legislative Update.
6. Charter Amendment for UCB Federal Credit Union in Bridgeville, Pa. (Community credit union).

TIME AND DATE: 4:00 p.m., Thursday, March 22, 1984.

PLACE: Double Tree Hotel, 445 So. Alvernon Way, Tucson, Arizona 85711, (602) 881-4200.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Special Assistance to Prevent Liquidation Under Section 208(a)(1) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Order of Conservatorship under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT:

Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,
Secretary of the Board.

[FR Doc. 84-7222 Filed 3-14-84; 12:16 pm]

BILLING CODE 7535-01-M

Friday,
March 16, 1984

Part II

Department of Labor

Employment Standards Administration,
Wage and Hour Division

Minimum Wages for Federal and
Federally Assisted Construction; General
Wage Determination Decisions; Notice

**Wage and Hour
Division
Department of Labor**

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
DivisionMinimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas
Decisions to General Wage
Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Iowa: IA84-4006	Feb. 17, 1984
Michigan: MI84-5004	Mar. 9, 1984
Missouri: MO 84-4009	Feb. 10, 1984
New York: NY83-3044	Aug. 26, 1983
Pennsylvania: PA84-3004	Feb. 17, 1984
Texas: TX83-4077	Oct. 21, 1983

Supersedeas Decisions to General Wage
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Kentucky:	
KY82-1062 (KY84-1006)	Oct. 15, 1982
KY82-1067 (KY84-1007)	Oct. 15, 1982
KY82-1071 (KY84-1008)	Oct. 22, 1982
Missouri:	
MO83-4010 (MO84-4016)	Jan. 21, 1983
MO82-4058 (MO84-4017)	Nov. 19, 1982
North Dakota: ND81-5130 (ND84-5006)	July 6, 1981
Texas: TX83-4007 (TX84-4015)	Jan. 7, 1983

Signed at Washington, D.C. this 9th day of March 1984.

James L. Valin,
Assistant Administrator.
BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION #IA84-4006-MOD#4
(49 FR 6206-February 17,
1984)
Black Hawk, Cerro Gordo,
Clinton, Des Moines,
Dubuque, Johnson, Linn
& Polk Counties, Iowa

CHANGE:

Carpenters:

Zone 5:

Carpenters

Piledrivers

Millwrights

DECISION NO. M184-5004
MOD#1 (49FR-March 9, 1984)
Iowa County, Michigan

Omit:

Power Equipment Operators:

Bulldozer

Add:

Power Equipment Operators:

Bulldozer

DECISION #MO84-4009 MOD.#1
(49 FR 5289 February 10,
1984)
Cass, Clay, Jackson, Platte,
Ray, Henry, Johnson, and
Lafayette Counties, and
Missouri; Johnson and
Wyandotte Counties, Kansas

Change:

Labors (Building Const.):

Zone 1

Group 1

Group 2

Group 3

Group 3

Group 3

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Group 3

Group 3

Group 3

Group 3

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DECISION NO. NY83-3044 -
MOD. #4
(48 FR 38963 - August 26,
1983)
STEBEN COUNTY, NEW YORK

CHANGE:

Modification #3 (49 FR
2601) January 20, 1984,
to read:

LABORERS

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

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DECISION NO. NY83-3044 -
MOD. #4
(48 FR 38963 - August 26,
1983)
STEBEN COUNTY, NEW YORK

CHANGE:

Modification #3 (49 FR
2601) January 20, 1984,
to read:

LABORERS

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

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Building Construction

Building Construction

DECISION NO. PA84-3004
MOD. NO. 1
(49 FR 6209 - February 17,
1984)
Armstrong, Allegheny, Beaver,
Butler, Fayette, Indiana,
Washington & Westmoreland
Counties, Pennsylvania

CHANGE:

Landscaping

Landscaping

Landscaping

Landscaping

Landscaping

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STATE: KENTUCKY
COUNTY: WARREN
DECISION NUMBER: KY84-1006
DATE: DATE OF PUBLICATION
Supersedes Decision Number KY82-1062, dated October 15, 1982 in 47 FR 46225.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (Does not include single
family homes and apartments up to and including four (4) stories).

CHANGE:

Modification #3 (49 FR
2601) January 20, 1984,
to read:

LABORERS

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

Building Construction

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DECISION NO. PA84-3004
MOD. NO. 1
(49 FR 6209 - February 17,
1984)
Armstrong, Allegheny, Beaver,
Butler, Fayette, Indiana,
Washington & Westmoreland
Counties, Pennsylvania

CHANGE:

Landscaping

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Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
\$16.15	\$2.81	\$11.70	\$1.55
18.05	3.175	11.85	1.55
13.75	1.75	12.60	1.55
11.90	1.65	9.75	1.55
14.50	1.01	10.25	1.55
13.95	+3%	12.15	1.65
16.73	3.00+a	16.25	3.22
11.71	3.00+a	10.90	3.30
8.365	3.00+a	16.23	3.30
12.50	1.12+b	14.97	2.18
12.35	2.17	12.23	2.18
10.75	2.00	11.46	2.18
10.90	2.00	10.60	1.46
11.25	2.00	10.85	1.46
13.95	.55	11.00	1.46
11.86	+3%	17.22	3.75
11.16	.55	16.47	3.23
11.25	+3%	11.43	e + d
14.85	2.90	11.55	c + d
11.35	1.55	11.66	c + d
11.60	1.55	11.73	c + d

PAINTERS (CONT'D):

Structural Steel,

Swing Stage & Chair,

Motor Stage

Paperhanger

Sandblaster

Commercial (all other

building construction):

Brush

Spray, Sandblast,

Boswain Chair or

heights over 50:

PILEDRIEVERS

PIPEFITTERS

PLUMBERS:

Contracts \$100,000.00 or

less

Contracts over

\$100,000.00

POWER EQUIPMENT OPERATORS:

CLASS A

CLASS B

CLASS C

ROOFERS:

Roofers

Precast

TRUCK DRIVERS: (CONT'D)	Basic Hourly Rates	Fringe Benefits
Driver, Euclid & other heavy earth moving equipment & low boy, winch truck & A-frame & monorail truck when used to transport building materials	\$11.83 c + d 11.73 c + d	
Mechanics		

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

- Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; Vacation Pay Credit: Employer contributes 8% of the basic hourly rate of employees with 5 years or more of service, or 6% for employees with 6 months to 5 years of service.
- Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day.
- Employer contribution of \$61.50 per week per employee whose name appears on the payroll and has been employed a minimum of 20 work days within an 90 consecutive day period.
- Paid vacation of 40 hours to any employee who has been regularly employed on a project for one year and who has worked a minimum of 1,200 hours during the year, and two weeks paid vacation to any employee who has completed 3 years employment on a project and who has worked 1,200 since their 2nd anniversary date.

CLASSIFICATION DEFINITIONS - LABORERS:

Group 1 - General Laborers, wrecking labor on buildings, clearing right-of-way & building site, Carpenter Tender, Truck Spotter & Dumper, Axe & Cross Cut Saw Filer, Concrete Puddler & Form Stripper.

Group 2 - All power driven tools, Hod Carrier, Mason Tender, Finisher Tender, Mortar Mixer, Jackhammer, Vibrator, Wagon Drill, Core Drill, Test Drill, Well Drill Concrete Pump Machine, Tunnel Boring Machine, Men in tunnel and crib ditch work, Signal Men, Riprap Rock Setter & Handler, Asphalt Raker, Tamper & Smoother, Pipe Layer, Grout Pump Men, Chain Saw, Pipe Clearing, Doping & Wrapping, Swamper & Straight Cable Hooking, Cement Gun, Grade Checker Machine Excavating, Batch Plant Scale Man, Sand Hog Free Air, Sand Hog Compressed Air, Cutting Torch Man on salvage work, Road Form Setter, Brick Slinger, Hand Spiker, Power Buggy, Handling of cressote material, Sandblaster, Curing of concrete & apply hardener, Air & Gas Tamper, Concrete Saw, Power Post Hole Digger & Green Cut Man on concrete work.

Group 3 - Powderman, Blaster.

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS:

Class A - Auto Patrol, Batch Plant, Bituminous Paver, Cable Way, Central Compressor Plant, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Pump, Crane, Crusher Plant, Derrick, Derrick Boat, Ditching & Trenching Machine, Dragline, Dredge Operator, Dredge Engineer, Elevating Grader & all types of Loaders, Hoe type Machine, Hoist (1-drum when used for stack or chimney construction or repair), Hoisting Engine (2-drums or more), Locomotive, Motor Scraper, Carry-all Scoop, Bulldozer, Heavy Duty Welder, Mechanic, Orangepeel Bucket, Pile Driver, Power Blade, Motor Grader, Roller (bituminous), Scarifier, Shovel, Tractor Shovel, Truck Crane, Winch Truck, Push Dozer, High Lift, Fork Lift (regardless of lift height & except when used for masonry construction), All types of Boom Cats, Core Drill, Hoist, Tow or Push Boat, A-Frame Winch Truck, Concrete Paver, Grader, Hoist, Hyster, Pumpcrete, Ross Carrier, Boom, Tail Boom, Rotary Drill, Hydro Hammer, Mucking Machine, Rock Spreader attached to equipment, Scoopmobile, Recal Loader, Tower Cranes (French, German & other types), Hydro Crane, Backfiller, Guries, Sub-Grader.

Class B - All Air Compressors (over 900 CFM), Bituminous Mixer, Joint Sealing Machine, Concrete Mixer (under 21 cu. ft.) Form Grader, Roller (rock), Tractor (50 HP & over), Bull Float, Finish Machine, Outboard Motor Boat, Flexplane, Fireman, Boom type Tamping Machine, Truck Crane Oiler, Greaser on grease facilities servicing heavy equipment, Switchman or Brakeman, Mechanic Helper, Whirley Oiler, Self-Propelled Compactor, Tractair & Road Widening Trencher, Farm Tractor with attachments (except Backhoe, High Lift & End Loader), Elevator (when used to hoist building materials), Hoisting Engine (1-drum or buck hoist), Fork Lift (when used for masonry construction), Well Points Grout Pump, Throttle-Valve Man, Tugger, Electric Vibrator Compactor.

Class C - Bituminous Distributor, Cement Gun, Conveyor, Mud Jack, Paving Joint Machine, Roller (earth), Tamping Machine, Tractors (under 50 HP), Vibrator, Oiler, Concrete Saw, Burlap & Curing Machine, Hydro-Seeder, Power Form Handling Equipment, Deckhand Steersman, Hydraulic Post Driver, Drill Helper.

STATE: KENTUCKY

COUNTIES: HARDIN, JEFFERSON & MEADE

DECISION NUMBER: KY84-1007
 Supersedes Decision Number KY82-1067, dated October 15, 1982 in 47 FR 46227.
 DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	\$16.57	\$3.07		
BOILERMAKERS	18.05	3.175		
BRICKLAYERS & STONE MASON	13.84	1.51		
CARPENTERS & LATHERS	13.35	1.88		
CEMENT MASONS	13.14	3.32		
ELECTRICIANS	16.14	1.25+		
		13%		
ELEVATOR CONSTRUCTORS:				
Mechanics	16.73	3.00+a		
Helpers	11.71	3.00+a		
Probationary helpers	8.365			
IRONWORKERS	14.25	4.72		
LABORERS:				
Group 1	10.55	1.70		
Group 2	10.75	1.70		
Group 3	10.90	1.70		
Group 4	11.05	1.70		
Group 5	11.75	1.70		
LINE CONSTRUCTION:				
Linemen, Line truck operators, & Mechanized equipment operators	16.44	1.25+		
		13%		
Backhoe operator	13.16	1.25+		
		13%		
Trencher operator	12.34	1.25+		
		13%		
Truck driver	11.52	1.25+		
		13%		
Groundmen	10.21	1.25+		
		13%		
MARBLE, TERRAZZO & TILE FINISHERS	11.25			
MARBLE, TERRAZZO & TILE WORKERS	13.80	1.50		
MILLWRIGHTS	14.85	2.90		
PAINTERS:				
Area 1 - within a 35 mile radius of the Jefferson County Courthouse in Louisville, Kentucky:				
Brush, roller, drywall painting, finishing & taping, & paper-hanging	11.07	1.18		
PAINTERS: Area 1 (Cont'd)				
Steeple Jack work, boatswain chair, safety-belt work, steamcleaning, sandblasting, exterior stage work & window Jack work over 50 ft. in height	\$11.42	\$1.18		
Spray	11.52	1.18		
Area 2 - Repaint work: Brush, roller, drywall painting, finishing, & taping, & paper-hanging	10.32	1.18		
Spray	10.77	1.18		
Area 2 - over a 35 mile radius from the Jefferson County Courthouse:				
Brush, roller, paper-hanging, drywall painting, finishing, & taping	11.42	1.18		
Steeple Jack work, boatswain chair, safety-belt work, steamcleaning, sandblasting, exterior stage work & window Jack work over 50 ft. in height	11.77	1.18		
Spray	11.87	1.18		
Area 2 - Repaint work: Brush, roller, paper-hanging, drywall finishing, painting, & taping	10.67	1.18		
Spray	11.12	1.18		
PILED/DRIVERSMEN	13.60	1.88		
PLASTERERS	15.60	.77		
PLUMBERS & PIPEFITTERS:				
Area 1 - Jefferson Co.: Pipefitters	16.25	3.22		
Plumbers:				
Contracts \$100,000.00 or less	10.90	3.30		
Contracts over \$100,000.00	16.23	3.30		

PLUMBERS & PIPEFITTERS (CONT'D):
 Area 2 - Hardin County up to but not including Elizabethtown & Meade Counties:
 Pipefitters: Contracts \$100,000.00 or less
 Plumbers: Contracts over \$100,000.00
 Area 3 - Hardin (Remainder of County):
 Pipefitters
 Plumbers: Contracts \$100,000.00 or less
 POWER EQUIPMENT OPERATORS:
 CLASS A
 CLASS B
 CLASS C

ROOFERS
 SHEETMETAL WORKERS
 SOFT FLOOR LAYERS
 SPRINKLER FITTERS
 TRUCK DRIVERS:
 Truck tender:
 Driver, 3 tons & under, greaser, tire changer & mechanic helper
 Driver, over 3 tons, semitrailer or pole trailer, dump truck, tandem axle, farm tractor when used to pull building material or equipment
 Driver, concrete mixer truck (all types, hauling only on jobsites)
 Mechanics
 Driver, Euclid & other heavy earth moving equipment & lowboy, winch truck & A-frame & mono-rail truck when used to transport building materials

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.
 Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

FOOTNOTES:
 1. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; Vacation Pay Credit: Employer contributes 8% of the basic hourly rate of employees with 5 years or more service, or 6% of the basic hourly rate for employees with 6 months to 5 years of service.
 2. Employer contribution of \$61.50 per employee per week whose name appears on the payroll and has been employed a minimum of 20 work days within any 90 consecutive day period.
 3. Paid Vacation of 40 hours to any employee who has been regularly employed on a project for one year and who has worked a minimum of 1,200 hours during the year, and two weeks paid vacation to any employee who has completed 3 years employment on a project and who has worked 1,200 hours since their 2nd anniversary date.

Basic Hourly Rates
 Fringe Benefits

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 Fringe Benefits

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CLASSIFICATION DEFINITIONS - LABORERS:

- Group 1** - Laborers - general, concrete form stripping & wrecking, carpenter tender, cement finisher tender, placing of concrete, wrecking of buildings, hand digging & hand backfilling, of ditches, hand clearing of right-of-ways & building sites, curing of concrete & application of hardener, handling of chemically treated lumber, installing wood sheathing & shoring, signal laborers on concrete bucket & masonry work, cleaning & moving of general purpose materials, general cleanup of scrap & debris, & mobile sweeper.
- Group 2** - Power driven Georgia bug, chain saw, vibrator operator, mesh handler, power tools (air, diesel, electric, & gasoline), wagon drill, pipe layer, wall man, treatment of exposed concrete (chip, bush hammer & rub), concrete saw, gasoline tamper machine, walk behind trenching machine, burner man, joint maker, & asphalt maker.
- Group 3** - Air track drillers, mason tender, side rail setter (metal), stack man, fork lift operators (masonry & plastering contractors only).
- Group 4** - Powderman, introflax burning rod, gunnite nozzle man operator, sewer, tunnel laborer (free air), sand hog or mucker (free air).
- Group 5** - Hole man drilled pier, augured caisson, sand miner (tunnel free air), caisson workers.

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS:

- Class A** - Auto Patrol, Batch Plant, Bituminous Paver, Cable Way, Central Compressor Plant, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Pump, Crane, Crusher Plant, Derrick, Derrick Boat, Ditching & Trenching Machine, Dragline, Dredge Operator, Dredge Engineer, Elevating Grader & all types of Loaders, Hoe type Machine, Hoist (1-drum when used for stack or chimney construction or repair), Hoisting Engine (2-drums or more), Locomotive, Motor Scraper, Carry-all Scoop, Bulldozer, Heavy Duty Welder, Mechanic, Orangepeel Bucket, Pile Driver, Power Blade, Motor Grader, Roller (bituminous), Scarifier, Shovel, Tractor Shovel, Truck Crane, Winch Truck, Push Dozer, High Lift, Fork Lift (regardless of lift height & except when used for masonry construction), All types of Boom Cats, Core Drill, Hoist, Tow or Push Boat, A-Frame Winch Truck, Concrete Paver, Grapple, Hoist, Hyster, Pumpcrete, Ross Carrier, Boom, Tail Boom, Rotary Drill, Hydro Hammer, Nucking Machine, Rock Spreader attached to equipment, Scoopmobile, Kecal Loader, Tower Cranes (French, German & other types), Hydro Crane, Backfiller, Gurries, Sub-Grader.
- Class B** - All Air Compressors (over 900 CFM), Bituminous Mixer, Joint Sealing Machine, Concrete Mixer (under 21 cu. ft.) Form Grader, Roller Motor Boat, Flexplane, Fireman, Boom type Tamping Machine, Truck Crane Oilier, Greaser on grease facilities servicing heavy equipment, Switchman or Brakeman, Mechanic Helper, Whirley Oilier, Self-Propelled Compactor, Tractor & Road Widening Trencher, Farm Tractor with attachments (except Backhoe, High Lift & End Loader), Elevator (when used to hoist building materials), Hoisting Engine (1-drum or buck hoist), Fork Lift (when used for masonry construction), Well Points Grout Pump, Throttle-Valve Man, Tugger, Electric Vibrator Compactor.
- Class C** - Bituminous Distributor, Cement Gun, Conveyor, Mud Jack, Paving Joint Machine, Roller (earth), Tamping Machine, Tractors (under 50 HP), Vibrator, Oilier, Concrete Saw, Burlap & Curing Machine, Hydro-Seeder, Power Form Handling Equipment, Deckhand Steersman, Hydraulic Post Driver, Drill Helper.

SUPERSEDEAS DECISION

STATE: Kentucky

COUNTIES: Boone, Campbell,

Kenton, & Pendleton

DATE: Date of Publication

DECISION NUMBER: KY84-1008

Supersedes Decision Number KY82-1071, dated October 22, 1982 in 47 FR 47153

DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes & apartments up to and including four (4) stories).

Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits	Job Description
\$18.32	4.08	19.30	3.30 +	ELECTRICIANS (CONT'D)
16.35	4.815	18.30	3.5%	Zone 4 (Cont'd)
17.225	1.99	13.86	2.55+	Electricians
17.00	2.625	13.86	3.5%	Linemen & Mechanized equipment operators
			3.5%	Groundmen
				ELEVATOR CONSTRUCTORS:
		17.78	2.69+	Mechanics
		12.45	2.69+	Helpers
		8.89		Probationary Helpers
		16.36	1.51	GLAZIERS
				IRONWORKERS:
		15.01	3.68	Fence Erectors
		16.58	3.62	Reinforcing
		16.68	3.68	Structural Steel
				LATHERS (Except Pendleton Co.)
		16.62	2.625	MARBLE SETTERS
		16.285	1.97	MARBLE FINISHERS
		15.98		MILLWRIGHTS
		16.44	3.01	PAINTERS:
				Commercial-(all interior work in apartment buildings larger than 4 family type, housing projects, schools, libraries, loft buildings, hotels, commercial offices buildings, banks, stores, churches, public buildings, amusement parks, real estate developments and commercial garages whose principal business is parking.)
				Brush, Roller, Exterior bldgs. (under 40'), work limited to 1st floor, Taping, Paperhanging & Wall Covering, Washing Steamcleaning, exterior bldg. (40' & over), Interior rooms (40' or over)
				Taping on Stills
		16.75	1.00	
		16.90	1.00	
		17.20	1.00	

PAINTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits
Commercial (Cont'd)	17.25	1.00
Spray Sandblasting, Hopper Tenders, Waterblasting	17.65	1.00
Drywall Machine Operator	17.75	1.00
Industrial - (all work done on industrial plants, repair garages, processing plants, storage tanks, warehouses, skeleton structure, offices or office buildings in industrial sites):		
Brush, Roller, Steam-cleaning, Taping, Paperhanging, & Wall Covering	16.90	1.00
Paperhanging & Wall Covering (Furnishing own tools)	17.15	1.00
Taping on Stilts	17.35	1.00
Spray Sandblasting; Hopper Tender & Waterblasting	17.40	1.00
Drywall Machine Op.	17.65	1.00
PIPEFITTERS	17.90	1.00
PLASTERERS	17.54	4.56
PLUMBERS & GAS FITTERS	17.645	1.53
ROOFERS	16.47	3.90
SHEET METAL WORKERS:	18.15	1.53
Pendleton County	17.22	3.75
Remaining Counties	17.60	3.87
SPRINKLER FITTERS	16.47	3.23
TERRAZZO & TILE WORKERS	16.235	1.97
TERRAZZO & TILE FINISHERS	15.98	
SOFT FLOOR LAYERS	13.00	2.075

FOOTNOTE:

- a. Seven Paid Holidays:
 New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, Christmas, Vacation Pay Credit: Employer contributes 8% of the basic hourly rate of employees with 5 years or more of service, or 6% for employees with 6 months to 5 years of service.

LABORERS:	Basic Hourly Rates	Fringe Benefits
Boone, Campbell, & Kenton Counties:		
Group A	14.75	2.60
Group B	14.85	2.60
Group C	14.90	2.60
Group D	14.95	2.60
Group E	15.10	2.60
Group F	15.25	2.60
Group G	15.50	2.60
Pendleton County:		
Group I	10.15	2.00
Group II	10.55	2.00
Group III	10.75	2.00
Group IV	10.85	2.00
Group V	11.35	2.00
Group VI	11.65	2.00
POWER EQUIPMENT OPERATORS		
Group A	16.96	3.32
Group B	16.80	3.32
Group C	16.44	3.32
Group D	15.66	3.32
Group E	15.33	3.32
Group F	13.13	3.32
WRECKING LABORERS:		
Boone, Campbell & Kenton Counties:		
Labors	13.92	2.25
Jackhammer man, wall man & burner	14.07	2.25
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.		

CLASSIFICATION DEFINITIONS - LABORERS FOR BOONE, CAMPBELL, & KENTON COUNTIES:

Group A - Unskilled laborers, Cement Mason Tender, Hand Operated Mechanical Sweeper, Hand Operated Mechanical Mule

Group B - Pipe Layer, Bottom Man

Group C - Burning Torch Operator, Jack Hammer, Chipper Hammer, Air Spade, Mechanical & Air Taper Operator, Mechanical Concrete Buggies, Power Operated Mechanical Mule, Concrete Pump Hose Man, Vibrator Man

Group D - Plasterer Tender, Bottom Jack Hammer Man, Mason Tender

Group E - Plaster Mixer Pump Operator

Group F - Tunnel Laborer

Group G - Gunnite Nozzle Operator

CLASSIFICATION DEFINITIONS - LABORERS FOR PENDLETON COUNTY:

Group I - General Laborers, Water Boys, Concrete Pouring, Concrete Forms Stripping & Wrecking, Hand Digging & Backfilling of Ditches, Clearing of right-of-ways & Building Sites, Wood Sheeting & Shoring, Signal Man for Concrete Bucket, General Cleaning

Group II - All Air Tool Operator, Air Track Drills, Asphalt Rakers, Barco Tamers, Batch Plant & Scale Man, Chain Saw, Concrete Saw, Electric Hand Grinder, All Electric Bush & Chipping Hammer, Fork Lift Operators, Form Setters (street or highway), Gunnite Laborers, Hand Spikers, Inro-flax Burning Rod, Joint Makers, Mason Tenders, Pipe Layers, Plaster Tenders, Powderman Helper, Power Georgia Buggies, Power Post Hole Digger, Railroad Laborers, Sandblast Laborers, Scow Man & Deck Hand, Signal Man, Sweeper & Cleaner Machines, Vibrator Operators, Walk-Behind Trenching Machines, Mortar Mixers Machines, Water Pump Man

Group III - Gunnite Nozzlemen & Gunnite Nozzle Machine Operator, Sandblast Nozzlemen, Concrete or Grout Pump Man, Plaster Pump Man

Group IV - Powderman & blaster

Group V - Caisson Holes (6 ft. & over) pressure & free air including tools

Group VI - Tunnel Man & Tunnel Sand Miner, Cofferdam (pressure & free air), Sand Hog & Mucker (pressure or free air)

CLASSIFICATION DEFINITIONS FOR POWER EQUIPMENT OPERATORS

Group A - Boiler or Compressor Operator Mounted on Crane (Piggy-Back Operation); Boom Trucks; Cableways; cherry pickers; Combination Concrete Mixer and Tower; Concrete Pumps (except Trailer Pumps); *Cranes; Derricks; Draglines; Dredges (Dipper, Clam or Suction) 3 Man Crew; Elevating Grader or Euclid Loader; Floating Equipment; Gradalls; Helicopter Operator and Helicopter-Winch Operator (When Hoisting Builders Materials); Hoes; Hoists (Two or More Drums); Lift Slab or Panel Jack Operator; Locomotives; Main-Tenace Engineer (Mechanic or Welder); Mixing Paving (Multiple Drum); Mobile Concrete Pumps (With Boom); Panelboard, Pile Driver; Power Shovels; Rotary Drills used on Caisson Work for Foundations and Substructure Work; Side Boom; Slip Form Pavers; Straddle Carriers; Trench Machine (over 24" Wide); & Tug Boat

CLASSIFICATION DEFINITIONS FOR POWER EQUIPMENT OPERATORS (CONT'D)

Group B - Asphalt Paver; Bulldozer; C.M.I. Type Equipment; Endloaders; Kohlman Type Loaders (Dirt Loading); Mucking Machines; Power Grader; Power Scoops; Power Scrapers; & Push Cat

Group C - A-Frames; Air Compressor (pressurizing Shafts or Tunnels); Asphalt Roller; Boiler (15 lbs. pressure & over); Fork Lifts (except Masonry); Hoisting Engines (one drum); House Elevators (except those automatic call button controlled); Man Lift; Mud Jacks; Pressure Grouting; Pump Operators (installing or operating well points or other type of Dewatering System); Pumps (4" and Over Discharge; Submersible Pumps (4" and Over Discharge); Trailer Concrete Pumps (without Booms); Trench Machines (24" and Under)

Group D - Compressors; Concrete Mixers (capacity more than one bag); Concrete Mixers (one bag capacity, side loader); Conveyors; Generators; Gunite Machines; Pavement Breaker (Hydraulic or Cable); Post Driver; Post Hole Diggers; Road Widening Trencher; & Rollers (except Asphalt Rollers)

Group E - Backfillers & Tampers; Bar and Joint Installing Machines; Batch Plant; Bullfloats; Burlap and Curing Machines; Clefplanes; Concrete Spreaders; Crushers; Deckhands; Drum Fireman (in Asphalt Plant); Farm-Type Tractors (Pulling Attach.); Finishing Machines; Form Trenchers; Hydro Seeders; Pressure Pumps (over 4" discharge); Self-propelled Power Spreader; Self-propelled Sub-Grader; Tire Repairman; Tractors (Pulling Sheep Foot Roller or Grader; Vibratory Compactor (with Integral Power)

Group F - Boilers (Less Than 15 lbs. pressure); Fork Lift (Masonry); Inboard & Outboard Motor Boat Launch; Light Plant Operator; Oilier; Power Driven Heaters (Oil fired); Power Scrubbers; Power Sweepers; Pumps (Under 4" discharge); Submersible Pumps (Under 4" discharge); Tenders; & VAC/ALLS

*BOOM & JIB OVER 150 FEET, \$.25 PREMIUM; BOOM & JIB OVER 250 FEET, \$.50 PREMIUM

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(iii)).

SUPERSEDEAS DECISION

STATE: Missouri

COUNTIES: Franklin, Jefferson, Lincoln, St. Charles, Warren, and City and County of St. Louis

DECISION NUMBER: MO84-4016

DATE: Date of Publication

SUPERSEDES DECISION NO. MO83-4010, dated January 21, 1983, in 48 FR 2932.

DESCRIPTION OF WORK: Building projects, excluding single family homes and apartments up to and including 4 stories.

ASBESTOS WORKERS:	Basic Hourly Rates	Fringe Benefits	LABORERS:	Basic Hourly Rates	Fringe Benefits
Asbestos Workers:			Zone 1:		
Swing Stage of Boson's Chair:	\$19.73	\$3.12	General Laborers	14.45	2.50
BOILERMAKERS	20.48	3.12	Wrecking Laborers	14.30	2.50
BRICKLAYERS, STONEMASONS	17.495	3.00	Plasterers' Tenders	14.75	2.50
CARPENTERS, MILLWRIGHTS, PIPEFITTERS:	15.35	2.76	Mason Tenders, Brick	14.40	2.50
Zone 1			Plumber, Labor	14.80	2.50
CARPENTERS:	16.11	2.45	Zone 2:		
Contracts \$500,000.00			Contracts \$500,000.00 or less:		
and under			General Laborers	12.15	1.70
Contracts over \$500,000.00	14.41	2.45	Mason Tenders,		
Zone 3:			Plumbers' Laborers,		
Contracts \$25,000.00	16.11	2.45	Plaster Tender	12.35	1.70
and under			Contracts over \$500,000.00:		
Contracts over \$25,000.00	14.46	2.00	General Laborers	13.65	1.70
CEMENT MASONS:	16.11	2.45	Mason Tenders,		
Zone 1			Plumbers' Laborers,		
Zone 2:			Plaster Tender	13.85	1.70
Projects less than \$700,000.00	15.35	2.60	Zone 3:		
Projects over \$700,000.00	14.65	2.60	Laborers	13.95	1.65
ELECTRICIANS:			Powderman, Mason		
Zone 1	16.50	1.79+	Tenders, Plaster	14.45	1.65
Zone 2	16.50	1.79+	Tenders	14.62	2.30
Zone 3	14.78	1.79+	Zone 4:		
ELEVATOR CONSTRUCTORS,	16.49	2.69+	General Laborer	12.87	2.30
ELEVATOR CONSTRUCTORS',			Plumber Laborer		
HELPERS	70&JR	2.69+	General laborer projects	13.62	2.30
ELEVATOR CONSTRUCTORS',			under \$1.5 Million		
HELPERS (PROB.)	50&JR	5.43+	General laborer projects	14.12	2.30
GLAZIERS	15.81	13.24	\$1.5 Million to 15 Million	14.62	2.30
IRONWORKERS	16.125	2.99	Million	15.16	2.905
			General laborer projects		
			over \$15 Million	15.66	2.03
			Plumber Laborer	17.66	2.03
			MARBLE SETTERS		
			PAINTERS:		
			Brush		
			Spray & Sandblasting		
			PIPEFITTERS:		
			Zone 1	17.85	5.18

Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
PIPEFITTERS and PLUMBERS:			
Zone 1	17.85	5.18	
PLASTERERS	15.555	1.62	
PLUMBERS:			
Zone 1	16.405	4.50	
ROOFERS:			
Composition, Slate & Tile	14.45	2.05	
SHEET METAL WORKERS	16.94	2.54+	
		3%	
SPRINKLER FITTERS	19.86	3.27	
TERRAZZO WORKERS	18.55		
TILE SETTERS	15.03	2.905	
TILE WORKERS' FINISHERS	14.12	2.605	
TRUCK DRIVERS:			
Group 1 - Trucks or trailers of a water level capacity of 11.99 cu. yds. or less, fork lift trucks, job site ambulances & pick-up trucks and flat bed trucks	13.52	76.00 per/wk +b	
Group 2 - Trucks or trailers of a water level capacity of 12.0 cu. yds. up to 22.0 cu. yds. including euclids, speedace and similar equipment of same capacity	13.72	76.00 per/wk +b	
Group 3 - Trucks or trailers of a water level capacity of 22.0 cu. yds. & over including euclids, speedace and all floats, flat bed trailers, boom trucks & similar equipment of same capacity	13.82	76.00 per/wk +b	

POWER EQUIPMENT

OPERATORS:

Group 1

Group 2

Group 3

Group 4

FOOTNOTES

ELEVATOR CONSTRUCTORS:

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit, also (7) Paid Holidays.

TRUCK DRIVERS:

b. Paid vacation of 3 days for 600 hours of service in any one contract year; 4 days paid vacation for 800 hours of service in any one contract year; 5 days paid vacation for 1,000 hours of service in any one contract year. Also 7 paid holidays.

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

ZONE DESCRIPTIONS

CARPENTERS, MILLWRIGHTS, PILEDRIVERS:

Zone 1: St. Louis City and County, and St. Charles County

Zone 2: Franklin, Lincoln, and Warren Counties

Zone 3: Jefferson County

CEMENT MASONS:

Zone 1: St. Louis City and County, Jefferson and St. Charles Counties

Zone 2: Franklin, Lincoln, and Warren Counties

ELECTRICIANS:

Zone 1: City and County of St. Louis, and St. Charles County

Zone 2: Franklin, Jefferson, Lincoln, and Warren Counties

where the electrical contracts exceeds \$15,000.00

Zone 3: Franklin, Jefferson, Lincoln, and Warren Counties

where the electrical contract does not exceed \$15,000.00

LABORERS:

Zone 1: City and County of St. Louis

Zone 2: Franklin County

Zone 3: Jefferson County

Zone 4: St. Charles County

Zone 5: Lincoln and Warren Counties

PIPEFITTERS:

Zone 1: Franklin, Jefferson, St. Charles, St. Louis City and County and Warren Counties

PIPEFITTERS AND PLUMBERS:

Zone 1: Lincoln County

PLUMBERS:

Zone 1: Franklin, Jefferson, St. Charles, St. Louis City and County and Warren Counties

DEFINITIONS

POWER EQUIPMENT OPERATORS:

Group 1: Backhoe; Cableway; Crane, Crawler or Truck; Crane, Hydraulic-truck or crawler mounted-16 tons and over; Crane, Locomotive; Derrick, steam; Derrick Car and Derrick Boat; Dragline; Dredge; Grapple, crawler or Tire Mounted; Locomotive, gas, steam and other power; Piledriver; Land or scoop Skimmer; Shovel, power (steam, gas, electric or other power); Switch Boat; Whiskey

Group 2: Air Tugger with air compressor; Anchor Placing Barge; Asphalt Spreader; Athey Force Feeder Loader (self-propelled); Back-filling Machine; Boat Operator-Push Boat or Tow Boat (job site); Boiler, high pressure breaking in period; Boom Truck, placing or erecting; Boring Machine, footing foundation; Bullfloat; Cherry Picker, combination concrete hoist and mixer such as Mixer-Mobile, Compressor-welder combination; Concrete Breaker (truck or tractor mounted); Concrete Pump, such as Pumpcrete Machine, Concrete Spreader; Compressor (when operator run throttle); Compressor-generator combination; Compressor-pump combination; Generators, two 30 KW or over, or any number developing over 30 KW; Generator-pump combination Conveyor, large (not self-propelled) hoisting or moving brick and concrete into and/or on floor level, one or both; Crane, Hydraulic, Rough Terrain, self-propelled; Crane Hydraulic-truck or crawler mounted, under 16 tons; Drilling Machines, self-powered, used for earth or rock drilling or boring (Wagon Drills and any hand drills obtaining power from other sources including Concrete Breakers, Jackhammers and Barco equipment); Elevating Grader; Engine Man, dredge; Excavator or powerbelt Machine; Finishing Machine, self-propelled Oscillating Sced, Forklift; Grader, road with power blade; Hoist, concrete and brick (brick cages on concrete skips operating in or on tower, Towermobile or similar equipment); Hoist, stack; Hydro-hammer; Lad-a-vator, hoisting brick or concrete; Lgading Machine (such as Barber-Greene); Mixer-Mobile, Mucking Machine, Pipe Cleaning Machine; Pipe Wrapping Machine; Plant, asphalt; Plant, concrete producing or ready-mix, job site; Plant, heating, job site; Plant, mixing, job site; Plant, power generating, job site; Pumps, two self powered, over 2" through 6" pumps, electric submersible, one through three over 4" Quad-track; Roller, asphalt, top or subgrade; Scoop, tractor drawn; Spreader Box; Subgrader; Tie tamper; Tractor, crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; Trenching Machine; Tunnel Boring Machine; Vibrating Machine, automatic; Welding Machines (gasoline or diesel) more than one but not over four (regardless of size); Well Drilling Machine; Mechanic on job site; Mixer, Paving; Compressors, two, not more than 50 feet apart

DEFINITIONS - (CONT'D)

POWER EQUIPMENT OPERATORS (CONT'D):

Group 3: Air Tugger with plant, air; Boiler, for power or heating on construction projects; Boiler, temporary; Compressor, air, one; Compressor, air (mounted on truck); Concrete Saw, self-propelled; Conveyor, large (not self-propelled); Conveyor, large (not self-propelled) moving brick and concrete (distributing) on floor level; Curb Finishing Machine; Ditch Paving Machine; Elevator (building construction or alteration); Endless Chain Hoist; Fireman; Form Grader; Generator, one over 30 KW or any number developing over 30 KW; Greaser; Hoist, one drum regardless of size (except brick or concrete); Lad-a-vator, other hoisting; Manlift; Mixer, asphalt, over 8 cu. ft. capacity; Mixer, if two or more mixers of one bag capacity or less are used by one employer on job, an operator is required; Mixer, without side loader, 2 bag capacity or more; Mixer with side loader, regardless of size, not Paver; Oilier on dredge; Oiler on Truck Crane; Pug Mill Operator; Pump; Pump, self-powered, automatic contriller over 2" during use in connection with construction work; Sweeper, street; Welding Machine, one over 400 amp.; Winch operating from truck; Scissor Lift (used for hoisting); Curb Finishing Machine; Tractor, small wheel type, 50 HP and under with Grader, blade and similar equipment

Group 4: Boat Operator, outboard motor (job site); Conveyor (such as Con-vay-it) regardless of how used; Oiler; Sweeper, floor

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards clauses (29 CFR, 5.5 (a)(1)(ii)).

DECISION NO. MO84-4017		Page 2	
		Basic Hourly Rates	Fringe Benefits
ROOFERS:			
Composition; Slate & Tile		14.45	2.05
SHEET METAL WORKERS		16.94	2.54+
			38
SPRINKLER FITTERS		19.86	3.27
TERRAZZO WORKERS		17.55	
TILE SETTERS		15.03	2.905
TILE WORKER FINISHER		14.12	2.605
WELDERS-receive rate pre-			
scribed for craft per-			
forming operation to			
which welding is			
incidental.			
TRUCK DRIVERS:			
GROUP 1		13.52	76.50
			per wk.
GROUP 2		13.72	"
GROUP 3		13.82	"
b-Paid vacation of 3 days for 600 hours			
of service in any one contract year;			
4 days paid vacation for 800 hours			
of service in any one contract year;			
5 days paid vacation for 1,000 hours			
of service in any one contract year.			
Also			
7 paid holidays			
CLASSIFICATION DEFINITIONS			

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS:

Group 1: Trucks or trailers of a water level capacity of 11.99 cu. yds. or less, fork lift trucks, job site ambulances & pick-up trucks and flat bed trucks
Group 2: Trucks or trailers of a water level capacity of 12.0 cu. yds. up to 22.0 cu. yds. including euclids, speedee and similar equipment of same capacity.
Group 3: Trucks or trailers of a water level capacity of 22.0 cu. yds. and over including euclids, speedee and all floats, flat bed trailers boom trucks & similar equipment of same capacity.

POWER EQUIPMENT OPERATORS

GROUP I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted-16 tons & over; crane, locomotive; derrick, steam; derrick car or derrick boat; dragline; dredge; grapple, crawler or tire mounted; locomotive gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas electric or other powers); switch boat; & whirley.

GROUP II - Air tugger/w/air compressor; anchor placing barge; asphalt spreader; athey force feeder loader (self-propelled); back-filling machine; boat operator-push boat or tow boat (job site); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer such as mixer-mobile; compressors, two, not more than 50 ft. apart; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pumcrete machine; concrete spreader; conveyor, large (not-self-propelled) hoisting or moving brick and concrete into, or into and on floor level, one or both sides of building; crane, self-propelled; crane hydraulic, used for crane, mounted-under 16 tons; drilling machines, self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers, back-

obtaining power from other sources including concrete breakers, jack-hammers and barco equipment); elevating grader; engine man, dredge excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift/grader, road with power blade; highlight; hoist, concrete and brick (brick cages on concrete skips operating in or on tower, tower-moblie, or similar equipment); hoist, stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as Barber-greene); mixer-moblie, mucking machine, pipe cleaning machine; pipe wrapping machine; plant, asphalt; plant, concrete producing or ready-mix; job site; plant, heating-job-site; plant mixing job site; plant, power generating; job site;

STATE: Missouri

COUNTIES: Franklin, Jefferson, Lincoln, St. Charles, Warren, & City & County of St. Louis

DATE: Date of Publication November 19, 1982 in 47 FR 52318.

DECISION NO. M084-4017

Superseded Decision No. M082-4058, dated November 19, 1982 in 47 FR 52318.

DESCRIPTION OF WORK: Residential projects, consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits	LABORERS: Zone I - St. Louis City & County	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	\$19.73	3.12	Laborers General	12.375	2.50
BRICKLAYERS; STONEMASONS	15.35	2.76	Laborers, site improvement	10.175	2.50
BOLLERMAKERS	17.495	3.00	Plumber, laborer	14.80	2.50
CARPENTERS			Zone II - Lincoln & Warren Counties	12.37	2.30
Zone 1 - St. Louis City & County:			Zone III - Jefferson Co.: Laborer, General	13.95	1.65
Carpenters (including insulation)	15.31	2.45	Powderman, Mason Tenders	14.45	1.65
Carpenters-reinsulator (not including pipe & duct insulation)	10.95	2.23	Checker; Pipelayer		
Zone 2 - Remainder of Counties:			Zone IV - Franklin Co.: Contracts less than \$500,000:		
Carpenters	15.31	2.45	General Laborer	12.15	1.70
ELECTRICIANS:			Mason Tenders, Plumber		
Zone I - City & County of St. Louis & St. Charles County	16.10	1.79+ 18%	laborer, Plaster Tender	12.35	1.70
Zone II - Franklin, Jefferson, Lincoln, & Warren Cos. where the electrical contracts exceed \$15,000	16.10	1.79+ 18%	Contracts \$500,000 or over:		
Zone III - Franklin, Jefferson, Lincoln, & Warren Cos. where electrical contracts does not exceed \$15,000	14.78	1.79+ 18%	General Laborer	13.65	1.70
ELEVATOR CONSTRUCTORS	16.49	2.69+a	Mason Tenders, Plumber laborer, plaster tender	13.85	1.70
ELEVATOR CONSTRUCTORS HELPERS	70%JR	2.69+a	Zone V - St. Charles Co.: Laborers & Plumber		
ELEVATOR CONSTRUCTORS HELPERS (PROBATIONARY)	50%JR		Laborer	12.87	2.30
a. Employer contributes 8% of basic hourly rate for over 5 years' service & 6% of basic hourly rate for 6 mos. to 5 years as vacation pay Credit, also 7 paid holidays.			MARBLE SETTERS	15.16	2.905
GLAZIERS	15.81	5.43+	PAINTERS:		
IRONWORKERS	16.125	2.99	Brush	15.66	2.03
			Spray	17.66	2.03
			PIPEFITTERS (Franklin, Jefferson, St. Charles, City & County of St. Louis & Warren Cos.)	17.85	5.18
			PIPEFITTERS & PLUMBERS (Lincoln County)	17.85	5.18
			PLUMBERS (Franklin, Jefferson, St. Charles, City & County of St. Louis & Warren Counties)	16.405	4.50
			PLASTERERS	15.555	1.62
			POWER EQUIPMENT OPERATORS:		
			GROUP I	14.32	2.95
			GROUP II	14.32	2.95
			GROUP III	13.77	2.95
			GROUP IV	13.32	2.95

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

Group 4: Pipe Layers (sanitary sewer, storm sewer, water and gas lines); Drill Runner (includes Wagon Churn or Air Track); Powderman, gunite and sandblast, Nozzleman

POWER EQUIPMENT OPERATORS (Cont'd)

Group 4: Asphalt Paving Machine Operator; Asphalt Plant Operator and Console Board Operator; CMI Grading Operator; Crushing Plant Operator (gravel and stone or gravel washing, crushing and screening plant operator); Front End Loader Operator, 2 cu. yds. up to 6 cu. yds.; Grader or Motor Patrol, finishing earth work and bituminous; Mechanic or Welder (heavy duty); Rubber Tired Industrial Tractor with Backhoe attachment (water main sanitary sewer and storm sewer, truck line construction); Scraper Operator; Tractor type or rubber tired Dozer, D-6 and over; Trenching Machine Operator, sewer and water (except Ditch Witch or similar, use offer rate); Turnpull Operator or similar type; Rotomill Operator

Group 5: Bituminous Spreader and Bituminous Finishing Operator (power); Concrete Distributor and Spreader Operator, Finishing Machine, Longitudinal Float Operator, Ft. Machine Operator and Spray Operator; Concrete Mixer Operator, on job site, 165 or over; Paving Breaker or Tamping Machine Operator or Including Machine with power shovel attachments (power driven); Power actuated Augers and Boring Machine Operator; Power actuated Jacks Operator; Power Plant Engineer, 100 K.W.H. and over (when an Engineer is in charge of Crushing or Blacktop plants with the operation of these plants no Power Plant Engineer shall be required); Push Tractor; Self-propelled Traveling Soil Stabilizer; Slip Form, Curb and Gutter Stabilizer; Truck Mechanic

Group 6: Bituminous Spreader and Bituminous Finishing Machine Operator (tender) (power); Concrete Saw Operator (multiple blade) (power operated); Distributor Operator; Fine Grade Operator; Roller, Steel and self-propelled rubber, on hot mix asphalt paving; Sheepfoot Packer with Dozer attachment; Tractor type or rubber tired Dozer under D-6 H.P.

Group 7: Brakeman or Switchman; Concrete Batch Plant Operator (cement, rock and sand) Electronic; Concrete Mixer Operator on job site, under 165; Crane Truck Oiler; Fireman or Tank Car Heater Operator; Grader Operator (motor patrol) (haul road) Gravel Screening Plant Operator (portable not crushing or washing); Greaser (truck or tractor); Gunite Operator, Gun-ton; Hoist Engineer (power); Hydro Crane Operator, under 15 ton; Launchman (Tankerman or Pilot license); Pick-up Sweeper, 1 cu. and over Hopper capacity; Sheepfoot Roller or Compactor (self-propelled); Shouldering Machine Operator (power) (Apco or similar type) including Self-propelled Sand Chip Spreader Flaherty or similar

POWER EQUIPMENT OPERATORS:		TRUCK DRIVERS:	
Group	Basic Hourly Rates	Group	Basic Hourly Rates
Group 1	\$11.42	Single Axle	\$8.57
Group 2	11.25	Tandem	8.69
Group 3	11.08	Agitator Dumpcrete;	
Group 4	11.02	Lowboy; Off road heavy	
Group 5	10.73	duty end dumps, 20	
Group 6	11.46	yards and under;	
Group 7	9.38	Tandem, Semi	9.00
Group 8	9.20	Euclid, over 20 yards	9.77
Group 9	9.08		
Group 10	8.68		

POWER EQUIPMENT OPERATORS

Group 1: Cableway Operator; Crane Operator with boom over 135' all types; Derrick, Guy and Stiff Leg, power, skids and stationary; Front End Loader, over 10 cu. yds.; Gantry Crane Operator; Helicopter Operator; Mole Operator including power supply to Tunnel Mucking Machine; Power Shovel or other equipment with Shovel type controls, 3 1/2 cu. yds. and over

Group 2: Concrete Mixer Stationary Plant Operator, over 34E; Dredge Operator or Engineer; Dredge Operator (power) and Engineer; Elevator Grader Operator; Hydro Crane Operator, 15 tons and over; Locomotive Crane Operator; Master Mechanic (if employed, shall perform manual work); Mixer, paving; Concrete paving Operator, road; Power Shovels and other equipment with shovel type controls up to 3 1/2 cu. yds.; Scraper Tandem; Tandem Pusher, Quad 9 or similar; Tractor Operator (pipeline); Side Boom; Truck Crane Operator

Group 3: Dope Machine Operator (pipeline); Drill Rigs, heavy duty Rotary or Churn or Cable Drill; Front End Loader Operator, 6 cu. yds. and over; Locomotive, all types; Pipeline Wrapping, Cleaning and Bending Machine Operator; Power actuated Horizontal Boring Machine, over 6" (pipeline); Pumperete Operator; Refrigeration Plant Engineer; Slip Form Operator, power driven, paving; Tandem Scraper twin engine, 50 cu. yds. struck and over

POWER EQUIPMENT OPERATORS (Cont'd)

Group 8: Boom Truck Operator; Crawler type and/or Steiger or similar tractor pulling compaction or aereating equipment; Farm type rubber tired tractor with backhoe attachment; Roller, steel and self-propelled rubber; on other than hot mix asphalt paving; Self-propelled Vibrating Packer Operator, pad type (35 HP and over); Off-road self-propelled watering equipment

Group 9: Concrete Batch Operator (cement, rock and sand) (manual); Form Trench Digger (power); Front End Loader Operator, up to 1 cu. yd.; Hydrate Carrier or Forklift; Lever-man; Mechanic's Tender or Greaser Tender; Oilier (power Shovel, Crane, Dragline); Pugmill Operator; Pump Operator (well points); Self-propelled Broom

Group 10: Conveyor Operator; Curb Machine Operator (manual); Dredge Deck Hand; Farm Tractors, rubber tired for compacting and aereating; Front End Loader Operator (farm type rubber tired tractor); Paint Machine Stripping Operator; Stump Chipper Operator; Tie Tamper and Ballast Machine Operator

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDES DECISION

STATE: TEXAS

COUNTY: Wichita

DECISION NUMBER: TX84-4015

DATE: Date of Publication

Supersedes Decision No. TX83-4007, dated January 7, 1983 in 48 FR 932.

DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to and including 4 stories). (Use current heavy and highway general wage determination for paving and utilities incidental to building construction).

	Basic Hourly Rates	Fringe Benefits		Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	\$16.71	2.94	LINE CONSTRUCTION:		
BOILERMAKERS	16.40	2.645	Lineman; Lineman	\$14.30	.90+
BRICKLAYERS & STONEMASONS	15.30	.70	Operator		3 1/4
CARPENTERS:			Cable splicers	14.35	.80+
Carpenters	13.45	2.18	Groundman	70%JR	.80+
Millwrights	13.95	2.18			3 1/4
CEMENT MASONS	10.94		MARBLE SETTERS	8.61	
ELECTRICIANS	14.30	.80 +	PAINTERS:	7.50	
Electricians	3-1/10	.80 +	Brush	8.50	
Cable splicers	14.55	3-1/10	Spray	14.25	.01
ELEVATOR CONSTRUCTORS:			PLASTERERS & PIPEFITTERS:		
Mechanics	16.025	2.69+a	Plumbers & Pipefitters:		
Helpers	70%JR	2.69+a	Zone 1 - within 25 miles		
Helpers (Prob.)	50%JR		of Wichita Falls City	15.10	1.90
IRONWORKERS:			limits		
Structural; Ornamental;			Zone 2 - over 25 miles		
Reinforcing	12.50	2.95	of Wichita Falls City		
Ironworkers on jobs 30			limits		
miles or more from the			SHEET METAL WORKERS	15.60	1.90
City of Wichita Falls			TERRAZZO WORKERS	14.38	.89
LABORERS:			TILE SETTERS	7.50	
Group 1: General Laborer			WELDERS - receive rate	6.50	
Group 2: Pipelayer	7.75	.92	prescribed for craft		
(concrete and clay);			performing operation to		
Power buggy operator;			which welding is		
Gunite mixer; cement			incidental.		
work mixer; power tool					
operator; bell hole					
man (piers)					
Group 3: Mason tender;					
mason mortar mixer; Hod					
plasterer tender, Hod					
carrier; plasterer					
mortar mixer; Gunite					
over 1-1/2" thick;					
Nozzlemen & machine					
operator	8.00	.92			
Group 4: Powderman,					
blaster	8.25	.92			

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:

a - 1st 6 months - none; 6 months to 5 years - 6% over 5 years - 8% of basic hourly rate

b - Paid Holidays A thru G

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:

A - New Years' Day; B-Memorial Day;

C-Independence Day; D-Labor Day;

E-Thanksgiving Day; F-the Friday

after Thanksgiving Day; G-Christmas

Day.

	Basic Hourly Rates	Fringe Benefits
Group 1	12.325	1.425
Group 2	13.225	1.425
Group 3	13.625	1.425

POWER EQUIPMENT OPERATORS:

Group 1
Group 2
Group 3

Group 1: Oilier - Fireman

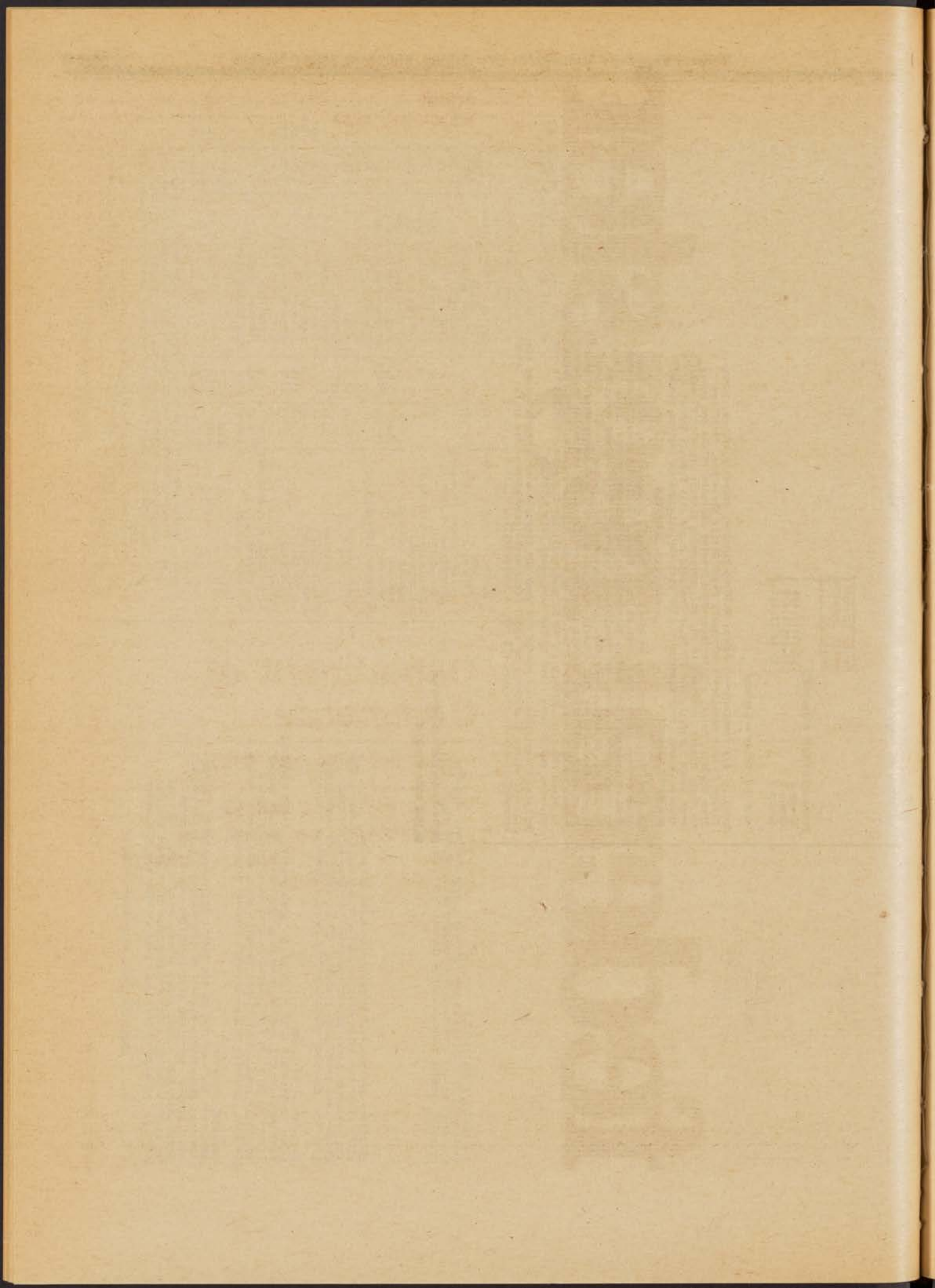
Group 2: Air Compressors, Pumps, Welding Machine, Throttle Valves, Light Plants (3 to 6 machines); Conveyor; Vagon Drill; Elevators; building; Form Graders; Hoist, single drum; Ford Tractor including blade and mower on rear; Mixers less than 14 cu. ft.; Screening Plants; Crushing Plant; Fork Lifts (short, under 25 ft.); Concrete Pumps (all types); Bobcat type equipment; Ford Tractor or like with any attachments (except blade and mower on rear)

Group 3: Backhoe; Drilling Machines (all types); Scoopmobiles; Hoist, two drums or more; Fork Lifts (over 25 ft.); Winch Trucks; Six wheel Truck when used continuously for 5 days; Mixermobile; Locomotives; Mixers, 14 cu. ft. or over; Blade Graders, self-propelled; Cableways; Cranes-power operated (to 100 ft. of boom); Derricks, power operated (all types); Gradall; Hy-Ho; Hop-to; Paving Mixer (all types); Pile Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressors, Pumps, Welding Machines and Light plants (7 to 12 machines); Air Compressor and Air Tugger; Boilers, two or more fired by one man; Heavy Duty Mechanic

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 84-5571 Filed 3-15-84; 8:45 am]

BILLING CODE 4510-27-C



United States Federal Register

**Friday
March 16, 1984**

Part III

Department of Commerce

Patent and Trademark Office

**37 CFR Parts 1, 2, and 10
Practice Before the Patent and
Trademark Office; Advance Notice of
Proposed Rulemaking**

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 10

[Docket No. 40308-24]

Practice Before the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.**ACTION:** Advance notice of proposed rulemaking.

SUMMARY: In August 1983, the Patent and Trademark Office (PTO) proposed amendments to the rules governing standards of conduct and disciplinary proceedings for attorneys and agents who practice before the PTO. Two hearings were held. After reviewing written comments and oral presentations at the hearings, the PTO has decided to withdraw, and not adopt, the rules as then proposed. This advance notice of proposed rulemaking sets forth changes that the PTO is considering in the rules governing admission to practice before the PTO, standards of conduct for those representing applicants and others before the PTO, and conduct of disciplinary proceedings. Interested individuals are invited to comment on the proposed rules being considered. A formal notice of proposed rulemaking could be published as early as July 31, 1984. A hearing on any formal proposal could be held in October 1984.

DATES: Comments should be received by July 9, 1984.**ADDRESSES:** Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231 marked to the attention of Fred E. McKelvey (703) 557-4025 (if no answer, message may be left at 703-557-4103).**FOR FURTHER INFORMATION CONTACT:** Fred E. McKelvey by telephone at (703) 557-4025 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231.**SUPPLEMENTARY INFORMATION:** Attorneys and agents practice before the Patent and Trademark Office (PTO) in patent cases. 35 U.S.C. 31. Attorneys also practice before the PTO in trademark and other non-patent cases. 5 U.S.C. 500(b). A limited number of agents also practice before the PTO in trademark cases under rules in force prior to January 1, 1957.A notice of proposed rulemaking for attorney and agent conduct and disciplinary procedure was published on August 11, 1983 in the *Federal Register*,

48 FR 36478, and on September 20, 1983 in the *Official Gazette*, 1034 O.G. 39, 1034 TMOG 33. A notice extending the comment period and setting a second hearing was published on October 5, 1983 in the *Federal Register*, 48 FR 45424, and on October 18, 1983, in the *Official Gazette*, 1035 O.G. 19, 1035 TMOG 17. The PTO has decided to withdraw, and not adopt, the rules proposed in the *Federal Register* notice of August 11, 1983. There were numerous objections to the proposed rules and the public indicated that a longer period for study and review of a code of conduct and disciplinary procedures was necessary.

Accordingly, the PTO is issuing this advance notice of proposed rulemaking to permit interested individuals sufficient time to study and review the rules being considered. After written comments are received in response to this advance notice, a notice of proposed rulemaking will be published. The PTO expects to be able to publish a notice of proposed rulemaking on or about July 31, 1984. The PTO also expects to hold a hearing sometime in October of 1984 and that new rules governing admission to practice, conduct, and disciplinary procedures will be issued before the end of 1984.

This advance notice of proposed rulemaking sets out rules being considered in three areas:

(1) Rules governing practice of attorneys and agents before the PTO in patent, trademark, and other non-patent cases (§§ 10.2 through 10.19);

(2) Rules setting out a PTO Code of Professional Responsibility (§§ 10.20 through 10.112); and

(3) Rules governing (a) investigation of possible violations of the PTO Code of Professional Responsibility and (b) disciplinary proceedings to reprimand, suspend, or exclude (disbar) individuals practicing before the PTO who, after notice and opportunity for a hearing, are found to have violated a disciplinary rule of the PTO Code of Professional Responsibility (§§ 10.130 through 10.161).

Tables 1, 2, and 3 are included in this advance notice to assist readers in correlating present rules with the proposed rules being considered and to find the principal source for the rules being considered. An indication in Tables 1, 2, or 3 that a section is "new" means that a corresponding section does not currently appear in Title 37 of the Code of Federal Regulations.

Table 1 shows the principal sources of the rules being considered which relate to (1) admission to practice of attorneys and agents in patent cases and (2) practice in trademark and other non-patent cases.

Table 2 shows the principal sources of the rules being considered for the PTO Code of Professional Responsibility.

Table 3 shows the principal sources of the rules being considered for disciplinary proceedings and makes reference to corresponding sections in the notice of proposed rulemaking published in the *Federal Register* on August 11, 1983.

Other sources for the rules being considered are set forth under the discussion of each rule being considered.

Section 1.8 would be amended to exclude from the application thereof papers filed in disciplinary proceedings under Part 10. Under the rule being considered, papers filed in a disciplinary proceeding would have to actually reach the PTO or an administrative law judge (ALJ) within the time set for filing the paper. A certificate of mailing could not be used. The rule is being considered because other rules being considered would call for the use of an ALJ. The PTO does not employ an ALJ. Accordingly, papers filed with the ALJ would not be filed in the PTO.

Section 1.31 would be amended to refer to Part 10.

Paragraph (a) of § 1.34 would be amended to refer to Part 10.

The center heading preceding § 1.341 and §§ 1.341 through 1.348 would be deleted.

Section 2.11 would be amended to refer to Part 10.

Paragraph (a) of § 2.17 would be amended to refer to Part 10.

Section 2.19 would be amended by adding paragraph (b) which would require permission for a practitioner to withdraw from representing a party in a trademark case. Application to and approval by the Commissioner would be required. Attorneys representing parties in trademark cases before the Trademark Trial and Appeal Board often move for leave to withdraw. Section 602.03 of the Trademark Manual of Examining Procedure [1st Ed., Rev. 5, Dec., 1982] permits withdrawal in *ex parte* trademark cases, "but such withdrawal should not be done in a manner which would prejudice applicant." It would be expected that requests for withdrawal in *ex parte* trademark cases would be decided by the Director of the Trademark Operation or another appropriate PTO employee and that request for withdrawal in *inter partes* trademark cases would continue to be decided by the Trademark Trial and Appeal Board.

Section 10.1 would set out definitions for terms used in Part 10. Terms which are defined include affidavit,

application, attorney, Canon, confidence, differing interests, Director (meaning Director of Enrollment and Discipline), Disciplinary Rule, employee of a tribunal (which would include PTO employees), law firm, lawyer, legal counsel, legal profession, legal service, legal system, non-lawyer, non-practitioner, Office (meaning PTO), person (which would include corporations, associations, trusts, partnerships, and other legal entities), practitioner, proceeding before the Office, professional legal corporation, registration (meaning registration to practice before the PTO in patent cases), respondent, secret, solicit, state, tribunal, and United States.

The word "individual" is used in the proposed rules being considered to mean a natural person and would not include juristic entities. The definition of "person" is similar to the definition of "person" in 1 U.S.C. 1. "Attorney" is defined to mean an individual who is a member in good standing of the bar of a United States court or the highest court of any State. This definition differs from the present definition in § 2.12. The proposed definition being considered would include an attorney who may be a member of one bar in good standing and "under * * * [an] order of any court suspending, enjoining, restraining, the disbaring, or otherwise restricting" the attorney from practice before the bar of another state. The broader definition being considered is believed necessary in view of 5 U.S.C. 500(b) which provides that "[a]n individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency * * *." Thus, an attorney disbarred in one state and in good standing in a second state would appear to meet the requirements of 5 U.S.C. 500(b). Compare 31 CFR 10.2(b) (1983) defining attorney in the rules of practice before the Internal Revenue Service. The attorney nevertheless could be excluded to practice before the PTO, 5 U.S.C. 500(d)(2), after notice and opportunity for a hearing. See *Selling v. Radford*, 243 U.S. 46 (1917). "Affidavit" is defined to include affidavits, declarations, under 35 U.S.C. 25 and 37 CFR 1.68 or 2.20, and statutory declarations under 28 U.S.C. 1746.

Section 10.2 would provide for a Director of Enrollment and Discipline ("Director"). The duties of the Director are set out in the proposed rule being considered. Any final decision of the Director refusing to register an individual, specially recognize an individual, or reinstate a suspended or excluded practitioner would be

reviewable by petition to the Commissioner on the record made before the Director. A fee would be charged; the amount of the fee has not been determined, but would be set out in any notice of proposed rulemaking which follows this advance notice.

Section 10.3 would provide for a Committee on Enrollment to assist the Director in connection with registration of attorneys and agents. One of the principal functions of the Committee on Enrollment would be assisting the Director prepare and grade an examination (see § 10.7(b)).

Section 10.4 would add a new concept in disciplinary proceedings in the PTO. The section would provide for a Committee on Discipline. The Committee would comprise the Director and at least two Associate Solicitors in the Office of the Solicitor. As provided in paragraph (b) of § 10.4, the Committee would meet at the request of the Director. The Committee would determine by majority vote whether there is probable cause to initiate a disciplinary proceeding against a practitioner. The two Associate Solicitors would act independently of the Solicitor. The rationale behind this latter provision is to leave the Solicitor and other members of the Solicitor's staff free to advise the Commissioner as to the proper disposition of a disciplinary proceeding after an appeal (§ 10.155) is filed following an initial decision (§ 10.154) of an ALJ. Under § 1.348, the Solicitor presently files charges and thus cannot advise the Commissioner as to a proper disposition of a disciplinary proceeding. See 5 U.S.C. 557(d)(1). Accordingly, under the proposed rules being considered, the Solicitor and the staff of the Solicitor's Office which is not part of the Committee on Discipline would be insulated from the activities of the Director and the Committee on Discipline.

Under § 10.4(c), discovery could not be had of deliberations of the Committee on Discipline. See *Morgan v. United States*, 313 U.S. 409, 422 (1941). The Committee on Discipline would function in the nature of a Grand Jury. Accordingly, under the proposed rules being considered, a disciplinary proceeding would not be a trial of whether the Committee on Discipline had a reasonable basis for its action; rather, the disciplinary proceeding would resolve whether the respondent has or has not committed the violations alleged in the complaint which the Committee on Discipline authorized to be filed under § 10.134.

Under § 10.5, a single register of attorneys and agents registered to practice before the PTO would be kept. The proposed rule being considered would conform the rules to what actually occurs today inasmuch as only a single register of all registered attorneys and agents is kept in fact.

Section 10.6 would provide for registration of individuals to practice before the PTO in patent cases.

Paragraphs (a) and (b) of § 10.6 would provide for registration of attorneys and agents, respectively. Citizens of the United States could be registered regardless of their residence. Resident aliens, under appropriate circumstances, could be registered by the Director. Registration of permanent resident aliens would be consistent with *In re Griffiths*, 413 U.S. 717 (1973) (permanent resident alien entitled to be admitted to Bar of Connecticut notwithstanding status as an alien). See also *Raffaelli v. Committee of Bar Examiners*, 496 P.2d 1264 (Cal. 1972) and *Application of Park*, 484 P.2d 690 (Alaska 1971). The PTO currently registers permanent resident aliens. See *In re Bhogaraju*, 178 USPQ 628 (Comm'r. Pat. 1973); *In re Bramham*, 181 USPQ 723 (Comm'r. Pat. 1974); and *In re Keen*, 187 USPQ 477 (Comm'r. Pat. 1975).

The proposed rules being considered would, however, restrict the circumstances under which an alien could be registered. Registration would be precluded if the practice of patent law before the PTO is inconsistent with the terms of any visa under which the alien was admitted to and continues to reside in the United States. See e.g., *In re Richardson*, 203 USPQ 959 (Comm'r. Pat. 1977) (alien admitted to U.S. with an H-3 visa for training could not practice patent law under the terms of the visa) and *In re Mikhail*, 202 USPQ 71 (Comm'r. Pat. 1976) (alien admitted to U.S. with B-1/B-2 visa and visiting the U.S. temporarily for business or pleasure could not practice patent law under terms of visa). While certain aliens should not be registered, it may nevertheless be appropriate to grant an alien limited recognition under § 10.9. See e.g., *In re Messulam*, 185 USPQ 438 (Comm'r. Pat. 1975) (alien admitted to U.S. with L-1 visa for purpose of rendering service to a single company for whom the alien had previously worked abroad and who would remain in the U.S. temporarily could not practice, but could be given limited recognition). See also *In re Gresset*, 189 USPQ 350 (Comm'r. Pat. 1976).

An alien who is registered and who thereafter ceases to reside in the United States would be removed (after notice

and opportunity for a hearing) unless the alien is otherwise qualified to be registered on the basis of reciprocity under paragraph (c) of § 10.6.

Paragraph (c) of § 10.6 would continue to provide for registration of foreigners who do not reside in the United States. A practitioner who is suspended from practice before the patent office in the country where he or she resides would also be suspended from practice before the PTO. See *In re Walton*, 956 *Official Gazette* 346 (March 8, 1977) and *In re Cavanagh*, 979 *Official Gazette* 22 (February 20, 1979).

Paragraph (d) of § 10.6 would continue the practice under 37 CFR 1.341(f) of restricting registration of employees of the United States. See 41 Op. Att'y. Gen. 21 (1949), reprinted in 1949 Dec. Comm'r. Pat. 1.

Paragraph (e) of § 10.6 would continue certain restrictions on practice of patent law before the PTO by former patent examiners and other former PTO employees. Every former employee who sought registration or reinstatement (if registered prior to becoming a PTO employee) would be required to sign a written statement indicating that he or she had read 18 U.S.C. 207.

Section 10.7 would provide for the requirements for registration. The requirements would be essentially the same as the present requirements under 37 CFR 1.341(c). The examination would not be administered as a mere academic exercise. See *In re Mikhail*, 202 USPQ 71 (Comm'r. Pat. 1976). Thus, the examination will not be administered to any individual who cannot be registered or given limited recognition. Paragraph (c) of § 10.7 would provide in the rules for a procedure for seeking regrading of an examination failed by an applicant. A fee would be charged, the amount of which would be determined in the future and announced in a notice of proposed rulemaking.

Section 10.8 would continue the practice under 37 CFR 1.341(h) of requiring an oath and payment of a fee prior to registration.

Section 10.9 would continue to provide for limited recognition of individuals under appropriate circumstances. Paragraph (b) would codify in the Code of Federal Regulations the Commissioner's decisions in *In re Messulam* and *In re Gresset*, both of which are discussed above.

Section 10.10 would continue the present provisions of 37 CFR 1.343.

Section 10.11 would continue the present practice under 37 CFR 1.347. The PTO would continue the practice of requiring a registered practitioner to take and pass an examination if the

registered practitioner is removed for a substantial period under § 10.11. See Commissioner's Notice of August 21, 1978, "Reinstatement of Patent Attorneys and Agents Registered to Practice before the U.S. Patent and Trademark Office," 974 *Official Gazette* 14 (September 19, 1978).

Section 10.14 would set forth who may practice before the PTO in trademark and other non-patent cases. Section 10.14, in essence, would continue present practice under 37 CFR 2.12, except that the definition of attorney is changed. See the discussion above under § 10.1. The change in the definition of attorney is believed necessary in view of 5 U.S.C. 500(b) and the fact that an individual may be an attorney in good standing in one state even though suspended in another state. In other non-patent cases, e.g., disciplinary proceedings or proceedings to disqualify counsel in an *ex parte* or *inter partes* patent or trademark case, a party could be represented only by an attorney.

Section 10.15 would provide that practitioners (individuals who practice before the PTO in patent, trademark, or other non-patent cases) could be suspended or excluded.

The Commissioner has authority under 35 U.S.C. 32 to suspend or exclude practitioners registered to practice before the PTO in patent cases. See also 5 U.S.C. 500(e).

The Commissioner also has authority to suspend or exclude practitioners who practice before the PTO in trademark and other non-patent cases. 5 U.S.C. 500(d)(2); *Herman v. Dulles*, 205 F.2d 715 (D.C. Cir. 1953); and Attorney General's Manual on the Administrative Procedure Act, pp. 65-66 (1947). See also *Harary v. Blumenthal*, 555 F.2d 1113 (2d Cir. 1977) (certified public accountant disbarred from practice before IRS) and *Koden v. U.S. Department of Justice*, 564 F.2d 228 (7th Cir. 1977) (attorney suspended from practicing before Immigration and Naturalization Service).

Section 10.18 would continue present practice under 37 CFR 1.346 and 37 CFR 2.15. The practice is similar to that under Rule 11 of the Federal Rules of Civil Procedure. See also § 10.23(c)(15).

Sections 10.20 through 10.112 would establish a PTO Code of Professional Responsibility. Presently, practitioners representing parties in patent and trademark cases are required to conform to the standards of ethical and professional conduct set forth in the Code of Professional Responsibility of the American Bar Association as amended February 24, 1970. The 1970 ABA Code is incorporated by reference into the PTO rules. See 37 CFR 1.344 and

37 CFR 2.13. The PTO believes that it may be more desirable to create a PTO Code of Professional Responsibility which would be applicable to those practicing before the PTO and to set forth the PTO Code in the Code of Federal Regulations. Many practitioners have advised the PTO that they do not have ready access to the 1970 ABA Code and would prefer that the rules governing standards of ethical and professional conduct be published in the Code of Federal Regulations as part of the PTO rules.

In addition to the 1970 ABA Code, practitioners have been subject to strict advertising standards (37 CFR 1.345 and 37 CFR 2.14) which have been outdated by decisions of the Supreme Court. See *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *In re Primus*, 436 U.S. 412 (1978); and *In re R.M.J.*, 455 U.S. 191 (1982). Sections 1.345 and 2.14 have not been enforced since *Bates*.

Section 10.20 would define Canons and Disciplinary Rules. The Canons and Disciplinary Rules for the most part were derived from the Model Code of Professional Responsibility of the American Bar Association (1980). See Table 2 for the principal source of each section of the PTO Code being considered. Ethical considerations of the 1980 ABA Code have not been included because they are "aspirational" in character.

The "Disciplinary Rules" would be mandatory in character and would state the minimum level of conduct expected of practitioners before the PTO.

Sections 10.21 through 10.112 would constitute the PTO Code of Professional Responsibility. The PTO Canons and Disciplinary Rules are for the most part self-explanatory and generally known by practitioners. A few additional comments will be made with respect to certain Disciplinary Rules to enable interested persons to better understand why the proposed Disciplinary Rules are being considered.

Section 10.23 would define misconduct.

Paragraph (a) of § 10.23 is based on 35 U.S.C. 32 and would prohibit disreputable or gross misconduct. For an example where a practitioner was excluded for gross misconduct, see *In re Wedderburn*, 1897 Dec. Comm'r. Pat. 77 (Comm'r. Pat. 1897), *Mandamus denied sub nom., United States ex rel. Wedderburn v. Bliss*, 1897 Dec. Comm'r. Pat. 750 (Sup. Ct. D.C. 1897), *aff'd*, 12 App. D.C. 485, 1898 Dec. Comm'r. Pat. 413 (D.C. Cir. 1898).

Paragraph (b) of § 10.23 would be essentially the same as DR 1-102(A) of the 1980 ABA Code. Subparagraph (b)(3)

of § 10.23(b) would prohibit a practitioner from engaging in illegal conduct involving moral turpitude. Members of the bar have expressed different views as to whether any PTO Code of Professional Responsibility should contain such a provision. The present rules contain such a provision. See 37 CFR 1.344, 37 CFR 2.13, and DR 1-102(A)(3) of the 1970 Code of Professional Responsibility of the American Bar Association. The PTO presently believes that a majority of practitioners would favor retaining such a provision. Several states have a similar provision and recently have taken disciplinary action based on violation of the provision. See e.g., *Florida Bar v. Lord*, 433 So. 2d 983 (Fla. 1983) (attorney disciplined for failure for 22 years to file income tax returns); *Florida Bar v. Wilson*, 425 So. 2d 2 (Fla. 1983) (attorney disciplined for solicitation to traffic in cocaine); *In re Robertson*, 429 A. 2d 530 (D.C. App. 1981) (attorney disciplined for conspiring to sell narcotic drugs and to receive and conceal narcotic drugs); *In re Wines*, 660 P. 2d 454 (Ariz. 1983) (attorney disciplined for willful failure to supply information relating to income tax); *In re Levinson*, 444 N.R. 2d 1175 (Ind. 1983) (attorney disbarred, inter alia, for indecent exposure and related acts—444 N.E. 2d at 1176, col. 1); and *In re Phillips*, 452 A. 2d 345 (D.C. App. 1982) (attorney disbarred based on rape and sodomy).

Paragraph (c) of § 10.23 would define some, but not all, acts which would constitute violations of paragraphs (a) and (b) of § 10.23. The PTO believes that it would be helpful to practitioners if some specific prohibitions were set out in the rules. The prohibitions set out in subparagraphs (1) through (18) of § 10.23(c) represent violations which have occurred in the past or which the PTO specifically seeks to prevent. The specific acts set out in paragraph (c) would not constitute a complete description of all acts which would be violations of paragraphs (a) and (b) of § 10.23.

Subparagraph (1) of § 10.23(c) would provide that misconduct includes being convicted of a criminal offense involving moral turpitude, dishonesty, or breach of trust. This subparagraph would continue present practice. See *In re Castorina*, 975 Official Gazette 14 (October 10, 1978) (attorney excluded from PTO practice upon conviction under 18 U.S.C. 201(f)).

Subparagraph (5) of § 10.23(c) would provide for suspension or exclusion from practice before the PTO after entry of an order suspending or excluding a

practitioner by a duly constituted authority of the United States (e.g., a federal court or another federal agency) or a state (e.g., a state supreme court or a state bar). Suspension or exclusion from practice before the PTO based on disciplinary action by another tribunal would not occur prior to notice and opportunity for a hearing and would continue to be governed by the principles of *Theard v. United States*, 354 U.S. 278 (1957); *Selling v. Radford*, 243 U.S. 46 (1917); and *In re Thies*, 662 F. 2d 771 (D.C. Cir. 1980). See *In re Davis*, 982 Official Gazette 2 (May 1, 1979), *aff'd. sub nom.*, *Davis v. Commissioner*, No. 80-1036 (D.C. Cir. Mar. 31, 1981), *cert. denied*, 454 U.S. 1090 (1981) (attorney excluded by PTO based on disbarment in Minnesota, *Matter of Davis*, 264 N.W. 2d 371 (Minn. 1977)); *In re Hodgson*, 1023 Official Gazette 13 (October 12, 1982) (attorney excluded before the PTO after disbarment in Virginia); *In re Pattison*, 1023 Official Gazette 13 (October 12, 1982) (attorney excluded by PTO after disbarment in Maryland, *Attorney Grievance Commission of Maryland v. Pattison*, 441 A. 2d 328 (Md. 1982)); and *In re Kraft*, 954 Official Gazette 550 (January 11, 1977), *aff'd. sub nom.*, *Kraft v. Commissioner*, No. 77-0087 (D.D.C. Nov. 3, 1977) (attorney excluded from practice before PTO based on suspension order of the Supreme Court of Idaho).

Subparagraph (6) of § 10.23(c) would include as misconduct aiding and abetting a practitioner, suspended or excluded from practice before the PTO, in engaging in the unauthorized practice of law before the PTO during a period of suspension or exclusion. See also § 10.158.

Subparagraph (7) of § 10.23(c) would include as misconduct knowingly withholding information identifying a patent or application of another from which one or more claims have been copied. This specific provision would provide a penalty for those knowingly violating the provisions of 37 CFR 1.205(b) or, if adopted, the provisions of §§ 1.604(b) and 1.607(c) of interference rules proposed January 30, 1984, 49 FR 3768, 3787, 3788, 1039 Official Gazette 11, 83, 85, (Feb. 14, 1984).

Subparagraph (8) of § 10.23(c) would address a problem which has occurred in at least one case in the PTO. Misconduct under this subparagraph would include failing to forward, or failing to notify the PTO of an inability to forward, to a client correspondence received from the PTO or the client's opponent in an *inter partes* proceeding before the PTO when the correspondence could have significant

effect on a matter pending before the PTO under the conditions specified.

Subparagraph (9) of § 10.23(c) would put practitioners on specific notice that misconduct includes misuse of a certificate of mailing under 37 CFR 1.8. See *In re Dula*, 1030 Official Gazette 20 (May 17, 1983) (attorney suspended for misusing certificate of mailing; see also BNA's Patent, Copyright, and Trademark Journal, Vol. 27, No. 658, p. 133 (December 8, 1983)).

Subparagraph (10) of § 10.23(c) would include as misconduct knowingly violating the duty of candor or good faith requirements of 37 CFR 1.56(a). See *In re Milmore*, 196 USPQ 628 (Comm'r. Pat. 1977) and *Kingsland v. Dorsey*, 338 U.S. 318 (1949).

Subparagraph (12) of § 10.23(c) would provide that the following is misconduct: in the absence of information sufficient to establish a reasonable belief in the existence of probable cause that a practitioner is in violation of, or has violated, a Disciplinary Rule, causing a disciplinary investigation to be made, or a disciplinary proceeding to be brought, against the practitioner by a court, a state, or an administrative agency.

Subparagraph (15) of § 10.23(c) is based on 37 CFR 1.346 and 37 CFR 2.15. The "scandalous and indecent matter" provision is based on Rule 11 of the Federal Rules of Civil Procedure.

Subparagraph (17) of § 10.23(c) would include as misconduct representing before the PTO in a patent case either a joint venture comprising an inventor and an invention developer or an inventor referred to the registered practitioner when (i) the registered practitioner knows, or should have reasonably known, that a formal complaint filed by a federal or state agency, based on any violation of any law relating to securities, unfair methods of competition, unfair or deceptive acts or practices, mail fraud, or other civil or criminal conduct, is pending before a federal or state court or federal or state agency, or has been resolved unfavorably by such court or agency, against the invention developer in connection with invention development services and (ii) the registered practitioner fails to fully advise the inventor of the existence of the pending complaint or unfavorable resolution thereof prior to undertaking or continuing representation of the joint venture or inventor. Federal agencies empowered to investigate and file charges relating to violations included within the rule being considered would include, for example, the Securities and Exchange Commission, the Federal Trade Commission, and the U.S.

Department of Justice. See e.g., *Securities and Exchange Commission v. Lawrence Peska Associates, Inc.*, Civil Action 77-2436 (S.D. Fla. Filed: Aug. 8, 1977) and *United States v. Beecroft*, 608 F.2d 753 (9th Cir. 1979) (defendant officers in a company which helped inventors to promote and market their ideas convicted of mail fraud). State agencies which might file charges relating to violations included within the rule being considered would include an attorney general of a state. See e.g., Thomas, *Invention Development Service and Inventors: Recent Inroads on Caveat Inventors*, 60 J. Pat. Off. Soc'y. 355, 376 n. 75 (1978); Shemin, *Idea Promoter Control: The Time Has Come*, 60 J. Pat. Off. Soc'y. 261, 262 n. 7 (1978); and *Illinois v. Lawrence Peska Associates, Inc.*, Civil Action No. 77 CH 3771 (Cir. Ct. Cook County Filed: June 8, 1977). Thus a registered practitioner who (1) represents an inventor and an invention developer, (2) knows or should have known that the invention developer was charged by the FTC under the circumstances described in *In re the Matter of the Raymond Lee Organization, Inc.*, 92 F.T.C. 489 (1978), *aff'd sub nom., Raymond Lee v. Federal Trade Commission*, 679 F.2d 905 (D.C. Cir. 1980), could be subject to disciplinary action under the proposed rule being considered if the practitioner does not advise the inventor of the existence of the charges.

In defining the terms "invention developer," "invention development services," "invention development," "customer," and "contract for invention development services," the PTO has relied on the Virginia Code, section 59.1-208 (1982) (Repl. Vol. 1982) and has adopted suggestions made by Thomas, *supra* at pp. 388-389.

Paragraph (d) of § 10.23 would provide that a practitioner who acts with reckless indifference to whether a representation is true or false would be chargeable with knowledge of its falsity. Likewise, deceitful statements of half-truths or concealment of material facts would be deemed actual fraud within the meaning of the Disciplinary Rules. See e.g., *United States v. Beecroft*, 608 F.2d 753 (9th Cir. 1979).

Section 10.24 would require a practitioner possessing unprivileged knowledge of a violation of a PTO Disciplinary Rule to report the violation to the Director. This section would also require practitioners to cooperate with tribunals, including the PTO, in connection with investigations of practitioners by those tribunals. See also § 10.23(c)(16).

Section 10.31 would set out prohibited advertising. Paragraph (a) of § 10.31 is

based on 35 U.S.C. 32 and prohibits advertising which is specifically precluded by statute. Paragraph (b) of § 10.31 is based on 5 U.S.C. 501 which prohibits the use of the name of a Member of Congress or of an individual in the service of the United States in advertising the practitioner's practice before the PTO. Paragraph (c) of § 10.31 would continue the present practice of 37 CFR 1.345(c) by prohibiting registered patent agents from holding themselves out as qualified to practice general law or practice before the PTO in trademark cases.

Section 10.32 would provide guidelines relating to advertising. Paragraph (a) of § 10.32 would indicate certain types of advertising in which a practitioner could engage. Paragraph (a) is not all inclusive. Any advertising which is not contrary to 35 U.S.C. 32 and which meets the standards announced in *Bates* would be proper. Paragraphs (b) and (d) of § 10.32 would impose a record keeping requirement when a practitioner advertises. The record keeping requirement does not compel a practitioner to create a record. The recordkeeping requirement is believed proper in the event it would become necessary to investigate whether advertising violates the provisions of 35 U.S.C. 32 or § 10.31.

Section 10.33 is based on Rule 7.3 of the Model Rules of Professional Conduct of the American Bar Association (1983). Section 10.33 would be designed to prohibit "ambulance-chasing" in accordance with *Ohralik v. Ohio State Bar Ass'n.*, 436 U.S. 447 (1978) (attorney disciplined for soliciting clients in person for pecuniary gain under circumstances evidencing undue influence, intimidation, or overreaching).

Section 10.34 would continue to authorize registered patent attorneys to use the designation "patent attorney" or similar designation. Likewise, registered patent agents could continue to use the designation "patent agent" or similar designation.

Section 10.40 would provide for the circumstances under which a practitioner could or should withdraw from employment. The section continues present practice.

Section 10.47(a) would provide that a practitioner shall not aid a non-practitioner in the unauthorized practice of law before the PTO. Paragraph (b) of § 10.47 would further prohibit a practitioner from aiding a suspended or excluded practitioner in the unauthorized practice of law. See also § 10.23(c)(6). Paragraph (c) of § 10.47 would prohibit a practitioner from aiding a non-lawyer in the unauthorized practice of law. Thus, a registered

patent practitioner who aids an invention developer under the circumstances outlined in *Lefkowitz v. Lawrence Peska Associates, Inc.*, 393 N.Y. S.2d 650 (Sup. Ct. N.Y. 1977) could be subject to discipline for violating this section.

Section 10.49 would continue present practice. An attorney who practices before the PTO and another attorney who does not practice before the PTO could form a partnership to practice law in a state, because the other attorney falls within the definition of practitioner. See § 10.1(c).

Section 10.57 would continue present practice with respect to preservation of "confidences" and "secrets." Under § 10.57(a), a "confidence" is information protected by the attorney-client or agent-client privilege under applicable law. The privilege is applicable in certain cases to communications between agents registered to practice before the PTO in patent cases and their clients. See *In re Ampicillin Antitrust Litigation*, 81 F.R.D. 377, 392-394 (D.D.C. 1978). Nothing in § 10.57 would alter the obligation of a practitioner to report and reveal information required under §§ 10.23 and 10.24 or any other Disciplinary Rule.

Sections 10.62 and 10.63 would continue present practice with respect to refusing or continuing employment when the interests of a practitioner may impair his or her independent professional judgment. Under § 10.62(b)(3), a registered practitioner representing an inventor could normally sign and file a Rule 131 (37 CFR 1.131) affidavit describing his or her attorney diligence. Likewise, the registered practitioner could normally testify in an interference proceeding when his or her attorney diligence is an issue in the interference. The PTO would continue to assess on a case-by-case basis the weight to be given testimony by a registered practitioner who also represents a party in the proceeding in which the registered practitioner gives testimony. See *Wilder v. Snyder*, 201 USPQ 927, 934 (Bd. Pat. Int. 1979).

Section 10.66 would continue present practice. Paragraph (c) of § 10.66 would further support the requirements of § 10.23(c)(17).

Section 10.68 would continue present practice. Paragraph (b) of § 10.68 would also support the requirements of § 10.23(c)(17).

Section 10.77 would continue present practice. The PTO has disciplined practitioners for neglecting legal matters entrusted to them and for incompetence. See e.g., *In re Frank*, 1023 Official Gazette 13 (October 12, 1982) (agent

suspended for neglecting to file a response to an examiner's action and for misstating facts in a request for an extension of time); *In re Wyden*, 973 *Official Gazette* 40 (August 22, 1978) (agent suspended for general incompetence in handling patent applications); and *In re Paley*, 961 *Official Gazette* 48 (August 30, 1977) (agent suspended for improper handling of patent application). Under paragraph (c) of § 10.77, "neglect" could include a single instance of neglect. Thus, the PTO would not adopt Informal Opinion 1273 (1973) of the American Bar Association or suggestions such as that in Manson, *Helping Lawyers Who Need Help (But Won't Ask for It!)*, 25 Va. Bar News 27 (June 1977).

Section 10.84 would continue present policy. Under § 10.84(b)(1) it should be noted that a practitioner could continue to exercise professional judgment to waive or fail to assert a right or position of a client. Such a policy is believed to be entirely consistent with *Link v. Wabash R.R.*, 370 U.S. 626, 633-34 (1962); *Johnson v. Department of the Treasury*, No. 83-684, slip op. at 8 (Fed. Cir. Nov. 18, 1983).

Section 10.85 would continue present practice. Subparagraph (3) of § 10.85(a) would continue to prohibit a practitioner from concealing or knowingly failing to disclose that which he or she is required by law to reveal. See e.g., § 10.23 (a), (b)(4), (c)(2)(ii) (setting forth a practitioner's duty of candor and good faith under 37 CFR 1.56(a)), and (c)(16); § 10.24; and § 10.85(b). The PTO has disciplined practitioners for failing to reveal evidence required by law to be disclosed. See *In re Milmore*, discussed above.

Subparagraph (5) of § 10.85(a) would continue to prohibit a practitioner from knowingly making a false statement of law or fact. The PTO has disciplined practitioners for making false statements of facts. See *In re Dubno*, 959 *Official Gazette* 25 (June 21, 1977) (attorney disciplined for making false statements in attempting to secure filing date of application under 37 CFR 1.47).

Under Subparagraph (7) of § 10.85(a), a practitioner would not be able to destroy a document or other material that the practitioner knows or should know is relevant to a pending proceeding in the Office or a proceeding in the Office that is reasonably foreseeable. Likewise, a practitioner would not be able to counsel, advise, or assist another in destroying such a document. This provision does not appear in the 1980 Model Code of Professional Responsibility of the American Bar Association, but would be included in the PTO Code of

Professional Responsibility. The provision is based in part on *In re Williams*, 23 N.W.2d 4, 9 (Minn. 1946). See also *In re Osofsky*, 18 N.Y.S.2d 8 (App.Div. 1940), *reinstatement denied*, 43 N.Y.S.2d 273 (App.Div. 1943). Subparagraph (7) of § 10.85(a) would make explicit in the PTO Code a provision which some maintain is implicit in the 1980 ABA Code. See e.g., Fedders, *Document Retention and Destruction: Practical, Legal, and Ethical Considerations*, 56 *Notre Dame Law*, 5, 59-60 (1980).

Section 10.89(b) would provide for standards of conduct in proceedings before the PTO. Paragraph (a) of § 10.89 would prohibit a practitioner from disregarding or advising a client to disregard either (1) the rules of practice in patent or trademark cases or (2) orders entered by the PTO in particular cases or proceedings in which the practitioner participates in a representative capacity.

Subparagraph (1) of § 10.89(b) would require a practitioner to reveal to the PTO known authority directly adverse to the position of a client unless the authority is cited by opponent or an employee of the PTO on the record of the proceeding. Some states seemingly have relaxed their disciplinary codes in this area. See e.g. DR 7-105 of the Virginia Code of Professional Responsibility (1984) and compare Virginia's 1976 version of DR 7-106(B)(1), 216 Va. 1120 (1976). All of the decisions made by the PTO in patent and trademark cases affect the public interest. *Lear v. Atkins*, 395 U.S. 653 (1969); *In re E.I. duPont de Nemours & Co., Inc.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); and 41 Op. Att'y Gen. 21 (1949). Many of the decisions made by the PTO are made *ex parte*. Accordingly, the PTO feels that practitioners should cite to the PTO known authority which is contrary to a position being taken by the practitioner in the PTO. The practitioner could, of course, argue in good faith that any cited authority should not be followed or should be overruled.

Subparagraph (6) of § 10.89 would prohibit a practitioner from engaging in undignified or discourteous conduct which is degrading to a tribunal. A tribunal includes the Office, courts, and other adjudicatory bodies. The PTO has disciplined a practitioner for engaging in undignified and discourteous conduct. See *In re Paley*, 961 *Official Gazette* 48 (August 30, 1977) (agent suspended for making unfounded and scandalous allegations against employees of the PTO and two judges of the United States Court of Appeals for the District of Columbia Circuit). See also 37 CFR 1.3.

The provisions of DR 7-107 of the Code of Professional Responsibility which were held unconstitutional in *Hirschkop v. Snead*, 594 F.2d 356 (4th Cir. 1979), have not been included in the proposed PTO Code of Professional Responsibility being considered.

Section 10.111 would provide that a practitioner should avoid an appearance of impropriety. Paragraph (b) of § 10.111 would provide that a practitioner should not accept private employment in a matter in which he or she had substantial responsibility while a public employee. See 18 U.S.C. 207. Appropriate insulation of a newly hired practitioner who joins a firm would be appropriate under § 10.111. In applying § 10.111 the PTO would continue to follow the principles announced in *Affiliated Steel Co., Ltd. v. Armoco, Inc.*, 680 F.2d 751 (CCPA 1982); *Sierra Vista Hospital, Inc. v. United States*, 639 F.2d 749 (Ct. Cl. 1981); *Armstrong v. McAlpin*, 625 F.2d 433 (2d Cir. 1980) (en banc), *vacated*, 449 U.S. 1106 (1981); *General Electric Co. v. United States*, 215 Ct. Cl. 928 (1977); and *Kesselhaut v. United States*, 555 F.2d 791 (Ct. Cl. 1977).

Section 10.112 would continue present policy under 37 CFR 1.344.

During the comment period after publication of the August 11, 1983, *Federal Register* notice proposing to amend the attorney disciplinary rules, there were some who questioned whether the proposed rules would be made to apply to PTO personnel. The proposed Code of Professional Responsibility would not be applicable to employees of the PTO. PTO employees are governed by a code of employee responsibilities and conduct of the Department of Commerce. See Part O of Title 15 of the Code of Federal Regulations, 15 CFR 0.735-1 through 0.735-41 (1984).

Sections 10.130 through 10.161 would establish a procedure for handling disciplinary proceedings.

In the past responsibility for investigating and prosecuting disciplinary proceedings has been with the Solicitor and the staff of the Office of the Solicitor. See 37 CFR 1.348. Since the Solicitor has been the investigator and the individual filing charges, the Solicitor and his staff have not been available to give legal advice to the Commissioner with respect to particular disciplinary cases. See 5 U.S.C. 557(d)(1).

While there is currently a defined procedure for handling disciplinary cases, it is very broad. Attorneys defending practitioners in disciplinary cases have complained that the procedure is not sufficiently defined.

Procedure has been developed on a case-by-case basis. Officials appointed to preside at the hearing of disciplinary cases have included the Commissioner, Deputy Commissioner, and others, such as examiners-in-chief of the Board of Appeals. More recently, the PTO has used an administrative law judge (ALJ) of the Department of Commerce.

There are approximately 12,500 registered patent attorneys and agents. Numerous other attorneys practice before the PTO in trademark and other non-patent cases. The bar which practices before the PTO is nationwide. The large nationwide bar and small size of the Solicitor's staff has made it difficult to devote sufficient time to reasonably investigate complaints and, where appropriate, prosecute disciplinary proceedings.

Table 4 and the discussion immediately following Table 4 summarize the PTO disciplinary proceedings since 1976, which resulted in disciplinary action. Despite the size of the bar practicing before the PTO, the number of disciplinary proceedings is relatively small given the nationwide PTO bar. The geographic nature of the PTO bar makes it difficult for the PTO to investigate complaints with a part-time staff. Accordingly, the proposed rules being considered would create investigating authority in the Director of Enrollment and Discipline. The proposed rules being considered would also (1) insulate the Solicitor from duties of investigating and prosecuting disciplinary matters, thus rendering the Solicitor free to provide legal advice to the Commissioner, (2) establish procedure for handling disciplinary proceedings, and (3) provide for record keeping of the disciplinary proceedings.

Paragraph (a) of § 10.130 would provide for reprimands, suspensions, and exclusions. The term "exclude," rather than "disbar," is used throughout the proposed rules being considered, because "exclude" is used in 35 U.S.C. 32. Paragraph (a) of § 10.130 is based on 35 U.S.C. 32 and 5 U.S.C. 500(d)(2). Paragraph (b) of § 10.130 would provide that motions to disqualify counsel in PTO proceedings would continue to be handled on a case-by-case basis. *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1974). For a discussion of PTO disqualification proceedings, see "Attorney Disqualification Cases in the PTO," 62 J. Pat. Off. Soc'y 625 (1980). See also Note, Developments in the Law—Conflicts of Interest in the Legal Profession, 94 Harv. L. Rev. 1244 (1981) and the cases cited above in connection with the discussion of § 10.111.

Section 10.131 would authorize the Director to investigate possible

violations of PTO Disciplinary Rules. Paragraph (b) of § 10.131 would require practitioner to report and reveal certain knowledge and evidence to the Director and to cooperate with the Director in connection with any disciplinary proceeding. Paragraph (c) of § 10.131 would provide that non-practitioners could report violations to the Director. The Director would have discretion to require a non-practitioner to make a report of a violation in the form of an affidavit.

Section 10.132 would provide for a procedure for initiating a disciplinary proceeding and for referring to proceeding to an ALJ.

Under paragraph (2) of § 10.132, when the Director would be of the opinion that there is probable cause to believe that a Disciplinary Rule had been violated, the Director would determine whether a practitioner should be given a notice under 5 U.S.C. 558(c). Section 558(c) provides, in part, "Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—(1) notice by the agency in writing of the facts or conduct which may warrant the action; and (2) opportunity to demonstrate or achieve compliance with all lawful requirements." The provisions of 5 U.S.C. 558(c) do not apply to disciplinary proceedings in the PTO involving practitioners who are not registered inasmuch as the PTO does not issue a license to such practitioners. Likewise, where a practitioner willfully violates a Disciplinary Rule, notice and opportunity to demonstrate compliance is not needed. In certain cases, the public interest may require suspension of an incompetent practitioner or a practitioner who has been found guilty of a crime and committed to the custody of the Attorney General or has otherwise been incarcerated.

After giving notice under 5 U.S.C. 558(c), or if no notice is needed, the Director would call a meeting of the Committee on Discipline. The Committee on Discipline, comprising the Director and two Associate Solicitors, would determine by a majority vote whether there is probable cause to believe that a practitioner has violated a PTO Disciplinary Rule. If the Committee on Discipline determines that a violation has occurred, the Director would institute a disciplinary proceeding by filing a "complaint" under § 10.134. Upon the filing of a complaint, an Associate Solicitor who is a member of the Committee on Discipline, normally

would prosecute the disciplinary proceeding on behalf of the Director. Upon the filing of a complaint, the disciplinary proceeding would be referred to an ALJ. A copy of the complaint would be forwarded to the ALJ. All papers filed in the disciplinary proceeding thereafter would be filed with the ALJ.

An ALJ would be used in disciplinary proceedings brought under 35 U.S.C. 32. The use of an ALJ is not required in disciplinary proceedings to suspend or exclude individuals from practice before the PTO in trademark and other non-patent cases. *Herman v. Dulles*, 205 F.2d 715 (D.C. Cir. 1958). Nevertheless, an ALJ is particularly qualified to handle disciplinary proceedings. Accordingly, as a matter of policy the PTO is currently using, and would continue to use, ALJs in handling all disciplinary cases.

Section 10.133 would permit conferences between practitioners and the Director. Paragraph (a) would provide for general conferences. Paragraph (b) would permit resignation from practice before the PTO to avoid institution or conclusion of a disciplinary proceeding. Paragraph (c) of § 10.133 would permit settlement conferences. Past experience indicates that settlement conferences are desirable. Settlement of any controversy, particularly a disciplinary matter, is desirable. Accordingly, to permit both the Director and a respondent to discuss frankly and openly the possibility of settlement, no offer of settlement or refusal of an offer of settlement will be admissible in evidence unless both the Director and the respondent agree in writing.

Section 10.134 would set out the requirements of a complaint. A complaint would be deemed sufficient if it fairly informs the respondent of any violation of the Disciplinary Rules which form the basis for the disciplinary proceeding so that the respondent is able to answer. See *In re Ruffalo*, 390 U.S. 544 (1968).

Section 10.135 would provide for a method of serving a complaint. Service of complaints has been a problem in the past. Use of certified and registered mail has not always been satisfactory, because receipts are returned signed by individuals other than the respondent. Moreover, the PTO may have to resort to proving who signed a particular receipt. Accordingly, § 10.135 provides that service may be accomplished by handing the complaint to the respondent. When service is by hand, the party serving the respondent shall file an affidavit with the Director. An alternative method for serving the

complaint is to mail the complaint first-class or "Express Mail" to the last known address of the respondent, although the proposed rule being considered does not so specify, under this rule the Director would probably attempt to contact the respondent shortly after mailing to determine whether the complaint had been received. A third method of service would be any method mutually agreeable to the Director and a respondent.

Under paragraph (b) of § 10.135, if a complaint is returned by the Postal Service, a second complaint would be mailed. If the second complaint is returned, a notice would be published in the *Official Gazette* for four consecutive weeks. Any time for answering would run from the fourth publication of the notice.

Under paragraph (c) of § 10.135, a letter under § 10.11(b) could be served with the complaint. This practice has been used lately by the PTO and is the most satisfactory method of serving complaints. If a response is not timely submitted to a letter under § 10.11(b), a registered practitioner is removed from the register. Such removal moots any disciplinary proceedings. Reinstatement after such removal would not be automatic. A respondent would have to demonstrate that he or she should be reinstated in light of the complaint filed under § 10.134.

Under paragraph (d) of § 10.135, if a respondent is represented by an attorney at the time a complaint is filed, a copy of the complaint would be served on the respondent's attorney. This practice is currently followed in the PTO. See also 5 U.S.C. 500(f).

Section 10.136 would provide for an answer to a complaint. Under paragraph (a) of § 10.136, an answer would be due within thirty (30) days unless extended for up to no more than thirty (30) additional days by the ALJ. Under Paragraph (c) of § 10.136 the content of the answer would be the same as under the current practice. See 37 CFR 1.348(c).

Under § 10.137, false statements in an answer could be made the basis of supplemental charges. This section would continue the practice under the last sentence of 37 CFR 1.348(c).

Section 10.138 would provide that on the filing of an answer, a disciplinary proceeding would become a contested case within the meaning of 35 U.S.C. 24. However, evidence obtained by a subpoena issued under 35 U.S.C. 24 would not be admissible in evidence or considered unless leave to proceed under 35 U.S.C. 24 is first obtained from the ALJ. Ordinarily, a subpoena under 35 U.S.C. 24 is needed when a witness

will not voluntarily appear. Often subpoenas are issued to be sure that a witness appears—particularly if both counsel and the ALJ have to travel to hear the testimony of a witness. The PTO believes that approval by the ALJ prior to issuing subpoenas is highly desirable. Initially, the ALJ can determine whether the evidence is relevant and/or whether a third-party should be subjected to the inconvenience of a subpoena. In this respect, if the ALJ does not believe any proffered evidence is admissible, the ALJ may refuse to permit a party to proceed under 35 U.S.C. 24. If a party nevertheless caused a subpoena to issue, a motion to quash the subpoena would lie in the District Court which issued the subpoena. The proposed rule being considered would adopt the policy of *Sheehan v. Doyle*, 513 F.2d 895, 898, 185 USPQ 489, 492 (1st Cir.), cert. denied, 423 U.S. 874 (1975) and *Sheehan v. Doyle*, 529 F.2d 38, 40, 188 USPQ 545, 546 (1st Cir.), cert. denied, 429 U.S. 879 (1976), rehearing denied, 429 U.S. 987 (1976), while rejecting the policy announced in *Brown v. Braddick*, 595 F.2d 961, 967, 203 USPQ 95, 101-102 (5th Cir. 1979).

Section 10.139 would provide authority for the ALJ to take action. Paragraph (a) would define the ALJ. Paragraph (b) of § 10.139 would set out the authority of the ALJ.

Under subparagraph (2) of § 10.139(b), the ALJ would make rulings on motions. See also § 10.143. The time for filing motions and oppositions would be set on a case-by-case basis. Obviously, if respondent and his or her attorney are located in the Washington, D.C. metropolitan area, less time is needed for filing oppositions than a case where a respondent and his or her attorney are located in Los Angeles, California. It should be noted that, under § 10.142(e), an ALJ could require papers to be served by "Express Mail."

Under subparagraph (4) of § 10.139(b), the ALJ may authorize the taking of depositions in lieu of personal appearance at a hearing. Whether such a deposition would be authorized would be within the discretion of the ALJ. If demeanor is an issue with a particular witness, the ALJ could exercise discretion and deny a request to take a deposition in lieu of appearance. When a deposition would be authorized by the ALJ, notice and taking of the deposition would be governed by § 10.151(a).

Under subparagraph (8) of § 10.139(b), the ALJ could adopt procedures for the orderly disposition of disciplinary proceedings. For example, the ALJ could require the Director and the respondent to file a pre-hearing brief setting out the

names of the witnesses to be called, a summary of their expected testimony, and any factual issues believed to be in dispute. The ALJ could also require the parties to serve copies of the exhibits to be used in their respective cases-in-chief.

Under paragraph (c) of § 10.139, the ALJ would exercise such control over the disciplinary proceeding as to normally issue an initial decision within six (6) months from the filing of the complaint. The ALJ, however, could issue an initial decision after six months if in his or her opinion there exist unusual circumstances which preclude issuance of the initial decision within the six month period. The purpose of this provision would be to put parties on notice that the ALJ has authority to complete his or her work within six months and that the parties should plan to meet any time schedules set by the ALJ. In the past, delays in disciplinary proceedings have considerably delayed final decisions. This provision would be designed to minimize delays. Inasmuch as it would be expected that the ALJ would consult with the parties prior to setting times, it is not expected that the six months provision of this rule will work undue hardship on either the Director or the respondent.

Paragraphs (d) and (e) of § 10.139 would preclude interlocutory appeals by the Director or respondent from an order of the ALJ except under limited conditions. Under subparagraph (1) of § 10.139(d), the ALJ could permit interlocutory review of his or her order when the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion and an immediate decision by the Commissioner would materially advance the ultimate termination of a disciplinary proceeding. The standard would be the same as that of 28 U.S.C. 1292(b). There would be no stay of proceedings before the ALJ when an appeal is taken on an interlocutory order unless a stay is granted by the ALJ or the Commissioner. The PTO would intend under this section that stays would be granted only in the most compelling of circumstances. Parties would not be permitted to render the ALJ ineffective by filing appeals or requests for review of interlocutory orders.

Section 10.140 provides for representation of respondents and the Director.

Section 10.141 provides for the filing of papers. Paragraph (a) makes clear that the certificate of mailing practice under 37 CFR 1.8 is not applicable in

disciplinary proceedings. Paragraph (b) provides that papers filed after the complaint and prior to entry of an initial decision would be filed with the ALJ. The ALJ would designate the address to which he or she would want papers mailed. The ALJ, however, could require in an appropriate circumstance, that papers be hand-delivered to his or her office. All papers filed after the initial decision would be filed with the Director and the Director would transmit to the Commissioner any paper which requires action by the Commissioner.

Section 10.142 would provide for the method of serving papers in disciplinary cases.

Section 10.143 would provide for filing of motions. No motion could be filed unless supported by a written statement that the moving party conferred with the other party for the purpose of resolving the issue raised in the motion and that agreement could not be reached. If an issue raised in a motion is resolved prior to decision on the motion by the ALJ, the parties would be required to notify the judge. This provision would save the ALJ time.

Section 10.144 would provide for hearings before the ALJ. The hearing would be transcribed and a copy of the transcript of the hearing would be provided, at PTO expense, to the Director and the respondent. If a respondent fails to appear at a hearing, the ALJ would be authorized to proceed in respondent's absence. Under paragraph (c), disciplinary hearings are normally not open to the public. The need for closed hearings in cases involving patent applications is occasioned in part by 35 U.S.C. 122. Apart from the PTO obligation to keep information concerning patent applications secret, until an attorney or agent is disciplined, it is believed that opening the hearings to the public would constitute a clearly unwarranted invasion of personal privacy. The fact that disciplinary proceedings are held in confidence, however, would not preclude the Director or respondent from approaching witnesses and providing those witnesses with sufficient information to determine whether they can give relevant testimony.

Section 10.145 would provide for a procedure for handling cases where there is a variance between the allegations in pleadings and the evidence. Any party would be given reasonable opportunity to meet any allegations in an amended complaint or answer. See *In re Buffalo*, 390 U.S. 544 (1968).

Section 10.150 would provide for rules governing evidence. Under paragraph (a) of § 10.150, the rules of evidence prevailing in courts of law and equity would not be controlling. This provision is bottomed on 5 U.S.C. 556(d) which provides, in part, that "[a]ny oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence." Thus, evidence in a disciplinary proceeding is not controlled by the Federal Rules of Evidence. *Klinestiver v. Drug Enforcement Administration*, 606 F.2d 1128, 1130 (D.C. Cir. 1979). While most evidence admissible under the Federal Rules of Evidence would be admissible in a disciplinary proceeding, there is evidence which is not admissible under the Federal Rules of Evidence which may be admissible in a disciplinary proceeding. Paragraph (b) of § 10.150 provides for admission into evidence of depositions taken under § 10.151. Any deposition under § 10.151(a) would have prior approval of the ALJ. A deposition under § 10.151(b) would not have prior approval, but may or may not be admissible. Admissibility of the latter deposition is within the discretion of the ALJ. Under paragraph (c) of § 10.150, PTO documents, records, and papers would not have to be certified to be admissible.

Section 10.151 provides for depositions. Under paragraph (a) of § 10.151, either the Director or the respondent may move for leave to take a deposition of a witness in lieu of personal appearance of the witness before the ALJ. The ALJ is authorized to grant leave to take the deposition upon a showing of good cause. The taking of depositions under paragraph (a) would not be for the purpose of discovery. A deposition would be taken only when it is not possible or desirable for the ALJ to hear the witness in person. Under paragraph (b) of § 10.151, the Director and the respondent could agree to take a deposition. Often depositions are desirable during settlement. The testimony of a witness may be "locked-in" through a deposition. Several disciplinary matters have been settled by the PTO in the past by using mutually agreed to depositions. However, under paragraph (b) of § 10.151 the parties could not take depositions for use at a hearing without prior approval of the ALJ. This provision is deemed to be necessary to maintain control over the proceeding with the ALJ.

Section 10.152 provides for limited discovery. Considerable thought has been given to discovery. There are cases

which hold that discovery is not necessary in disciplinary proceedings. See e.g., *In re Murray*, 362 N.E.2d 128 (Ind. 1977); *In re Wireman*, 367 N.E.2d 1368 (Ind. 1977). There are those who advocate that discovery should be similar to that under the Federal Rules of Civil Procedure. Both views have been considered. The PTO believes that some discovery should be permitted. On the other hand, the wide scope of discovery under the Federal Rules of Civil Procedure, and the delays caused thereby are well-known. Under § 10.152, the ALJ could require parties to file and serve, prior to any hearing, a pre-hearing statement which lists all proposed exhibits to be used in connection with the party's case-in-chief, a list of proposed witnesses, the identity of any government employee who investigated the case, and copies of memoranda reflecting respondent's own statements. This provision is patterned after *Silverman v. Commodity Futures Trading Commission*, 549 F.2d 28 (7th cir. 1977).

The ALJ could determine when the discovery authorized by paragraph (a) of § 10.152 should be made.

Subparagraph (1) of § 10.152(a) would limit discovery to exhibits which a party intends to use as part of his or her case-in-chief. Exhibits not used in a party's case-in-chief, but which might be used to impeach or cross-examine the other party's witnesses would not have to be produced. If a document were to be used both in a case-in-chief and to impeach, it would have to be produced.

Subparagraph (3) of § 10.152(a) would provide for identifying any government witness who investigated the matter. Respondent could then call the government witness. Subparagraph (4) of § 10.152(a) would provide for producing copies of any statement made by a respondent.

Under paragraph (b) of § 10.152 a party would be entitled to see any written statement made by a witness prior to cross-examination of the witness. Compare 18 U.S.C. 3500.

Under § 10.153, the ALJ would afford the parties a reasonable opportunity to submit proposed findings and conclusions and a post-hearing memorandum. See 5 U.S.C. 557(c).

Under § 10.154, the ALJ would file an "initial" decision. In rendering an initial decision, it would be expected that the ALJ would make appropriate reference to the administrative record in explaining an initial decision. See e.g., *Food Marketing Institute v. Interstate Commerce Commission*, 587 F.2d 1285, 1292 n. 20 (D.C. Cir. 1978). In the absence of an appeal to the Commissioner (see

§ 10.155), the decision of the ALJ would become the final decision in the disciplinary proceeding. 5 U.S.C. 557(b).

Paragraph (b) of § 10.154 would require the ALJ to explain the reason for any penalty. Four factors would guide the ALJ and the Commissioner in setting and approving penalties. The factors are the public interest, the seriousness of the violation of the Disciplinary Rule, the deterrent effects deemed necessary, and the integrity of the bar. These factors have been derived from numerous cases, including *Silverman v. Commodity Futures Trading Commission*, 562 F.2d 432, 439 (7th Cir. 1977) and *In re Merritt*, 363 N.E.2d 961, 971 (Ind. 1977). See also *Florida Bar v. Murrell*, 74 So.2d 221 (Fla. 1954). Past PTO disciplinary cases generally are not helpful in determining penalties. Often the penalties have not been explained in light of the factors which would be set out in paragraph (b) of § 10.154. Moreover, there have been very few disciplinary proceedings in the PTO. Under the proposed rules being considered, a penalty would be a matter within the discretion of the ALJ with ultimate decision being with the Commissioner. The discipline in each disciplinary proceeding would be tailored for the individual case. *In re Wines*, 660 P.2d 454 (Ariz. 1983). Manifestly, the PTO would not expect perfection or absolute uniformity. *Id.* Likewise the PTO would not propose to permit relitigation of penalties imposed in prior cases. *Id.* Any case concluded in which the penalty is not explained (e.g. a settlement) would not serve as precedent.

Section 10.155 would provide for an appeal from an initial decision of the ALJ to the Commissioner. If an appeal is not taken, the initial decision of the ALJ would become the decision of the Commissioner. See § 10.154(a). An appeal would be taken within 30 days of the initial decision of the ALJ. Any party opposing the appeal could file a brief in support of the opposition. Under paragraph (b) of § 10.155, the Commissioner would decide the appeal on the record made before the ALJ.

Section 10.156 would provide for a decision by the Commissioner. The Commissioner could affirm, reverse, or modify an initial decision of an ALJ or remand the disciplinary proceeding to the ALJ for such further proceedings as the Commissioner may deem appropriate. The Commissioner's decision would be transmitted to the Director who in turn would forward a copy of the decision to respondent.

Section 10.157 would set out how judicial review could be had of any final decision of the Commissioner.

Section 10.158 would set out the limitations on a practitioner who is suspended or excluded from the practice of law before the PTO.

Paragraph (b) of § 10.158 sets out what a practitioner would be required to do. Subparagraph (1) of § 10.158(b) would require a suspended or excluded practitioner to notify all clients of the suspension and to file a copy of each notice to a client with the Director. Subparagraph (2) of § 10.158(b) would require a practitioner, within thirty (30) days, to surrender a client's active case file to the client or another practitioner designated by the client. Under subparagraph (3) of § 10.158(b), a suspended or excluded practitioner could not hold himself or herself out as authorized to practice law before the PTO. Subparagraph (4) of § 10.158(b) would require a suspended or excluded practitioner to remove from directories published after suspension or exclusion any advertisement which would reasonably suggest to the public that the practitioner is authorized to practice before the PTO. The practitioner would be required to inform the Director of any action taken in this respect.

Subparagraph (5) of § 10.158(b) would preclude certain advertising. Under subparagraph (6) of § 10.158(b), a suspended or excluded practitioner would not render legal advice or services to any person having immediate, prospective, or pending business before the PTO as to that business. Subparagraph (7) of § 10.158(b) would require a suspended or excluded practitioner to take steps to change signs and/or stationary to eliminate any suggestion that the practitioner is authorized to practice law before the PTO. Subparagraph (8) of § 10.158(b) would require a suspended or excluded practitioner to return to any client any unearned funds, including any unearned retainer fee, and any securities and property of the client.

Paragraph (c) of § 10.158 would provide the conditions under which a suspended or excluded practitioner could aid another practitioner in the practice of law before the PTO. Paragraph (d) of § 10.158 would provide for affidavits and statements which would have to be made and filed by a suspended or excluded practitioner to be reinstated.

In the past, the conditions of a suspension or exclusion may not have been clear. Section 10.158 would make clear the restrictions for suspended or excluded practitioners. The provisions of § 10.158 were derived from several cases, including *In re Christianson*, 215 N.W.2d 920 (N.D. 1974); *In re Hawkins*, 503 P.2d 95 (Wash. 1972); *Florida Bar v.*

Davis, 397 So.2d 690 (Fla. 1981); *Florida Bar v. Thomson*, 310 So.2d 300 (Fla. 1975); *Florida Bar v. Thomson*, 354 So.2d 872 (Fla. 1978); *In re Kraus*, 670 P.2d 1012 (Ore. 1983); *In re Easler*, 272 S.E.2d 32 (S.C. 1980); *Crawford v. State Bar of California*, 7 Cal. Rptr. 746 (Cal. 1960); and *Ohio State Bar Ass'n. v. Hart*, 375 N.E.2d 1246 (Ohio 1978). Specifically considered, and rejected, was Guideline X of Provisional Order No. 18 of the Supreme Court of Rhode Island, 454 A.2d 1222 (1983), to the extent Guideline X is inconsistent with § 10.158.

The PTO agrees with the Supreme Court of North Dakota to the extent that it holds a suspended or disbarred attorney "is not the same as a layman." 215 N.E.2d at 925, column 2. The same is true of a practitioner who is suspended or excluded from practice before the PTO. Accordingly, while § 10.158 would permit a suspended or excluded practitioner to be employed by a practitioner, the suspended or excluded practitioner would nevertheless be precluded from taking some action which properly might be taken by a layperson or a para-legal. A suspended or excluded practitioner would have to be a salaried employee of the practitioner for whom he or she works and could not share profits. A suspended or excluded practitioner could not communicate directly with clients, render any legal advice, or meet with witnesses. A suspended or excluded practitioner could research the law, write patent or trademark applications (provided he or she did not interview clients or witnesses), or conduct patent or trademark searches. The provisions of § 10.158 are considered appropriate if a suspension or exclusion is to have any significance.

Section 10.159 would provide for notice of suspension or exclusion. Under paragraph (a) of § 10.159, upon issuance of an unfavorable final decision, the Director would give appropriate notice to employees of the PTO, United States courts, and appropriate authorities of any State in which a suspended or excluded practitioner is known to be a member of the bar. In the case of a practitioner registered under § 10.6(c), the Director would also notify the patent office of the country where the practitioner resides. Under paragraph (b) of § 10.159, the Director would publish an appropriate notice in the *Official Gazette*. Under paragraph (c) of § 10.159, the Director would maintain records which would be available to the public concerning disciplinary proceedings. The files of most disciplinary proceedings which result in imposition of a reprimand, suspension, or exclusion

are presently available for public inspection in the Office of the Director of Enrollment and Discipline. Public availability would continue under the proposed rules being considered subject to the removal of any information required by law to be maintained in secrecy.

Section § 10.160 would provide for a petition for reinstatement. A petition for reinstatement of a practitioner suspended for less than five years would not be considered until the period of suspension had passed. Under paragraph (b) of § 10.160, a petition for reinstatement of an excluded practitioner would not be considered until five years after entry of the order excluding the practitioner. Paragraph (c) of § 10.160 would set out some of the conditions which the Director might impose upon a suspended or excluded practitioner seeking reinstatement. One of those conditions could include taking and passing the examination of § 10.7(b). Another condition could be a requirement that the practitioner seeking reinstatement pay up to \$1,500 of the costs of the disciplinary proceeding leading to suspension or exclusion.

Under paragraph (c) of § 10.160, a suspended or excluded practitioner who had violated the provisions of § 10.158 would not be reinstated prior to serving a suspension free of any violation. Under paragraph (d) of § 10.160, proceedings for reinstatement would be open to the public and an appropriate notice that a suspended or excluded practitioner had applied for reinstatement would appear in the *Official Gazette*. Any comments from the public would be considered prior to reinstatement.

Section 10.161 would contain savings clauses.

TABLE 1.—PRINCIPAL SOURCE OF §§ 10.2 THROUGH 10.19

Section	
10.2(a)	New.
10.2(b)(1)	New, but see 37 CFR 1.341(f) (1983).
10.2(b)(2)	New, but see 37 CFR 1.348(a) (1983).
10.2(c)	New, but see 37 CFR 1.341(i) (1983).
10.3	37 CFR 1.341(i) (1983).
10.4(a)	New.
10.4(b)	New, but see 37 CFR 1.348(a) (1983).
10.5	37 CFR 1.341 (1983).
10.6(a)	37 CFR 1.341(a) (1983).
10.6(b)	37 CFR 1.341(b) (1983).
10.6(c)	37 CFR 1.341(e) (1983).
10.6(d)	37 CFR 1.341(f) (1983).
10.6(e)	37 CFR 1.341(g) (1983).
10.7(a), (b)	37 CFR 1.341(c) (1983).
10.7(c)	New.
10.8	37 CFR 1.341(h) (1983).
10.9(a)	37 CFR 1.342 (1983).
10.9(b)	New.
10.10	37 CFR 1.343 (1983).
10.11	37 CFR 1.347 (1983).
10.12	[Reserved.]
10.13	[Reserved.]
10.14	5 U.S.C. 500(b) and 37 CFR 2.12 (1983).

TABLE 1.—PRINCIPAL SOURCE OF §§ 10.2 THROUGH 10.19—Continued

Section	
10.15	35 U.S.C. 32; 5 U.S.C. 500(d)(2); 37 CFR 1.343 (1983); and 37 CFR 2.12(f) (1983).
10.16	[Reserved.]
10.17	[Reserved.]
10.18(a)	37 CFR 1.346 (1983) and 37 CFR 2.15 (1983), see also Rule 11, FRCP.
10.18(b)	35 U.S.C. 32 & Rule 11, FRCP.
10.19	[Reserved.]

TABLE 2.—PRINCIPAL SOURCE OF SECTIONS OF 10.20 THROUGH 10.112, THE PTO CODE OF PROFESSIONAL RESPONSIBILITY

[Abbreviations: FRCP means Federal Rules of Civil Procedure, MCPR means Model Code of Professional Responsibility of the ABA (1980), MRPC means Model Rules of Professional Conduct of the ABA (1983), VCPR means the Virginia Code of Professional Responsibility (1984).]

Section	
10.20	Preamble to MCPR (1980).
10.21	MCPR Canon 1 (1980).
10.22	MCPR DR 1-101 (1980).
10.23(a)	35 U.S.C. 32.
10.23(b)(1)	35 U.S.C. 32 and MCPR DR 1-102(A)(1) (1980).
10.23(b)(2)	MCPR DR 1-102(A)(2)-(6) (1980).
10.23(c)(1)-(14)	PTO created.
10.23(c)	Rule 11, FRCP.
10.23(c)	PTO created.
10.23(c)	(16)-(18).
10.24	MCPR 1-103 (1980).
10.25	[Reserved.]
through 10.29	
10.30	MCPR Canon 2 (1980).
10.31(a)	35 U.S.C. 32.
10.31(b)	5 U.S.C. 501.
10.31(c)	37 CFR 1.345(c) (1983).
10.32	MRPC Rule 7.2 (1983).
10.33	MRPC Rule 7.3 (1983).
10.34	MRPC Rule 7.4 (1983).
10.35(a)	5 U.S.C. 501 and MRPC Rule 7.5 (1983).
10.35(b)	MRPC 7.5 (1983).
10.36	MCPR DR 2-106 (1980).
10.37	MCPR DR 2-107 (1980).
10.38	MCPR DR 2-108 (1980).
10.39	MCPR DR 2-109 (1980).
10.40	MCPR DR 2-110 (1980).
10.41	[Reserved.]
through 10.45	
10.46	MCPR Canon 3 (1980).
10.47(a)	MCPR DR 3-101 (1980).
(c)	
10.47(b)	New (but see e.g., <i>Crawford v. State Bar of California</i> , 7 Cal. Rptr. 746, 355 P.2d 490 (Cal. 1960)).
10.48	MCPR DR 3-102 (1980).
10.49	MCPR DR 3-103 (1980).
10.50	[Reserved.]
through 10.55	
10.56	MCPR Canon 4 (1980).
10.57	MCPR DR 4-101 (1980).
10.58	[Reserved.]
through 10.60	
10.61	MCPR Canon 5 (1980).
10.62	MCPR DR 5-101 (1980).
10.63	MCPR DR 5-102 (1980).
10.64	MCPR DR 5-103 (1980).
10.65	MCPR DR 5-104 (1980).
10.66	MCPR DR 5-105 (1980).
10.67	MCPR DR 5-106 (1980).
10.68	MCPR DR 5-107 (1980).
10.69	[Reserved.]
through 10.75	
10.76	MCPR Canon 6 (1980).
10.77	MCPR DR 6-101 (1980).
10.78	MCPR DR 6-102 (1980).
10.79	[Reserved.]
through 10.82	

TABLE 2.—PRINCIPAL SOURCE OF SECTIONS OF 10.20 THROUGH 10.112, THE PTO CODE OF PROFESSIONAL RESPONSIBILITY—Continued

[Abbreviations: FRCP means Federal Rules of Civil Procedure, MCPR means Model Code of Professional Responsibility of the ABA (1980), MRPC means Model Rules of Professional Conduct of the ABA (1983), VCPR means the Virginia Code of Professional Responsibility (1984).]

Section	
10.83	MCPR Canon 7 (1980).
10.84	MCPR DR 7-101 (1980).
10.85	MCPR DR 7-102 (1980).
10.86	[Reserved.]
10.87	MCPR DR 7-104 (1980).
10.88	MCPR DR 7-105 (1980).
10.89(a)	MCPR DR 7-106 (1980).
(1)-(6), (8), (9), and (b)	
10.89(a)(7)	<i>In re Williams</i> , 23 N.W.2d 4,9 (Minn. 1946).
10.90	[Reserved.]
10.91	[Reserved.]
10.92	MCPR DR 7-109 (1980).
10.93	VCPR DR 7-109 (1984).
10.94	[Reserved.]
through 10.99	
10.100	MCPR Canon 8 (1980).
10.101(a)	MCPR DR 8-101 (1980).
10.101(b)	37 CFR 1.341(f) (1983) and 41 Op. Att'y Gen. 21 (1949), reprinted in 1949 Dec. Comm'r. Pat. 1.
10.102	MCPR DR 8-102 (1980).
10.103	MCPR DR 8-103 (1980).
10.104	[Reserved.]
through 10.109	
10.110	MCPR Canon 9 (1980).
10.111	MCPR DR 9-101 (1980).
10.112(a)	MCPR DR 9-102(A) (1980).
10.112(b)	MCPR DR 9-102(B) (1980).

TABLE 3.—PRINCIPAL SOURCE OF §§ 10.130 THROUGH 10.161

Section	Source	Reference to proposed rules 48 FR 36480 (Aug. 11, 1983) (section)
10.130	35 U.S.C. 32	1.360.
10.131(a)	New, but see 37 CFR 1.348(a).	1.363(a).
10.131(b)	MCPR 1-103 (1980)	1.363(b).
10.131(c)	New	1.363(a).
10.132(a)	New	New.
10.132(b)	New, but see 37 CFR 1.348(b) (1983).	1.363(c).
10.133	New	1.364.
10.134	37 CFR 1.348(b) (1983)	1.365.
10.135(a)(1)	New	1.366.
10.135(a)(2)	37 CFR 1.348(b) (1983)	1.366.
10.135(a)(3)	New	1.366.
10.135(b)	New	New.
10.135(c)	New	1.366.
10.135(d)	5 U.S.C. 500(f)	New.
10.136(a)	37 CFR 1.348(c) (1983)	1.365(b).
10.136(b)	New	1.367(a).
10.136(c)	37 CFR 1.348(c) (1983)	1.367(b).
10.136(d)	37 CFR 1.348(c) (1983)	1.367(c).
10.136(e)	New	1.367(d).
10.137	37 CFR 1.348(c) (1983)	1.368.
10.138	New	1.367(e).
10.139(a)	5 U.S.C. 3105	1.372(a).
10.139(b)	5 U.S.C. 556(c)	1.372(b).
10.139(c)	New	1.379.
10.139(d)	New	1.372(b)(2).
10.139(e)	New	New.
10.140(a)	5 U.S.C. 500(b)	1.371.
10.140(b)	New	1.371.
10.141	New	1.366(c).
10.142	New	1.366(b).
10.143	New	1.370.
10.144	New	1.373 and 1.374.
10.145	New	1.369.
10.146	[Reserved]	
10.149		
10.150(a)	5 U.S.C. 556(d)	1.375(a).
10.150(b)	37 CFR 1.348(d)(3) (1983)	1.375(b).
10.150(c)	New	1.375(c).

TABLE 3.—PRINCIPAL SOURCE OF §§ 10.130 Through 10.161—Continued

Section	Source	Reference to proposed rules 48 FR 36480 (Aug. 11, 1983) (section)
10.150(d)	New	1.375(d).
10.151	37 CFR 1.348 (d)(3) (1983).	1.376.
10.152	New, see <i>Silverman v. CFTC</i> , 549 F.2d 28 (7th Cir. 1977).	1.377.

TABLE 3.—PRINCIPAL SOURCE OF §§ 10.130 Through 10.161—Continued

Section	Source	Reference to proposed rules 48 FR 36480 (Aug. 11, 1983) (section)
10.153	New, but see 5 U.S.C. 557(c).	1.378.
10.154	See 5 U.S.C. 557(b) and 35 U.S.C. 32.	1.379.
10.155	New	1.380.
10.156	New	1.381.

TABLE 3.—PRINCIPAL SOURCE OF §§ 10.130 Through 10.161—Continued

Section	Source	Reference to proposed rules 48 FR 36480 (Aug. 11, 1983) (section)
10.157	35 U.S.C. 32, Local Rule 1-26 (D.D.C.).	1.381.
10.158	New	1.382.
10.159	New	1.382(d) and (e).
10.160	New	1.383.
10.161	New	1.384.

TABLE 4.—DISCIPLINARY PROCEEDINGS IN PTO (1976-1983)

Name	Location	Date of order of suspension or exclusion	Official Gazette citation	Nature of charges
Kraft, John W.	Idaho	12-16-76	954 O.G. 550 (1-11-77)	Based on suspension in Idaho.
Walton, John N.	Canada	2-1-77	956 O.G. 346 (3-8-77)	Based on revocation of license to practice before the Canadian Patent Office.
Paley, Lewis A.	Ill.	2-16-77	961 O.G. 48 (8-30-77)	Improper handling of patent application and making unfounded and scandalous allegations against PTO employees and judges of the U.S. Court of Appeals for the D.C. Circuit.
Molasky, Joseph W.	Pa.	4-12-77	958 O.G. 12 (5-10-77)	Misconduct for attempting to remove property belonging to the PTO from the Public Search Room for Patents.
Dubno, Herbert	N.Y.	5-25-77	959 O.G. 25 (6-21-77)	Misrepresenting facts to PTO in connection with application under 37 CFR 1.47.
Milmore, Oswald H.	Calif.	6-22-77	962 O.G. 2 (9-6-77)	Knowingly concealing relevant prior art during prosecution of patent application. See also 198 USPQ 626 (Comm'r. Pat. 1977).
Wyden, Stephen	N.Y.	7-27-78	973 O.G. 40 (8-22-78)	Incompetently handling patent applications.
Castorina, Anthony J.	Va.	8-2-78	975 O.G. 14 (10-10-78)	Based on conviction in E.D.Va. for violation of 18 U.S.C. 201(f).
Cavanagh, J. Richard	Canada	1-18-79	979 O.G. 22 (2-20-79)	Based on revocation of license to practice before Canadian Patent Office.
Davis, Keith B.	Minn.	4-6-79	982 O.G. 2 (5-1-79)	Based on disbarment in Minnesota which included charges of mishandling patent matters.
Hodgson, Albert C.	Va.	5-17-82	1023 O.G. 13 (10-12-82)	Based on disbarment in Virginia.
Pattison, William H.	Mid.	8-30-82	1023 O.G. 13 (10-12-82)	Based on disbarment in Maryland which included charge of mishandling patent application.
Frank, William F.	Va.	8-30-82	1023 O.G. 13 (10-12-82)	Neglecting to file a response to PTO action and misrepresenting fact in request for extension of time.
Dula, Arthur M., III	Tex.	4-18-83	1030 O.G. 20 (5-17-83)	Misusing certificate of mailing under 37 CFR § 1.8. See also BNA's Patent, Copyright & Trademark Journal, Vol. 27, No. 658, p. 133 (12-8-83).

In addition to the disciplinary proceedings set out in Table 4, there have been at least eight other disciplinary proceedings since 1976 which have been terminated. One was dismissed on the merits by the Commissioner after a hearing. Three were dismissed on motion of the Solicitor after a hearing. One was dismissed after the respondent resigned while the disciplinary proceeding was pending. Three resulted in private discipline. There are three disciplinary proceedings presently pending before the PTO. The respondents in the above-mentioned eleven disciplinary proceedings are distributed geographically as follows: California (1); Connecticut (1); District of Columbia (1); Maryland (1); New Mexico (1); New York (5); and Tennessee (1). Table 4 and

the geographical distribution of the eleven other disciplinary proceedings which have taken place since 1976 demonstrate the nationwide nature of investigations which need to be made by the PTO.

Other Considerations

The proposed rules being considered would not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rules being considered are in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The Patent and Trademark Office believes that this proposed rule change being considered would not be a major

rule under Executive Order 12291. The annual effect on the economy would be less than \$100 million. There would be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There would be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 37 CFR Parts 1, 2, and 10

Administrative practice and procedure, Authority delegations, Conflict of interests, Courts, Inventions and patents, Trademarks, Lawyers.

The proposed rules being considered would make the following proposed revisions to Parts 1 and 2 and would add Part 10 as follows wherein deletions are indicated by brackets and additions by arrows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. Section 1.8 would be amended by adding to paragraph (a)(2) a new subparagraph (xii) to read as follows:

§ 1.8 Certificate of mailing.

(a) * * *

(xii) Papers filed in connection with a disciplinary proceeding under Part 10 of this Subchapter.

2. Section 1.31 would be revised to read as follows:

§ 1.31 Applicants may be represented by [an] ▶ a registered ◀ attorney or agent.

An applicant for patent may file and prosecute his ▶ or her ◀ own case, or he ▶ or she ◀ may be represented by [an] ▶ a registered ◀ attorney ▶, ◀ [or] agent ▶ or other individual ◀ authorized to practice before the Patent and Trademark Office in patent cases. ▶ See §§ 10.6 and 10.9 of this Subchapter. ◀ The Patent and Trademark Office cannot aid in the selection of [an] ▶ a registered ◀ attorney or agent.

3. Section 1.34 would be amended by revising paragraph (a) as follows:

§ 1.34 Recognition for representation.

(a) When a registered attorney or agent acting in a representative capacity appears in person or signs a paper in practice before the Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the Patent and Trademark Office that under the provisions of this [part] ▶ Subchapter ◀ and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. In filing such a paper, the ▶ registered ◀ attorney or agent should specify his or her registration number with his or her signature. Further proof of authority to act in a representative capacity may be required.

4. The center heading preceding § 1.341 would be removed.

§§ 1.341-1.348 [Removed]

5. Sections 1.341 through 1.348 would be removed.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

6. Section 2.11 would be revised to read as follows:

§ 2.11 Applicants may be represented by an attorney.

The owner of a trademark may file and prosecute his ▶ or her ◀ own application for registration of such trademark, or he ▶ or she ◀ may be represented by an attorney or other [person] ▶ individual ◀ authorized to practice in trademark cases ▶ under § 10.14 of this Subchapter ◀. The Patent and Trademark Office cannot aid in the selection of an attorney or other representative.

§§ 2.12-2.16 [Removed]

7. Sections 2.12 through 2.16 would be removed.

8. Sections 2.17 would be amended by revising paragraph (a) as follows:

§ 2.17 Recognition for representation.

(a) When an attorney [at law] ▶ as defined in § 10.1(c) of this Subchapter ◀ acting in a representative capacity appears in person or signs a paper in practice before the Patent and Trademark Office in a trademark case, his ▶ or her ◀ personal appearance or signature shall constitute a representation to the Patent and Trademark Office that ▶, ◀ under the provisions of [these rules] ▶ § 10.14 ◀ and the law ▶, ◀ he ▶ or she ◀ is authorized [and qualified under § 2.12(a).] to represent the particular party in whose behalf he ▶ or she ◀ acts. Further proof of authority to act in a representative capacity may be required.

9. Section 2.19 would be revised as follows:

§ 2.19 Revocation of power of attorney or of other authorization to represent ▶, withdrawal ◀.

▶ (a) ◀ Authority to represent an applicant or a party to a proceeding may be revoked at any stage in the proceedings of a case upon notification to the Commissioner; and when it is so revoked, the Office will communicate directly with the applicant or party to the proceeding or with such other qualified person as may be authorized. The Patent and Trademark Office will notify the person affected of the revocation of his ▶ or her ◀ authorization.

▶ (b) ◀ An individual authorized to represent an applicant or party in a trademark case may withdraw upon application to and approval by the Commissioner. ◀

10. The following Part 10 would be added:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

Sec.

- 10.1 Definitions.
- 10.2 Director of Enrollment and Discipline.
- 10.3 Committee on Enrollment.
- 10.4 Committee on Discipline.

Individuals Entitled To Practice Before the Patent and Trademark Office

- 10.5 Register of attorneys and agents in patent cases.
- 10.6 Registration of attorneys and agents.
- 10.7 Requirements for registration.
- 10.8 Oath and registration fee.
- 10.9 Limited recognition in patent cases.
- 10.10 Individuals not registered or recognized to practice in patent cases.
- 10.11 Removing names from the register.
- 10.12-10.13 [Reserved].
- 10.14 Individuals who may practice before the Office in trademark and other non-patent cases.
- 10.15 Refusal to recognize a practitioner.
- 10.16-10.17 [Reserved].
- 10.18 Signature and certificate of practitioner.
- 10.19 [Reserved].

Patent and Trademark Office Code of Professional Responsibility

- 10.20 Canons and disciplinary rules.
- 10.21 Canon 1.
- 10.22 Maintaining integrity and competence of the legal profession.
- 10.23 Misconduct.
- 10.24 Disclosure of information to authorities.
- 10.25-10.29 [Reserved].
- 10.30 Canon 2.
- 10.31 Communications concerning a practitioner's services.
- 10.32 Advertising.
- 10.33 Direct contact with prospective clients.
- 10.34 Communication of fields of practice.
- 10.35 Firm names and letterheads.
- 10.36 Fees for legal services.
- 10.37 Division of fees among practitioners.
- 10.38 Agreements restricting the practice of a practitioner.
- 10.39 Acceptance of employment.
- 10.40 Withdrawal from employment.
- 10.41-10.45 [Reserved].
- 10.46 Canon 3.
- 10.47 Aiding unauthorized practice of law.
- 10.48 Sharing legal fees.
- 10.49 Forming a partnership with a non-practitioner.
- 10.50-10.55 [Reserved].
- 10.56 Canon 4.
- 10.57 Preservation of confidences and secrets of a client.
- 10.58-10.60 [Reserved].
- 10.61 Canon 5.
- 10.62 Refusing employment when the interest of the practitioner may impair the practitioner's independent professional judgment.

- Sec.
 10.63 Withdrawal when the practitioner becomes a witness.
 10.64 Avoiding acquisition of interest in litigation or proceeding before the Office.
 10.65 Limiting business relations with a client.
 10.66 Refusing to accept or continue employment if the interests of another client may impair the independent professional judgment of the practitioner.
 10.67 Settling similar claims of clients.
 10.68 Avoiding influence by others than the client.
 10.69-10.75 [Reserved].
 10.76 Canon 8.
 10.77 Failing to act competently.
 10.78 Limiting liability to client.
 10.79-10.82 [Reserved].
 10.83 Canon 7.
 10.84 Representing a client zealously.
 10.85 Representing a client within the bounds of the law.
 10.86 [Reserved].
 10.87 Communicating with one of adverse interest.
 10.88 Threatening criminal prosecution.
 10.89 Conduct in proceedings.
 10.90-10.91 [Reserved].
 10.92 Contact with witnesses.
 10.93 Contact with officials.
 10.94-10.99 [Reserved].
 10.100 Canon 8.
 10.101 Action as a public official.
 10.102 Statements concerning officials.
 10.103 Practitioner candidate for judicial office.
 10.104-10.109 [Reserved].
 10.110 Canon 9.
 10.111 Avoiding even the appearance of impropriety.
 10.112 Preserving identity of funds and property of client.
 10.113-10.129 [Reserved].

Disciplinary Proceedings

- 10.130 Reprimand, suspension or exclusion.
 10.131 Investigations.
 10.132 Initiating a disciplinary proceeding; reference to an administrative law judge.
 10.133 Conference between Director and practitioner; resignation.
 10.134 Complaint.
 10.135 Service of complaint.
 10.136 Answer to complaint.
 10.137 Supplemental complaint.
 10.138 Contested case.
 10.139 Administrative law judge; appointment; responsibilities; review of interlocutory orders; stays.
 10.140 Representative for Director or respondent.
 10.141 Filing of papers.
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Authority: 5 U.S.C. 500, 35 U.S.C. 6, 31, 32.

§ 10.1 Definitions.

This part governs practice of patent, trademark, and other law before the Patent and Trademark Office. Unless otherwise clear from the context, the following definitions apply to this part:

- (a) "Affidavit" means affidavit, declaration under 35 U.S.C. 25 (see § 1.68 and § 2.20 of this Subchapter), or statutory declaration under 28 U.S.C. 1746.
 (b) "Application" includes an application for a design, plant, or utility patent, an application to reissue any patent, and an application to register a trademark.
 (c) "Attorney" or "lawyer" means an individual who is a member in good standing of the bar of any United States court or the highest court of any State. A "non-lawyer" is a person who is not an attorney or lawyer.
 (d) "Canon" is defined in § 10.20(a).
 (e) "Confidence" is defined in § 10.57(a).
 (f) "Differing interests" include every interest that may adversely affect either the judgment or the loyalty of a practitioner to a client, whether it be a conflicting, inconsistent, diverse, or other interest.
 (g) "Director" means the Director of Enrollment and Discipline.

(h) "Disciplinary Rule" is defined in § 10.20(b).
 (i) "Employee of a tribunal" includes all employees of courts, the Office, and other adjudicatory bodies.

(j) "Giving information" within the meaning of § 10.23(c)(2) includes making (1) a written statement or representation or (2) an oral statement or representation.

(k) "Law firm" includes a professional legal corporation or a partnership.

(l) "Legal counsel" means practitioner.

(m) "Legal profession" includes the individuals who are lawfully engaged in practice of patent, trademark, and other law before the Office.

(n) "Legal service" means any legal service which may lawfully be performed by a practitioner before the Office.

(o) "Legal System" includes the Office and courts and adjudicatory bodies which review matters on which the Office has acted.

(p) "Office" means Patent and Trademark Office.

(q) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(r) "Practitioner" means an attorney or agent registered to practice before the Office in patent cases or an individual authorized under 5 U.S.C. 500(b), or as otherwise provided by this Subchapter, who practices before the Office in trademark cases or other non-patent cases. A "suspended or excluded practitioner" is a practitioner who is suspended or excluded under § 10.156. A "non-practitioner" is an individual who is not a practitioner.

(s) A "proceeding before the Office" includes an application, a reexamination, a protest, a public use proceeding, a patent interference, an *inter partes* trademark proceeding, or any other proceeding which is pending before the Office.

(t) "Professional legal corporation" means a corporation, authorized by law to practice law for profit.

(u) "Registration" means registration to practice before the Office in patent cases.

(v) "Respondent" is defined in § 10.134(a)(1).

(w) "Secret" is defined in § 10.57(a).

(x) "Solicit" is defined in § 10.33.

(y) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

(z) "Tribunal" includes courts, the Office, and other adjudicatory bodies.

(aa) "United States" means the United States of America, its territories and possessions.

§ 10.2 Director of Enrollment and Discipline

(a) *Appointment.* The Commissioner shall appoint a Director of Enrollment and Discipline. In the event of the absence of the Director or a vacancy in the office of the Director, the Commissioner may designate an employee of the Office to serve as acting Director of Enrollment and Discipline.

(b) *Duties.* The Director shall:

(1) Receive and act upon applications for registration, prepare and grade the examination provided for in § 10.7(b), maintain the register, and perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary.

(2) Conduct investigations into possible violations by practitioners of Disciplinary Rules, with the consent of the Committee on Discipline initiate disciplinary proceedings under § 10.132(b), and perform such other duties in connection with investigations

and disciplinary proceedings as may be necessary.

(c) *Review of Director's decision.* Any final decision of the Director refusing to register an individual under § 10.6, recognize an individual under §§ 10.9 or 10.14(c), or reinstate a suspended or excluded petitioner under § 10.160, may be reviewed by petition to the Commissioner upon payment of the fee set forth in § 1.—A petition filed more than 30 days after the date of the decision of the Director may be dismissed as untimely. Any petition shall contain (1) a statement of the facts involved and the points to be reviewed and (2) the action requested. Briefs or memoranda, if any, in support of the petition shall accompany or be embodied therein. The petition will be decided on the basis of the record made before the Director and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record before the Director shall not be submitted with the petition. An oral hearing on the petition will not be granted except when considered necessary by the Commissioner. The Commissioner may delegate to appropriate Office employees the determination of a petition under this section.

§ 10.3 Committee on Enrollment.

(a) The Commissioner may establish a Committee on Enrollment composed of one or more employees of the Office.

(b) The Committee on Enrollment shall, as necessary, advise the Director in connection with the Director's duties under § 10.2(b)(1).

§ 10.4 Committee on Discipline.

(a) The Commissioner shall appoint a Committee on Discipline. The Committee on Discipline shall consist of the Director and at least two Associate Solicitors from the Office of the Solicitor.

(b) The Committee on Discipline shall meet at the request of the Director and after reviewing evidence presented by the Director shall, by majority vote and without involving in any way the Solicitor or any other professional employee on the staff of the Office of the Solicitor, determine whether there is probable cause to bring charges under § 10.132 against a practitioner. When charges are brought against a practitioner:

(1) No member of the Committee on Discipline or employee under the direction of the Director shall participate in rendering a decision on the charges and

(2) The Associate Solicitors on the Committee on Discipline, or such other

employee of the Office as may be designated by the Commissioner, shall act as the prosecuting attorneys in presenting any charges.

(c) No discovery shall be authorized of, and no member of the Committee on Discipline shall be required to testify about, deliberations of the Committee on Discipline.

Individuals Entitled To Practice Before the Patent and Trademark Office

§ 10.5 Register of attorneys and agents in patent cases.

A register of attorneys and agents is kept in the Office on which are entered the names of all individuals recognized as entitled to represent applicants before the Office in the preparation and prosecution of applications for patent. Registration in the Office under the provisions of this part shall only entitle the individuals registered to practice before the Office in patent cases.

§ 10.6 Registration of attorneys and agents.

(a) *Attorneys.* Any citizen of the United States who is an attorney and who fulfills the requirements of this part may be registered as a patent attorney to practice before the Office. When appropriate, any alien who is an attorney, who lawfully resides in the United States, and who fulfills the requirements of this part may be registered as a patent attorney to practice before the Office, *provided:* registration is not inconsistent with the terms upon which the alien was admitted to, and resides in, the United States and *further provided:* the alien may remain registered only (1) If the alien continues to lawfully reside in the United States and registration does not become inconsistent with the terms upon which the alien continues to, lawfully reside in the United States or (2) if the alien ceases to reside in the United States, the alien is qualified to be registered under paragraph (c) of this section. See also § 10.9(b).

(b) *Agents.* Any citizen of the United States who is not an attorney and who fulfills the requirements of this part may be registered as a patent agent to practice before the Office. When appropriate, any alien who is not an attorney, who lawfully resides in the United States, and who fulfills the requirements of this part may be registered as a patent agent to practice before the Office, *provided:* registration is not inconsistent with the terms upon which the alien was admitted to, and resides in, the United States, and *further provided:* the alien may remain registered only (1) If the alien continues to lawfully reside in the United States

and registration does not become inconsistent with the terms upon which the alien continues to lawfully reside in the United States or (2) if the alien ceases to reside in the United States, the alien is qualified to be registered under paragraph (c) of this section. See also § 10.9(b).

Note.—All individuals registered prior to November 15, 1938, were registered as attorneys, whether they were attorneys or not, and such registrations have not been changed.

(c) *Foreigners.* Any foreigner not a resident of the United States who shall file proof to the satisfaction of the Director that he or she is registered and in good standing before the patent office of the country in which he or she resides and practices and who is possessed of the qualifications stated in § 10.7, may be registered as a patent agent to practice before the Office for the limited purpose of presenting and prosecuting patent applications of applicants located in such country, *provided:* the patent office of such country allows substantially reciprocal privileges to those admitted to practice before the United States Patent and Trademark Office. Registration as a patent agent under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain.

(d) *Government employees.* Any officer or employee of the United States who is disqualified by statute (18 U.S.C. 203, 205) from practicing as an attorney or agent in proceedings or other matters before Government departments or agencies, may not be registered to practice before the Office. If any registered attorney or agent becomes an officer or employee of the United States who is disqualified by statute from practicing as an attorney or agent in proceedings and other matters before Government department or agencies, his or her name shall be endorsed as inactive on the register during the period of any employment by the United States. An officer or employee of the United States whose official duties require the preparation and prosecution of applications for patent and who fulfills the requirements of this part may be registered to practice before the Office to the extent necessary to carry out his or her official duties. A written statement describing the official duties of the officer or employee and signed on behalf of the agency employing the officer or employee may be required by the Director.

(e) *Former Office employees.* No individual who has served in the Office will be registered after termination of

his or her services, nor if registered before such service, be reinstated, unless he or she signs a written statement indicating that he or she has read 18 U.S.C. 207. No individual who has served in the patent examining corps of the Office will be registered after termination of his or her services, nor if registered before such service, be reinstated, unless he or she signs a written undertaking (1) Not to prosecute or aid in any manner in the prosecution of any patent application pending in any patent examining group during his or her period of service therein and (2) not to prepare or prosecute or to assist in any manner in the preparation or prosecution of any patent application of another (i) assigned to such group for examination and (ii) filed within two years after the date he or she left such group, without written authorization of the Director. Associated and related classes in other patent examining groups may be required to be included in the undertaking or designated classes may be excluded from the undertaking. When an application for registration or reinstatement is made after resignation from the Office, the applicant will not be registered or reinstated if he or she has prepared or prosecuted or assisted in the preparation or prosecution of any any patent application as indicated in this paragraph.

§ 10.7 Requirements for registration.

(a) No individual will be registered to practice before the Office unless he or she shall:

(1) Apply to the Commissioner in writing on a form supplied by the Director and furnish all requested information and material and

(2) Establish to the satisfaction of the Director that he or she is:

(i) Of good moral character and repute;

(ii) Possessed of the legal, scientific, and technical qualifications necessary to enable him or her to render applicants for patents valuable service; and

(iii) Is otherwise competent to advise and assist applicants for patents in the presentation and prosecution of their applications before the Office.

(b) In order that the Director may determine whether an individual seeking to have his or her name placed upon the register has the qualifications specified in paragraph (a) of this section, satisfactory proof of good moral character and repute and of sufficient basic training in scientific and technical matters must be submitted to the Director.

Except as provided in this paragraph, each applicant for registration must take and pass an examination which is held

from time to time. Each application for admission to take the examination for registration must be accompanied by the fee set forth in § 1.21(a)(1) of this Subchapter. The taking of an examination may be waived in the case of any individual who has actively served for at least four years in the examining corps of the Office. The examination will not be administered as a mere academic exercise.

(c) Within two months from the date an applicant is notified that he or she failed an examination, the applicant may request regrading of the examination upon payment of the fee set forth in § 1. Any applicant requesting regrading shall particularly point out the errors which the applicant believed occurred in the grading of his or her examination.

§ 10.8 Oath and registration fee.

Before an individual may have his or her name entered on the register of attorneys and agents, the individual must, after his or her application is approved, subscribe and swear to an oath or make a declaration prescribed by the Commissioner and pay the registration fee set forth in § 1.21(a)(2) of this Subchapter.

§ 10.9 Limited recognition in patent cases.

(a) Any individual not registered under § 10.6 may, upon a showing of circumstances which render it necessary or justifiable, be given limited recognition by the Director to prosecute as attorney or agent a specified application or specified applications, but limited recognition under this paragraph shall not extend further than the application or applications specified.

(b) When registration of an alien under paragraphs (a) or (b) of § 10.6 is not appropriate, the alien may be given limited recognition as may be appropriate under paragraph (a) of this section.

§ 10.10 Individuals not registered or recognized to practice in patent cases.

Only practitioners who are registered under § 10.6 or individuals given limited recognition under § 10.9 will be permitted to prosecute patent applications of others before the Office.

§ 10.11 Removing names from the register.

(a) Registered attorneys and agents shall notify the Director of any change of address. Any notification to the Director of any change of address shall be separate from any notice of change of address filed in individual applications.

(b) A letter may be addressed to any individual on the register, at the address of which separate notice was last

received by the Director, for the purpose of ascertaining whether such individual desires to remain on the register. The name of any individual failing to reply and give any information requested by the Director within a time limit specified will be removed from the register and the names of individuals so removed will be published in the *Official Gazette*. The name of an individual so removed may be reinstated on the register as may be appropriate and upon payment of the fee set forth in § 1.21(a)(3) of this Subchapter.

§§ 10.12-10.13 [Reserved]

§ 10.14 Individuals who may practice before the Office in trademark and other non-patent cases.

(a) *Attorneys.* Any individual who is an attorney may represent others before the Office in trademark and other non-patent cases. An attorney is not required to apply for registration or recognition to practice before the Office in trademark and other non-patent cases.

(b) *Non-lawyers.* Individuals who are not attorneys are not recognized to practice before the Office in trademark and other non-patent cases, except that individuals not attorneys who were recognized to practice before the Office in trademark cases under this chapter prior to January 1, 1957, will be recognized as agents to continue practice before the Office in trademark cases.

(c) *Foreigners.* Any foreigner not a resident of the United States who shall prove to the satisfaction of the Director that he or she is registered and in good standing before the patent or trademark office of the country in which he or she resides and practices, may be recognized for the limited purpose of representing applicants located in such country before the Office in the presentation and prosecution of trademark applicants, *provided:* the patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark cases before the United States Patent and Trademark Office. Recognition under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain.

(d) Recognition of any individual under this section shall not be construed as sanctioning or authorizing the performance of any act regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No individual other than those specified in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Office in trademark

cases. Any individual may appear in a trademark or other non-patent case in his or her own behalf. Any individual may appear in a trademark case for (1) A firm of which he or she is a member or (2) a corporation or association of which he or she is an officer and which he or she is authorized to represent, if such firm, corporation, or association is a party of a trademark proceeding pending before the Office.

§ 10.15 Refusal to recognize a practitioner.

Any practitioner authorized to appear before the Office may be suspended or excluded in accordance with the provisions of this part. Any practitioner who is suspended or excluded under § 10.156(b) or removed under § 10.111(b) shall not be entitled to practice before the Office.

§§ 10.16-10.17 [Reserved]

§ 10.18 Signature and certificate of practitioner.

(a) Every paper filed by a practitioner representing an applicant or party to a proceeding in the Office must bear the signature of, and be personally signed by, such practitioner except those papers which are required to be signed by the applicant or party. The signature of practitioner to a paper filed by him or her, constitutes a certificate that:

- (1) The paper has been read;
 - (2) The paper's filing is authorized;
 - (3) To the best of his or her knowledge, information, and belief, there is good ground to support the paper, including any allegations of improper conduct contained or alleged therein; and
 - (4) It is not interposed for delay.
- (b) Any practitioner knowingly violating the provisions of this section is subject to disciplinary action. See § 10.23(c)(15).

§ 10.19 [Reserved]

Patent and Trademark Office Code of Professional Responsibility

§ 10.20 Canons and Disciplinary Rules.

(a) Canons are set out in §§ 10.21, 10.30, 10.46, 10.56, 10.61, 10.76, 10.83, 10.100, and 10.110. Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of practitioners in their relationships with the public, with the legal system, and with the legal profession.

(b) Disciplinary Rules are set out §§ 10.22-10.24, 10.31-10.40, 10.47-10.57, 10.62-10.68, 10.77, 10.78, 10.84, 10.85, 10.87-10.89, 10.92, 10.93, 10.101-10.103, 10.111, and 10.112. Disciplinary Rules are

mandatory in character and state the minimum level of conduct below which no practitioner can fall without being subjected to disciplinary action.

§ 10.21 Canon 1.

A practitioner should assist in maintaining the integrity and competence of the legal profession.

§ 10.22 Maintaining integrity and competence of the legal profession.

(a) A practitioner is subject to discipline if the practitioner has made a materially false statement in, or if the practitioner has deliberately failed to disclose a material fact requested in connection with, the practitioner's application for registration or membership in the bar of any United States court or any State or his or her authority to otherwise practice before the Office in trademark and other non-patent cases.

(b) A practitioner shall not further the application for registration or membership in the bar of any United States court, State, or administrative agency of another person known by the practitioner to be unqualified in respect to character, education, or other relevant attribute.

§ 10.23 Misconduct.

(a) A practitioner shall not engage in disreputable or gross misconduct.

- (b) A practitioner shall not:
 - (1) Violate a Disciplinary Rule.
 - (2) Circumvent a Disciplinary Rule through actions of another.
 - (3) Engage in illegal conduct involving moral turpitude.
 - (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
 - (5) Engage in conduct that is prejudicial to the administration of justice.
 - (6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to:

- (1) Conviction of a criminal offense involving moral turpitude, dishonesty, or breach of trust.
- (2) Knowingly giving false or misleading information or knowingly participating in a material way in giving false or misleading information, to:
 - (i) A client in connection with any immediate, prospective, or pending business before the Office.
 - (ii) The Office or any employee of the Office.
 - (3) Misappropriation of, or failure to properly or timely remit, funds received

by a practitioner or the practitioner's firm from a client to pay a fee which the client is required by law to pay to the Office.

(4) Directly or indirectly improperly influencing, attempting to improperly influence, offering or agreeing to improperly influence, or attempting to offer or agree to improperly influence an official action of any employee of the Office by:

(i) Use of threats, false accusations, duress, or coercion,

(ii) An offer of any special inducement or promise of advantage, or

(iii) Bestowing of any gift, favor, or thing of value.

(5) Suspension or disbarment from practice as an attorney or agent by any duly constituted authority of a State or the United States or, in the case of a practitioner who resides in a foreign country or is registered under § 10.6(c), suspension or disbarment as an attorney or agent by any duly constituted authority of:

- (i) A State,
- (ii) The United States, or
- (iii) The country in which the practitioner resides.

(6) Knowingly aiding or abetting a practitioner, suspended or excluded from practice before the Office in engaging in unauthorized practice before the Office under § 10.158.

(7) Knowingly withholding from the Office information identifying a patent or application of another from which one or more claims have been copied.

(8) Failing to forward, or failing to notify the Office of an inability to forward, to a client correspondence received from the Office or the client's opponent in an *inter partes* proceeding before the Office which could have a significant effect on a matter pending before the Office and received by a practitioner on behalf of a client or former client when:

(i) Responsibility of the practitioner for the pending matter has not been terminated pursuant to §§ 1.36 or 2.19 of this Subchapter or

(ii) The practitioner has not been authorized to withdraw pursuant to §§ 1.36 or 2.19, of this Subchapter. See §§ 10.40, 10.63, and 10.68.

(9) Knowingly misusing a certificate of mailing under § 1.8 of this Subchapter or a certificate of "Express Mail" under § 1.10 of this Subchapter.

(10) Violating the duty of candor or good faith requirements of § 1.56(a) of this Subchapter.

(11) Knowingly filing, or causing to be filed, an application which is subject to being stricken under § 1.56(c) of this Subchapter.

(12) In the absence of information sufficient to establish a reasonable belief in the existence of probable cause that a practitioner is in violation of, or has violated, a Disciplinary Rule, causing a disciplinary investigation to be made, or a disciplinary proceeding to be brought, against the practitioner by a court, a state, or an administrative agency.

(13) Knowingly preparing or prosecuting a patent application in violation of an undertaking signed under § 10.6(e).

(14) Knowingly failing to advise the Director in writing of any change which would preclude continued registration under § 10.6.

(15) Knowingly signing a paper filed in the Office in violation of the provisions of § 10.18 or including scandalous or indecent matter in a paper filed in the Office.

(16) Willfully refusing to reveal or report knowledge or evidence to the Director contrary to § 10.24 or paragraph (b) of § 10.131.

(17) Representing before the Office in a patent case either a joint venture comprising an inventor and an invention developer or an inventor referred to the registered practitioner by an invention developer when (i) The registered practitioner knows, or should have reasonably known, that a formal complaint filed by a federal or state agency, based on any violation of any law relating to securities, unfair methods of competition, unfair or deceptive acts or practices, mail fraud, or other civil or criminal conduct, is pending before a federal or state court or federal or state agency, or has been resolved unfavorably by such court or agency, against the invention developer in connection with invention development services and (ii) the registered practitioner fails to fully advise the inventor of the existence of the pending complaint or unfavorable resolution thereof prior to undertaking or continuing representation of the joint venture or inventor. "Invention developer" means any person, and any agent, employee, officer, partner, or independent contractor thereof, who is not a registered practitioner and who advertises invention development services in media of general circulation or who enters into contracts for invention development services with customers as a result of such advertisement. "Invention development services" means acts of invention development required or promised to be performed, or actually performed, or both, by an invention developer for a customer. "Invention development" means the evaluation, perfection,

marketing, brokering, or promotion of an invention on behalf of a customer by an invention developer, including a patent search, preparation of a patent application, or any other act done by an invention developer for consideration toward the end of procuring or attempting to procure a license, buyer, or patent for an invention. "Customer" means any individual who has made an invention and who enters into a contract for invention development services with an invention developer with respect to the invention by which the inventor becomes obligated to pay the invention developer less than \$5,000 (not to include any additional sums which the invention developer is to receive as a result of successful development of the invention). "Contract for invention development services" means a contract for invention development services with an invention developer with respect to an invention made by a customer by which the inventor becomes obligated to pay the invention developer less than \$5,000 (not to include any additional sums which the invention developer is to receive as a result of successful development of the invention).

(18) In the absence of information sufficient to establish a reasonable belief that fraud or inequitable conduct has occurred, alleging before a tribunal that anyone has committed a fraud on the Office or engaged in inequitable conduct in a proceeding before the Office.

(d) A practitioner who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity. Deceitful statements or half-truths or concealment of material facts shall be deemed actual fraud within the meaning of this part.

§ 10.24 Disclosure of information to authorities.

(a) A practitioner possessing unprivileged knowledge of a violation of a Disciplinary Rule shall report such knowledge to the Director.

(b) A practitioner possessing unprivileged knowledge or evidence concerning another practitioner, employee of the Office, or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of practitioners, employees of the Office, or judges.

§ 10.30 Canon 2.

A practitioner should assist the legal profession in fulfilling its duty to make legal counsel available.

§ 10.31 Communications concerning a practitioner's services.

(a) No practitioner shall with respect to any prospective business before the Office, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any prospective applicant or other person having immediate or prospective business before the Office.

(b) A practitioner may not use the name of a Member of either House of Congress or of an individual in the service of the United States in advertising the practitioner's practice before the Office.

(c) Unless a practitioner is an attorney, the practitioner shall not hold himself or herself out to be an attorney or lawyer or as authorized to practice before the Office in trademark and other non-patent cases.

§ 10.32 Advertising.

(a) Subject to § 10.31, a practitioner may advertise services through public media, including a telephone directory, legal directory, newspaper, or other periodical, radio, or television, or through written communications not involving solicitation as defined by § 10.33.

(b) A copy or recording of an advertisement or written communication shall be kept for two years after its last dissemination along with a record of when and where it was used. Upon a written request by the Director, a practitioner shall make the copy or recording available to the Director.

(c) A practitioner shall not give anything of value to a person for recommending the practitioner's services, except that a practitioner may pay the reasonable cost of advertising or written communication permitted by this section and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

(d) Any communication made pursuant to this section shall include the name of at least one practitioner responsible for its content.

§ 10.33 Direct contact with prospective clients.

A practitioner may not solicit professional employment from a prospective client with whom the practitioner has no family or prior professional relationship, by mail, in person or otherwise, when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain under circumstances evidencing undue influence, intimidation, or overreaching. The term "solicit" includes contact in person, by telephone or telegraph, by

letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not specifically known to need legal services of the kind provided by the practitioner in a particular matter, but who are so situated that they might in general find such services useful.

§ 10.34 Communication of fields of practice.

A registered practitioner may state or imply that the practitioner is a specialist as follows:

(a) A registered practitioner who is an attorney may use the designation "Patent Attorney," "Patent Lawyer," "Registered Patent Attorney," or a substantially similar designation.

(b) A registered practitioner who is not an attorney may use the designation "Patents," "Patent Agent," "Registered Patent Agent," or a substantially similar designation.

§ 10.35 Firm names and letterheads.

(a) A practitioner shall not use a firm name, letter head, or other professional designation that violates § 10.31. A trade name may be used by a practitioner in private practice if it does not imply a current connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of § 10.31.

(b) Practitioners may state or imply that they practice in a partnership or other organization only when that is the fact.

§ 10.36 Fees for legal services.

(a) A practitioner shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(b) A fee is clearly excessive when, after a review of the facts, a practitioner of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the practitioner.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the practitioner or practitioners performing the services.

(8) Whether the fee is fixed or contingent.

§ 10.37 Division of fees among practitioners.

(a) A practitioner shall not divide a fee for legal services with another practitioner who is not a partner in or associate of the practitioner's law firm or law office, unless:

(1) The client consents to employment of the other practitioner after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the practitioners does not clearly exceed reasonable compensation for all legal services rendered to the client.

(b) This section does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

§ 10.38 Agreements restricting the practice of a practitioner.

(a) A practitioner shall not be a party to or participate in a partnership or employment agreement with another practitioner that restricts the right of a practitioner to practice before the Office after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(b) In connection with the settlement of a controversy or suit, a practitioner shall not enter into an agreement that restricts the practitioner's right to practice before the Office.

§ 10.39 Acceptance of employment.

A practitioner shall not accept employment on behalf of a person if the practitioner knows or it is obvious that such person wishes to:

(a) Bring a legal action or commence a proceeding before the Office, or conduct a defense, or assert a position in litigation or any proceeding pending before the Office, or otherwise have steps taken for the person, merely for the purpose of harassing or maliciously injuring any other person.

(b) Present a claim or defense in litigation or any proceeding before the Office that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

§ 10.40 Withdrawal from employment.

(a) A practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office (see §§ 1.36, and 2.19 of this Subchapter). In any event, a practitioner shall not withdraw from employment until the practitioner has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to another practitioner, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules. A practitioner who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(b) *Mandatory withdrawal.* A practitioner representing a client before the Office shall withdraw from employment if:

(i) The practitioner knows or it is obvious that the client is bringing a legal action, commencing a proceeding before the Office, conducting a defense, or asserting a position in litigation or any proceeding pending before the Office, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any person;

(2) The practitioner knows or it is obvious that the practitioner's continued employment will result in violation of a Disciplinary Rule;

(3) The practitioner's mental or physical condition renders it unreasonably difficult for the practitioner to carry out the employment effectively; or

(4) The practitioner is discharged by the client.

(c) *Permissive withdrawal.* If paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matters pending before the Office, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The petitioner's client:

(i) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

(ii) Personally seeks to pursue an illegal course of conduct;

(iii) Insists that the practitioner pursue a course of conduct that is illegal or that is prohibited under a Disciplinary Rule.

(iv) By other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively;

(v) Insists, in a matter not pending before a tribunal, that the practitioner engage in conduct that is contrary to the judgment and advice of the practitioner but not prohibited under the Disciplinary Rule; or

(vi) Deliberately disregards an agreement or obligation to the practitioner as to expenses or fees;

(2) The practitioner's continued employment is likely to result in a violation of a Disciplinary Rule;

(3) The practitioner's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;

(4) The practitioner's mental or physical condition renders it difficult for the practitioner to carry out the employment effectively;

(5) The practitioner's client knowingly and freely assents to termination of the employment; or

(6) The practitioner believes in good faith, in a proceeding pending before the Office, that the Office will find the existence of other good cause for withdrawal.

§§ 10.41—10.45 [Reserved].

§ 10.46 Canon 3.

A practitioner should assist in preventing the unauthorized practice of law.

§ 10.47 Aiding unauthorized practice of law.

(a) A practitioner shall not aid a non-practitioner in the unauthorized practice of law before the Office.

(b) A practitioner shall not aid a suspended or excluded practitioner in the practice of law before the Office.

(c) A practitioner shall not aid a non-lawyer in the unauthorized practice of law.

§ 10.48 Sharing legal fees.

(a) A practitioner or a firm of practitioners shall not share legal fees with a non-practitioner except that:

(1) An agreement by a practitioner with the practitioner's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the practitioner's death, to the practitioner's estate or to one or more specified persons.

(2) A practitioner who undertakes to complete unfinished legal business of a deceased practitioner may pay to the estate of the deceased practitioner that proportion of the total compensation which fairly represents the services rendered by the deceased practitioner.

(3) A practitioner or firm of practitioners may include non-practitioner employees in a compensation or retirement plan, even

though the plan is based in whole or in part on a profit-sharing arrangement, providing such plan does not circumvent another Disciplinary Rule.

§ 10.49 Forming a partnership with a non-practitioner.

A practitioner shall not form a partnership with a non-practitioner if any of the activities of the partnership consist of the practice of patent, trademark, or other law before the Office.

§§ 10.50—10.55 [Reserved].

§ 10.56 Canon 4.

A practitioner should preserve the confidences and secrets of a client.

§ 10.57 Preservation of confidences and secrets of a client.

(a) "Confidence" refers to information protected by the attorney-client or agent-client privilege under applicable law. "Secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(b) Except when permitted under paragraph (c) of this section, a practitioner shall not knowingly:

(1) Reveal a confidence or secret of a client.

(2) Use a confidence or secret of a client to the disadvantage of the client.

(3) Use a confidence or secret of a client for the advantage of the practitioner or of a third person unless the client consents after full disclosure.

(c) A practitioner may reveal:

(1) Confidences or secrets with the consent of the client affected but only after a full disclosure to the client.

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of a client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect the practitioner's fee or to defend the practitioner or the practitioner's employees or associates against an accusation of wrongful conduct.

(d) A practitioner shall exercise reasonable care to prevent the practitioner's employee's associates, and others whose services are utilized by the practitioner from disclosing or using confidences or secrets of a client, except that a practitioner may reveal the information allowed by paragraph (c) of this section through an employee.

§§ 10.58—10.60 [Reserved].

§ 10.61 Canon 5.

A practitioner should exercise independent professional judgment on behalf of a client.

§ 10.62 Refusing employment when the interest of the practitioner may impair the practitioner's independent professional judgment.

(a) Except with the consent of a client after full disclosure, a practitioner shall not accept employment if the exercise of the practitioner's professional judgment on behalf of the client will be or reasonably may be affected by the practitioner's own financial, business, property, or personal interests.

(b) A practitioner shall not accept employment in contemplated or pending litigation or a proceeding in the Office if the practitioner knows or it is obvious that the practitioner or another practitioner in the practitioner's firm ought to sign an affidavit to be filed in the Office or be called as a witness, except that the practitioner may undertake the employment and the practitioner or another practitioner in the practitioner's firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the practitioner or the practitioner's firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the practitioner or the practitioner's firm as counsel in the particular case.

§ 10.63 Withdrawal when the practitioner becomes a witness.

(a) If, after undertaking employment in contemplated or pending litigation or a proceeding in the Office, a practitioner learns or it is obvious that the practitioner or another practitioner in the practitioner's firm ought to sign an affidavit to be filed in the Office or be called as a witness on behalf of a practitioner's client, the practitioner shall withdraw from the conduct of the trial or proceeding and the practitioner's firm, if any, shall not continue representation in the trial or proceeding, except that the practitioner may continue the representation and the practitioner or another practitioner in the practitioner's firm may testify in the circumstances enumerated in § 10.62(b)(1) through (4).

(b) If, after undertaking employment in contemplated or pending litigation or a proceeding in the Office, a practitioner learns or it is obvious that the practitioner or another practitioner in the practitioner's firm may be asked to sign an affidavit to be filed in the Office or be called as a witness other than on behalf of the practitioner's client, the practitioner may continue the representation until it is apparent that the practitioner's affidavit or testimony is or may be prejudicial to the practitioner's client.

§ 10.64 Avoiding acquisition of interest in litigation or proceeding before the Office.

(a) A practitioner shall not acquire a proprietary interest in the subject matter of a proceeding before the Office which the practitioner is conducting for a client, except that the practitioner may:

(1) Acquire a lien granted by law to secure the practitioner's fee or expenses.

(2) Contract with a client for a reasonable contingent fee.

(b) While representing a client in connection with a contemplated or pending proceeding before the Office, a practitioner shall not advance or guarantee financial assistance to a client, except that a practitioner may advance or guarantee the expenses of going forward in a proceeding before the Office including fees required by law to be paid to the Office, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

§ 10.65 Limiting business relations with a client.

(a) A practitioner shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the practitioner to exercise professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(b) Prior to conclusion of all aspects of the matter giving rise to a practitioner's employment, a practitioner shall not enter into any arrangement or understanding with a client or a prospective client by which the practitioner acquires an interest in publication rights with respect to the subject matter of the practitioner's employment or proposed employment.

§ 10.66 Refusing to accept or continue employment if the interests of another client may impair the independent professional judgment of the practitioner.

(a) A practitioner shall decline proffered employment if the exercise of the practitioner's independent

professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve the practitioner in representing differing interests, except to the extent permitted under paragraph (c) of this section.

(b) A practitioner shall not continue multiple employment if the exercise of the practitioner's independent professional judgment in behalf of a client will be or is likely to be adversely affected by the practitioner's representation of another client, or if it would be likely to involve the practitioner in representing differing interests, except to the extent permitted under paragraph (c) of this section.

(c) In the situations covered by paragraphs (a) and (b) of this section a practitioner may represent multiple clients if it is obvious that the practitioner can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of the practitioner's independent professional judgment on behalf of each.

(d) If a practitioner is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner, or associate, or any other practitioner affiliated with the practitioner or the practitioner's firm, may accept or continue such employment unless otherwise ordered by the Director or Commissioner.

§ 10.67 Settling similar claims of clients.

A practitioner who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against the practitioner's clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

§ 10.68 Avoiding influence by others than the client.

(a) Except with the consent of the practitioner's client after full disclosure, a practitioner shall not:

(1) Accept compensation from one other than the practitioner's client for the practitioner's legal services to or for the client.

(2) Accept from one other than the practitioner's client anything of value related to the practitioner's representation of or the practitioner's employment by the client.

(b) A practitioner shall not permit a person who recommends, employs, or pays the practitioner to render legal services for another to direct or regulate the practitioner's professional judgment in rendering such legal services.

(c) A practitioner shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A non-practitioner owns any interest therein, except that a fiduciary representative of the estate of a practitioner may hold the stock or interest of the practitioner for a reasonable time during administration;

(2) A non-practitioner is a corporate director or officer thereof; or

(3) A non-practitioner has the right to direct or control the professional judgment of a practitioner.

§§ 10.69—10.75 [Reserved]

§ 10.76 Canon 6.

A practitioner should represent a client competently.

§ 10.77 Failing to act competently.

A practitioner shall not:

(a) Handle a legal matter which the practitioner knows or should know that the practitioner is not competent to handle, without associating with the practitioner another practitioner who is competent to handle it.

(b) Handle a legal matter without preparation adequate in the circumstances.

(c) Neglect a legal matter entrusted to the practitioner.

§ 10.78 Limiting liability to client.

A practitioner shall not attempt to exonerate himself or herself from, or limit his or her liability to, a client for his or her personal malpractice.

§ 10.83 Canon 7.

A practitioner should represent a client zealously within the bounds of the law.

§ 10.84 Representing a client zealously.

(a) A practitioner shall not intentionally:

(1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by paragraph (b) of this section. A practitioner does not violate the provisions of this section, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and

consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but a practitioner may withdraw as permitted under §§ 10.40, 10.63, and 10.66.

(3) Prejudice or damage a client during the course of a professional relationship, except as required under § 10.85.

(b) In representation of a client, a practitioner may:

(1) Where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.

(2) Refuse to aid or participate in conduct that the practitioner believes to be unlawful, even though there is some support for an argument that the conduct is legal.

§ 10.85 Representing a client within the bounds of the law.

(a) In representation of a client, a practitioner shall not:

(1) Initiate or defend any proceeding in the Office, assert a position, conduct a defense, delay a trial or proceeding in the Office, or take other action on behalf of the practitioner's client when the practitioner knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that a practitioner may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which the practitioner is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when the practitioner knows or it is obvious that the evidence is false.

(7) Destroy a document or other material that the practitioner knows or should know is relevant to a pending proceeding in the Office or a proceeding in the Office that is reasonably foreseeable or counsel, advise, or assist another person to do so.

(8) Counsel or assist a client in conduct that the practitioner knows to be illegal or fraudulent.

(9) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(b) A practitioner who receives information clearly establishing that:

(1) A client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call

upon the client to rectify the same, and if the client refuses or is unable to do so the practitioner shall reveal the fraud to the affected person or tribunal, except when the information is protected as a privileged communication.

(2) A person other than a client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

§ 10.86 [Reserved].

§ 10.87 Communicating with one of adverse interest.

During the course of representation of a client, a practitioner shall not:

(a) Communicate or cause another to communicate on the subject of the representation with a party the practitioner knows to be represented by another practitioner in that matter unless the practitioner has the prior consent of the other practitioner representing such other party or is authorized by law to do so.

(b) Give advice to a person who is not represented by a practitioner other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the practitioner's client.

§ 10.88 Threatening criminal prosecution.

A practitioner shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in any prospective or pending proceeding before the Office.

§ 10.89 Conduct in proceedings.

(a) A practitioner shall not disregard or advise a client to disregard any provision of this Subchapter or a decision of the Office made in the course of a proceeding before this Office, but the practitioner may take appropriate steps in good faith to test the validity of such provision or decision.

(b) In presenting a matter to the Office, a practitioner shall disclose:

(1) Legal authority known to the practitioner to be directly adverse to the position of the client and which is not disclosed by opposing counsel or an employee of the Office.

(2) Unless privileged or irrelevant, the identities of the client the practitioner represents and of the persons who employed the practitioner.

(c) In appearing in a professional capacity before a tribunal, a practitioner shall not:

(1) State or allude to any matter that the practitioner has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that the practitioner has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert the practitioner's personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert the practitioner's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the practitioner may argue, on the practitioner's analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known customs of courtesy or practice of the Office without giving to opposing counsel timely notice of the practitioner's intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any provision of this Subchapter or established rule of evidence.

§§ 10.90—10.91 [Reserved]

§ 10.92 Contact with witnesses.

(a) A practitioner shall not suppress any evidence that the practitioner or the practitioner's client has a legal obligation to reveal or produce.

(b) A practitioner shall not advise or cause a person to be sequestered or to leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness therein.

(c) A practitioner shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' affidavit, testimony or the outcome of the case. But a practitioner may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending, testifying, or making an affidavit.

(2) Reasonable compensation to a witness for the witness' loss of time in attending, testifying, or making an affidavit.

(3) A reasonable fee for the professional services of an expert witness.

§ 10.93 Contact with officials.

(a) A practitioner shall not give or lend anything of value to a judge, official, or employee of a tribunal under circumstance which might give the appearance that the gift or loan is made to influence official action.

(b) In an adversary proceeding, including any *inter partes* proceeding in

the Office, a practitioner shall not communicate, or cause another to communicate, as to the merits of the cause with a judge, official, or Office employee before whom the proceeding is pending, except:

- (1) In the course of official proceedings in the cause.
- (2) In writing if the practitioner promptly delivers a copy of the writing to opposing counsel or to the adverse party if practitioner is not represented by a practitioner.
- (3) Orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a practitioner.
- (4) As otherwise authorized by law.

§§ 10.94–10.99 [Reserved]

§ 10.100 Canon 8.

A practitioner should assist in improving the legal system.

§ 10.101 Action as a public official.

(a) A practitioner who holds public office shall not:

- (1) Use the practitioner's public position to obtain, or attempt to obtain, a special advantage in legislative matters for the practitioner or for a client under circumstances where the practitioner knows or it is obvious that such action is not in the public interest.
- (2) Use the practitioner's public position to influence, or attempt to influence, a tribunal to act in favor of the practitioner or of a client.
- (3) Accept any thing of value from any person when the practitioner knows or it is obvious that the offer is for the purpose of influencing the practitioner's action as a public official.
- (b) A practitioner who is an officer or employee of the United States shall not practice before the Office in patent cases except as provided in § 10.6(d).

§ 10.102 Statements concerning officials.

- (a) A practitioner shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office or to a position in the Office.
- (b) A practitioner shall not knowingly make false accusations against a judge, other adjudicatory officer, or employee of the Office.

§ 10.103 Practitioner candidate for judicial office.

A practitioner who is a candidate for judicial office shall comply with applicable provisions of law.

§§ 10.104–10.109 [Reserved]

§ 10.110 Canon 9.

A practitioner should avoid even the appearance of professional impropriety.

§ 10.111 Avoiding even the appearance of impropriety.

- (a) A practitioner shall not accept private employment in a matter upon the merits of which he or she has acted in a judicial capacity.
- (b) A practitioner shall not accept private employment in a matter in which he or she had personal responsibility while a public employee.
- (c) A practitioner shall not state or imply that the practitioner is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

§ 10.112 Preserving identity of funds and property of client.

(a) All funds of clients paid to a practitioner or a practitioner's firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained:

- (1) In the case of a practitioner whose office is located in the United States, in the State in which the practitioner's office is situated or
- (2) In the case of the a practitioner having an office in a foreign country or registered under § 10.6(c) in the United States or the foreign country.
- (b) No funds belonging to the practitioner or the practitioner's firm shall be deposited in the bank accounts required by paragraph (a) of this section except as follows:
 - (1) Funds reasonably sufficient to pay bank charges may be deposited therein.
 - (2) Funds belonging in part to a client and in part presently or potentially to the practitioner or the practitioner's firm must be deposited therein, but the portion belonging to the practitioner or the practitioner's firm may be withdrawn when due unless the right of the practitioner or the practitioner's firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A practitioner shall:

- (1) Promptly notify a client of the receipt of the client's funds, securities, or other properties.
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the practitioner and render appropriate accounts to the client regarding the funds, securities, or other properties.
- (4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the

possession of the practitioner which the client is entitled to receive.

Disciplinary Proceedings

§ 10.130 Reprimand, suspension or exclusion.

(a) The Commissioner may, after notice and opportunity for a hearing, (1) reprimand or (2) suspend or exclude, either generally or in any particular case, any individual, attorney, or agent shown to be incompetent or disreputable, who is guilty of gross misconduct, or who violates a Disciplinary Rule.

(b) Petitions to disqualify a practitioner in *ex parte* or *inter partes* cases in the Office are not governed by §§ 10.130 through 10.161 and will be handled on a case-by-case basis under such conditions as the Commissioner deems appropriate.

§ 10.131 Investigations.

(a) The Director is authorized to investigate possible violations of Disciplinary Rules by practitioners. See § 10.2(b)(2). The investigation shall be such as to determine whether there is probable cause to believe that a violation of a Disciplinary Rule by a practitioner has occurred.

(b) Practitioners shall report and reveal to the Director any knowledge or evidence required by § 10.24. A practitioner shall cooperate with the Director in connection with any investigation under paragraph (a) of this section and with officials of the Office in connection with any disciplinary proceeding instituted under § 10.132(b).

(c) Any non-practitioner possessing knowledge or information concerning a violation of a Disciplinary Rule by a practitioner may report the violation to the Director. The Director may require that report be presented in the form of an affidavit.

§ 10.132 Initiating a disciplinary proceeding; reference to an administrative law judge.

(a) If after conducting an investigation under § 10.131(a) the Director is of the opinion that there is probable cause to believe that a practitioner has violated a Disciplinary Rule, the Director shall, after complying where necessary with the provisions of 5 U.S.C. 558(c), call a meeting of the Committee on Discipline. The Committee on Discipline shall then determine as specified in § 10.4(b) whether a disciplinary proceeding shall be instituted under paragraph (b) of this section.

(b) If the Committee on Discipline determines that probable cause exists to believe that a practitioner has violated a

Disciplinary Rule, the Director shall institute a disciplinary proceeding by filing a complaint under § 10.134. The complaint shall be filed in the Office of the Director. A disciplinary proceeding may result in:

- (1) A reprimand or
- (2) Suspension or exclusion of a practitioner from practice before the Office.

(c) Upon the filing of a complaint under § 10.134, the Commissioner will refer the disciplinary proceeding to an administrative law judge.

§ 10.133 Conference between Director and practitioner; resignation.

(a) *General.* The Director may confer with a practitioner concerning possible violations by the practitioner of a Disciplinary Rule whether or not a disciplinary proceeding has been instituted.

(b) *Resignation.* A practitioner may avoid institution or conclusion of a disciplinary proceeding by resigning from practice before the Office. Any practitioner who resigns from practice before the Office after a complaint has been filed under § 10.134 and who thereafter applies for reinstatement must comply with the provisions of § 10.158.

(c) *Settlement.* Before or after a complaint is filed under § 10.134, a settlement conference may occur between the Director and a practitioner for the purpose of settling any disciplinary matter. If an offer of settlement is made by the Director or the practitioner and is not accepted by the other, no reference to the offer of settlement or its refusal shall be admissible in evidence in the disciplinary proceeding unless both the Director and the practitioner agree in writing.

§ 10.134 Complaint.

(a) A complaint instituting a disciplinary proceeding shall:

- (1) Name the practitioner, who may then be referred to as the "respondent."
- (2) Give a plain and concise description of the violations of the Disciplinary Rules by the practitioner.
- (3) State the place and time for filing an answer by the respondent.
- (4) State that a decision by default may be entered against the respondent if an answer is not timely filed.
- (5) Be signed by the Director.
- (b) A complaint will be deemed sufficient if it fairly informs the respondent of any violation of the Disciplinary Rules which form the basis for the disciplinary proceeding so that the respondent is able to adequately prepare a defense.

§ 10.135 Service of complaint.

(a) A complaint may be served on a respondent in any of the following methods:

(1) By handing a copy of the complaint personally to the respondent, in which case the individual handing the complaint to the respondent shall file an affidavit with the Director indicating the time and place the complaint was handed to the respondent.

(2) By mailing a copy of the complaint by "Express Mail" or first-class mail to:

- (i) A registered practitioner at the address for which separate notice was last received by the Committee on Enrollment or
- (ii) A non-registered practitioner at the last address for the respondent known to the Director.

(3) By any method mutually agreeable to the Director and the respondent.

(b) If a complaint served by mail under paragraph (a)(2) of this section is returned by the U.S. Postal Service, the Director shall mail a second copy of the complaint to the respondent. If the second copy of the complaint is also returned by the U.S. Postal Service, the Director shall serve the respondent by publishing an appropriate notice in the *Official Gazette* for four consecutive weeks, in which case the time for answer shall be at least thirty days from the fourth publication of the notice.

(c) If a respondent is a registered practitioner, the Director may serve simultaneously with the complaint a letter under § 10.11(b). The Director may require the respondent to answer the § 10.11(b) letter within a period not less than 15 days. An answer to the § 10.11(b) letter shall constitute proof of service. If the respondent fails to answer the § 10.11(b) letter, his or her name will be removed from the register as provided by § 10.11(b).

(d) If the respondent is represented by an attorney under § 10.140(a), a copy of the complaint shall also be served on the attorney.

§ 10.136 Answer to complaint.

(a) *Time for answer.* An answer to a complaint shall be filed within a time set in the complaint which shall be not less than thirty days.

(b) *With whom filed.* The answer shall be filed in writing with the administrative law judge. The time for filing an answer may be extended once for a period of no more than thirty days by the administrative law judge upon a showing of good cause provided a motion requesting an extension of time is filed within thirty days after the date the complaint is filed by the Director. A copy of the answer shall be served on the Director.

(c) *Content.* The respondent shall include in the answer a statement of the facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the complaint. The respondent shall not deny a material allegation in the complaint which the respondent knows to be true or state that respondent is without sufficient information to form a belief as to the truth of an allegation when in fact the respondent possesses that information. The respondent shall also state affirmatively special matters of defense.

(d) *Failure to deny allegations in complaint.* Every allegation in the complaint which is not denied by a respondent in the answer is deemed to be admitted and may be considered proven. No further evidence in respect of that allegation need be received by the administrative law judge at any hearing. Failure to timely file an answer will constitute an admission of the allegations in the complaint.

(e) *Reply by Director.* No reply to an answer is required by the Director and any new matter in the answer shall be deemed to be denied. The Director may, however, file a reply if he or she chooses or if ordered by the administrative law judge.

§ 10.137 Supplemental complaint.

False statements in an answer may be made the basis of a supplemental complaint.

§ 10.138 Contested case.

Upon the filing of an answer by the respondent, a disciplinary proceeding shall be regarded as a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 shall not be admitted into the record or considered unless leave to proceed under 35 U.S.C. 24 was previously authorized by the administrative law judge.

§ 10.139 Administrative law judge; appointment; responsibilities; review of interlocutory orders; stays.

(a) *Appointment.* An administrative law judge, appointed under 5 U.S.C. 3105, shall conduct disciplinary proceedings as provided by this part.

(b) *Responsibilities.* The administrative law judge shall have authority to:

- (1) Administer oaths and affirmations;
- (2) Make rulings upon motions and other requests;
- (3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;
- (4) Authorize the taking of a deposition of a witness in lieu of

personal appearance of the witness before the administrative law judge;

(5) Determine the time and place of any hearing and regulate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues;

(7) Receive and consider oral or written arguments on facts of law;

(8) Adopt procedures and modify procedures from time to time as occasion requires for the orderly disposition of proceedings;

(9) Make initial decisions under § 10.154; and

(10) Perform acts and take measures as necessary to promote the efficient and timely conduct of any disciplinary proceeding.

(c) *Time for making initial decision.* The administrative law judge shall set times and exercise control over a disciplinary proceeding such that an initial decision under § 10.154 is normally issued within six months of the date a complaint is filed. The administrative law judge may, however, issue an initial decision more than six months after a complaint is filed if in his or her opinion there exist unusual circumstances which preclude issuance of an initial decision within six months of the filing of the complaint.

(d) *Review of interlocutory orders.* An interlocutory order of administrative law judge will not be reviewed by the Commissioner except:

(1) When the administrative law judge shall be of the opinion (i) that the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion and (ii) that an immediate decision by the Commissioner may materially advance the ultimate termination of the disciplinary proceeding or

(2) In an extraordinary situation where justice requires review.

(e) *Stays pending review of interlocutory order.* If the Director or a respondent seek review of an interlocutory order of an administrative law judge under paragraph (b)(2) of this section, any time period set for taking action by the administrative law judge shall not be stayed unless ordered by the Commissioner or the administrative law judge.

§ 10.140 Representative for Director or respondent.

(a) A respondent may be represented before the Office in connection with an investigation or disciplinary proceeding by an attorney. The attorney shall file a written declaration that he or she is an

attorney within the meaning of § 10.1(c) and shall state:

(1) The address to which the attorney wants correspondence related to the investigation or disciplinary proceeding sent and

(2) A telephone number where the attorney may be reached during normal business hours.

(b) In disciplinary proceedings, the Director shall be represented as provided in § 10.4(b)(2).

§ 10.141 Filing of papers.

(a) The provisions of § 1.8 of this Subchapter do not apply to disciplinary proceedings.

(b) All papers filed after the complaint and prior to entry of an initial decision by the administrative law judge shall be filed with the administrative law judge at an address or place designated by the administrative law judge. All papers filed after entry of an initial decision by the administrative law judge shall be filed with the Director. The Director shall promptly forward to the Commissioner any paper which requires action under this part by the Commissioner.

§ 10.142 Service of papers.

(a) All papers other than a complaint shall be served on a respondent represented by an attorney by:

(1) Delivering a copy of the paper to the office of the attorney;

(2) Mailing a copy of the paper by first-class mail or "Express Mail" to the attorney at the address provided by the attorney under § 10.140(a)(1);

(3) Any other method mutually agreeable to the attorney and a representative for the Director.

(b) All papers other than a complaint shall be served on a respondent who is not represented by an attorney by:

(1) Delivering a copy of the paper to the respondent; or

(2) Mailing a copy of the paper by first-class mail or "Express Mail" to the respondent at the address to which a complaint may be served or such other address as may be designated in writing by the respondent; or

(3) Any other method mutually agreeable to the respondent and a representative of the Director.

(c) A respondent shall serve on the representative for the Director one copy of each paper filed with the administrative law judge or the Director. A paper may be served on the representative for the Director by:

(1) Delivering a copy of the paper to the representative;

(2) Mailing a copy of the paper by first-class mail or "Express Mail" to an

address designated in writing by the representative; or

(3) Any other method mutually agreeable to the respondent and the representative.

(d) Each paper filed in a disciplinary proceeding shall contain therein a certificate of service indicating:

(1) The date on which service was made and

(2) The method by which service was made.

(e) The administrative law judge or the Commissioner may require that a paper be served by hand or by "Express Mail."

(f) Service by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service.

§ 10.143 Motions.

Motions may be filed with the administrative law judge. The administrative law judge will determine on a case-by-case basis the time period for response to a motion and whether replies to responses will be authorized. No motion shall be filed with the administrative law judge unless such motion is supported by a written statement by the moving party that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If issues raised by a motion are resolved by the parties prior to a decision on the motion by the administrative law judge, the parties shall promptly notify the administrative law judge.

§ 10.144 Hearings.

(a) The administrative law judge shall preside at hearings in disciplinary proceedings. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be received under oath or affirmation. The administrative law judge shall conduct hearings in accordance with 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. A copy of the transcript shall be provided to the Director and the respondent at the expense of the Office.

(b) If the respondent to a disciplinary proceeding fails to appear at the hearing after a notice of hearing has been given by the administrative law judge, the administrative law judge may deem the respondent to have waived the right to a hearing and may proceed with the

hearing in the absence of the respondent.

(c) A hearing in a disciplinary proceeding will not be open to the public except that the Director may grant a request by a respondent to open his or her hearing to the public and make the record of the disciplinary proceeding available for public inspection, *provided* agreement is reached in advance to exclude from public disclosure information which is privileged or confidential under applicable laws or regulations. If a disciplinary proceeding results in disciplinary action against a practitioner, the record of the entire disciplinary proceeding will be available for public inspection.

§ 10.145 Proof; variance; amendment of pleadings.

In case of a variance between the evidence and the allegations in a complaint, answer, or reply, if any, the administrative law judge may order or authorize amendment of the complaint, answer, or reply to conform to the evidence. Any party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegations in the complaint, answer, or reply, as amended, and the administrative law judge shall make findings on any issue presented by the complaint, answer, or reply as amended.

§§ 10.146-10.149 [Reserved]

§ 10.150 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings in disciplinary proceedings. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to § 10.151 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Office are admissible without extrinsic evidence of authenticity. These documents, records and papers may be evidenced by a copy certified as correct by an employee of the Office.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any conditions the administrative law judge deems appropriate.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection and the record may not include arguments thereon, except as ordered by the administrative law judge. Rulings on objections will be a part of

the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 10.151 Depositions.

(a) Depositions for use at the hearing in lieu of personal appearance of a witness before the administrative law judge may be taken by respondent or the Director upon a showing of good cause and with the approval of, and under such conditions as may be deemed appropriate by, the administrative law judge. Depositions may be taken upon oral or written questions, upon not less than ten days written notice to the other party, before any officer authorized to administer an oath or affirmation in the place where the deposition is to be taken. The requirement of ten days notice may be waived by the parties and depositions may then be taken of a witness and at a time and place mutually agreed to by the parties. When a deposition is taken upon written questions, copies of the written questions will be served upon the other party with the notice and copies of any written cross-questions will be served by hand or "Express Mail" within five days of the date of the taking of the deposition unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken shall file a copy of a transcript of the deposition signed by a court reporter with the administrative law judge and shall serve one copy upon the opposing party. Expenses for a court reporter and preparing, serving, and filing depositions shall be borne by the party at whose instance the deposition is taken.

(b) When the Director and the respondent agree in writing, a deposition of any witness who will appear voluntarily may be taken under such terms and conditions as may be mutually agreeable to the Director and the respondent. The deposition shall not be filed with the administrative law judge and may not be admitted in evidence before the administrative law judge unless he or she orders the deposition admitted in evidence. The admissibility of the deposition shall lie within the discretion of the administrative law judge who may reject the deposition on any reasonable basis including the fact that demeanor is involved and that the witness should have been called to appear personally before the administrative law judge.

§ 10.152 Discovery.

Discovery shall not be authorized except as follows:

(a) The administrative law judge may require parties to file and serve, prior to

any hearing, a pre-hearing statement which contains

(1) A list (together with a copy) of all proposed exhibits to be used in connection with a party's case-in-chief.

(2) A list of proposed witnesses.

(3) The identity of government employees who have investigated the case and.

(4) Copies of memoranda reflecting respondent's own statements to administrative representatives;

(b) After a witness testifies for a party, if the opposing party requests, the party may be required to produce, prior to cross-examination, any written statement made by the witness.

§ 10.153 Proposed findings and conclusions; post hearing memorandum.

Except in cases when the respondent has failed to answer the complaint, the administrative law judge, prior to making an initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and a post-hearing memorandum in support of the proposed findings and conclusions.

§ 10.154 Initial decision of administrative law judge.

(a) The administrative law judge shall make an initial decision in the case. The decision will include (a) a statement of findings and conclusions, as well as the reasons or basis therefor with appropriate references to the record, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of suspension or exclusion from practice, an order of reprimand, or an order dismissing the complaint. The administrative law judge shall file the decision with the Director and shall transmit a copy to the representative of the Director and respondent or the respondent's attorney of record. In the absence of an appeal to the Commissioner, the decision of the administrative law judge will, without further proceedings, become the decision of the Commissioner of Patents and Trademarks thirty (30) days from the date of the decision of the administrative law judge.

(b) The initial decision of the administrative law judge shall explain the reason for any penalty of suspension or exclusion. In determining any penalty, the following should normally be considered:

(1) The public interest;

(2) The seriousness of the violation of the Disciplinary Rule;

(3) The deterrent effects deemed necessary; and

(4) The integrity of the legal profession.

§ 10.155 Appeal to the Commissioner.

(a) Within thirty (30) days from the date of the initial decision of the administrative law judge under § 10.154, either party may appeal to the Commissioner. An appeal by the respondent will be filed with the Director in duplicate and will include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions. If the Director files the appeal, the Director shall serve a copy of the appeal on the respondent. Within thirty (30) days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director. If the Director files the reply brief, the Director shall serve a copy of the reply brief on the respondent. Upon the filing of an appeal and a reply brief, if any, the Director shall transmit the entire record to the Commissioner.

(b) The appeal will be decided by the Commissioner on the record made before the administrative law judge.

§ 10.156 Decision of the Commissioner.

(a) An appeal from an initial decision of the administrative law judge shall be decided by the Commissioner. The Commissioner may affirm, reverse, or modify the initial decision or remand the matter to the administrative law judge for such further proceedings as the Commissioner may deem appropriate. Entry of a decision by the Commissioner is a final agency action in a disciplinary proceeding. In making a final decision, the Commissioner shall review the record or those portions of the record as may be cited by the parties in order to limit the issues. The Commissioner shall transmit a copy of the final decision to the Director. The Director shall transmit a copy of the Commissioner's final decision to respondent.

(b) A final decision of the Commissioner may dismiss a disciplinary proceeding, reprimand a practitioner, or may suspend or exclude the practitioner from practice before the Office.

§ 10.157 Review of Commissioner's final decision.

Review of the Commissioner's final decision in a disciplinary case may be had by a petition filed in the United States District Court for the District of Columbia. See 35 U.S.C. 32 and Local Rule 1-16 of the United States District Court for the District of Columbia.

§ 10.158 Suspended or excluded practitioner.

(a) A practitioner who is suspended or excluded from practice before the Office under § 10.156(b) shall not engage in unauthorized practice of patent, trademark and other non-patent law before the Office.

(b) Unless otherwise ordered by the Commissioner, any practitioner who is suspended or excluded from practice before the Office under § 10.156(b) shall:

(1) Within 30 days of entry of the order of suspension or exclusion, notify all clients of the practitioner or the practitioner's firm in separate written communications of the suspension or exclusion and shall file a copy of each written communication with the Director.

(2) Within 30 days of entry of the order of suspension or exclusion, surrender a client's active case files to (i) the client or (ii) another practitioner designated by the client.

(3) Not hold himself or herself out as authorized to practice law before the Office.

(4) Promptly take any necessary and appropriate steps to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark or other non-patent law before the Office and, within 30 days of taking those steps, file with the Director an affidavit describing the precise nature of the steps taken.

(5) Not advertise the practitioner's availability or ability to perform or render legal services for any person having immediate, prospective, or pending business before the Office.

(6) Not render legal advice or services to any person having immediate, prospective, or pending business before the Office as to that business.

(7) Promptly take steps to change any sign identifying a practitioner's or the practitioner's firm's office and the practitioner's or the practitioner's firm's stationery to delete therefrom any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice law before the Office.

(8) Within 30 days, return to any client any unearned funds, including any unearned retainer fee, and any securities and property of the client.

(c) A practitioner who is suspended or excluded from practice before the Office and who aids another practitioner in any way in the other practitioner's practice of law before the Office, may, under the direct supervision of the other

practitioner, act as a para-legal for the other practitioner or perform other services for the other practitioner which are normally performed by lay-persons. *provided:* (1) The practitioner who is suspended or excluded is (i) a salaried employee of the other practitioner or the other practitioner's law firm and (ii) does not share profits with the other practitioner or the other practitioner's law firm; (2) the other practitioner assumes full professional responsibility to any client and the Office for any work performed by the suspended or excluded practitioner for the practitioner; (3) the suspended or excluded practitioner, in connection with any immediate, prospective, or pending business before the Office, does not (i) communicate directly in writing, orally, or otherwise with a client of the other practitioner, (ii) render any legal advice, or any legal services, to a client of the other practitioner, or (iii) meet in person or in the presence of the other practitioner, with any client of the other practitioner or the other practitioner's law firm or any witness or potential witness which the other practitioner or the other practitioner's law firm may or intends to call as a witness in any proceeding before the Office. The term "witness" includes individuals who will testify orally in a proceeding before, or sign an affidavit or any other document to be filed in, the Office.

(d) When a suspended or excluded practitioner acts as a para-legal or performs services under paragraph (c) of this section, the suspended or excluded practitioner shall not thereafter be reinstated to practice before the Office unless:

(1) The suspended or excluded practitioner shall have filed with the Director an affidavit which (i) explains in detail the precise nature of all para-legal or other services performed by the suspended or excluded practitioner and (ii) shows by clear and convincing evidence that the suspended or excluded practitioner has complied with the provisions of this section and all Disciplinary Rules and

(2) The other practitioner shall have filed with the Director a written statement which (i) shows that the other practitioner has read the affidavit required by subparagraph (d)(1) of this section and that the other practitioner believes every statement in the affidavit to be true and (ii) states why the other practitioner believes that the suspended or excluded practitioner has complied with paragraph (c) of this section.

§ 10.159 Notice of suspension or exclusion.

(a) Upon issuance of a final decision reprimanding a practitioner or suspending or excluding a practitioner from practice before the Office, the Director shall give notice of the final decision to appropriate employees of the Office and to interested departments, agencies, and courts of the United States. The Director shall also give notice to appropriate authorities of any State in which a practitioner is known to be a member of the bar.

(b) The Director shall cause to be published in the *Official Gazette* the name of any practitioner suspended or excluded from practice. Unless otherwise ordered by the Commissioner, the Director shall publish in the *Official Gazette* the name of the practitioner reprimanded by the Commissioner.

(c) The Director shall maintain records, which shall be available for public inspection, of every disciplinary proceeding where a practitioner is reprimanded, suspended, or excluded unless the Commissioner orders that the proceeding be kept confidential.

§ 10.160 Petition for reinstatement.

(a) A petition for reinstatement of a practitioner suspended for a period of less than five years will not be considered until the period of suspension has passed.

(b) A petition for reinstatement of a practitioner excluded from practice will not be considered until five years after the effective date of the exclusion.

(c) A practitioner who has been suspended or excluded may file a petition for reinstatement. The Director may grant a petition for reinstatement if the Director is satisfied that the suspended or excluded practitioner will conduct himself or herself in accordance with the regulations of this part and that granting a petition for reinstatement is not contrary to the public interest. As a condition to reinstatement, the Director may require a practitioner to:

(1) Meet the requirements of § 10.7, including taking and passing an examination under § 10.7(b), and

(2) Pay all or a portion of the costs and expenses, not to exceed \$1,500, of the disciplinary proceeding which lead to suspension or exclusion.

(d) Any suspended or excluded practitioner who has violated the provisions of § 10.158 during his or her period of suspension or exclusion shall not be entitled to reinstatement until such time as the Director is satisfied that a period of suspension equal in time to that ordered by the Commissioner or exclusion for five years has passed during which the suspended or excluded practitioner has complied with the provisions of § 10.158.

(e) Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any suspended or excluded practitioner, the Director shall publish in the *Official Gazette* a notice of the suspended or excluded practitioner's petition for reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence with respect to the petition for reinstatement.

§ 10.161 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify suspension or exclusion under the provisions of this part.

(b) No practitioner shall be subject to a disciplinary proceeding under this part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

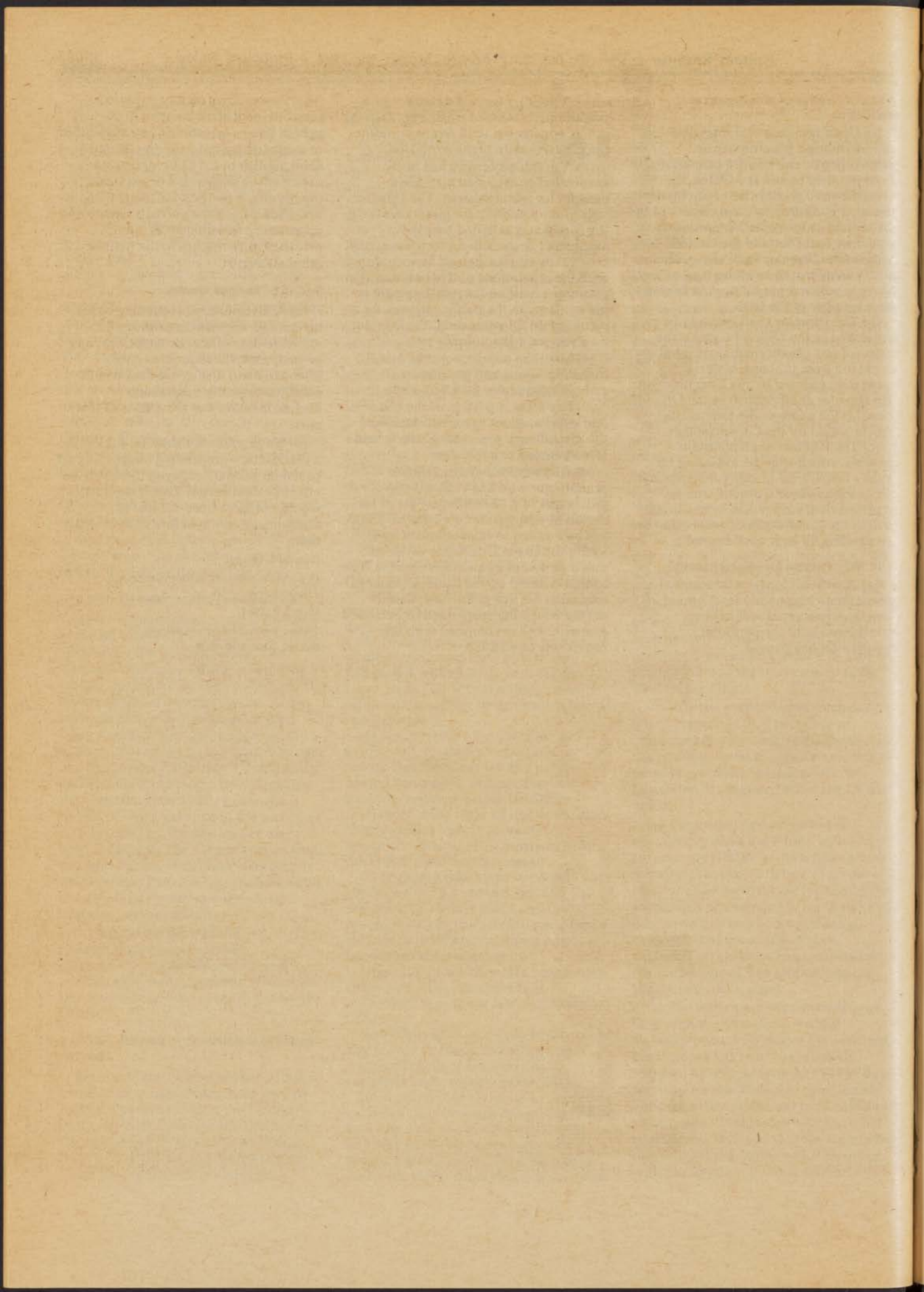
Donald J. Quigg,

Deputy Commissioner of Patents and Trademarks.

March 8, 1984.

[FR Doc. 84-6894 Filed 3-15-84; 8:45 am]

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FAST TRACK REPORT

Friday
March 16, 1984

Part IV

Department of Transportation

Research and Special Programs
Administration

49 CFR Part 171

Detailed Hazardous Materials Incident
Reports; Proposed Rule

49 CFR Part 172

Required Use of Emergency Response
Guidebooks and Material Safety Data
Sheets; Proposed Rule

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 171**

[Docket No. HM-36B; Notice 84-1]

Detailed Hazardous Materials Incident Reports

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Advance Notice of Proposed Rulemaking, and Notice of Public Hearing.

SUMMARY: This notice invites comments on changing the reporting criteria for hazardous materials (hazmat) incidents under 49 CFR 171.16. The purpose of this notice is to review existing regulations for clarity and effectiveness. Comments are also invited on the adequacy of certain of the data fields in DOT Form F 5800.1 for purposes of describing the safety performance record of DOT specification packages. Comments received will be considered in the publication of a notice of proposed rulemaking if it is decided to propose specific changes to the existing requirement for carriers to submit detailed hazardous materials incident reports.

DATES: A public hearing on the matters raised by this notice will be held on May 1, 1984, in Washington, D.C., at 400 Seventh Street, SW., Room 2230, from 9:30 a.m. to 5:00 p.m. Interested persons are invited to participate in the public hearing. The closing date for submission of written comments is June 5, 1984.

ADDRESS: Address comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Branch is located in Room 8426, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday. Telephone (202) 426-3148.

FOR FURTHER INFORMATION CONTACT: J. S. Nalevanko, Office of Regulatory Planning and Analysis, U.S. Department of Transportation, Washington, D.C. 20590, Telephone: (202) 472-2698, or Irving R. Abis, Standards Division, Office of Hazardous Materials Regulation, U.S. Department of

Transportation, Washington, D.C. 20590, Telephone: (202) 426-2075.

SUPPLEMENTARY INFORMATION:**Background**

The Materials Transportation Bureau (MTB) is reviewing the requirements of § 171.16 that each carrier who transports hazardous materials submit to the Department a hazardous materials (hazmat) incident report (DOT Form F 5800.1) for each incident that occurs during the course of transportation (including loading/unloading, or temporary storage). The review was conducted in accordance with Executive Order 12291 as a part of MTB's program to evaluate existing regulations for clarity and to revoke or revise those that are not achieving their intended purpose; or can achieve their intended purpose in a more effective and efficient manner. To accomplish this purpose, a review team consisting of the personnel of several offices of MTB was established.

The review is also consistent with the final rule under Docket HM-36 (35 FR 16836, October 31, 1970) which established the current reporting requirements for hazardous materials incidents. In that docket it was noted that, after a period of time, the Department would evaluate the effectiveness of the incident reporting system and, as appropriate, take further rulemaking action to incorporate additional input on the reporting of hazardous materials incidents.

One of the major objections raised in Docket HM-36 referred to the requirement that a detailed, written report be filed in every case where there "has been an unintentional release of hazardous materials from a package." Many commenters believed that the Department would be flooded with numerous incident reports relating to the release of insignificant amounts of hazardous materials. In response to these comments, the Hazardous Materials Regulations Board (the predecessor of the present Materials Transportation Bureau) stated that it was not in a position to determine whether there are insignificant unintentional releases of hazardous materials that do not warrant the filing of a written report; and that it lacked criteria to establish a line between those releases that should and those that should not be reported.

This Advanced Notice of Proposed Rulemaking is intended to assist MTB in determining what these criteria should be, in light of the more than 130,000 hazmat incident reports submitted to MTB over the past 12 years.

The Present Reporting Requirements

The present reporting requirements of § 171.16 are triggered by the following criteria (Reporting criteria (A) and (B) below also require telephonic reports, as required by § 171.15.):

(A) All releases of a hazardous material, which as a direct result of the hazardous material, result in:

A fatality;

An injury requiring hospitalization; Estimated carrier or other property damage exceeding \$50,000.

(B) All incidents, whether or not there is an actual release of a hazardous material, in which:

A fire, breakage, spillage, or suspected contamination occurs involving shipment of radioactive materials;

A fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; A situation exists of such a nature that in the judgment of the carrier, it should be reported, e.g., a continuing danger to life exists at the scene of the incident.

(C) All unintentional releases of hazardous materials from a package (including a tank) or any quantity of a hazardous waste during transportation, except for the following hazardous materials (except aboard aircraft):

Consumer commodity;

Battery, electric storage, wet, filled with acid or alkali;

Paint and paint related materials when shipped in packagings of five gallons or less.

Under these criteria, an average of 7,900 incidents per year have been reported to MTB over the last two years. The vast majority of these reports pertain to criterion (C)—that is, they do not involve a death, an injury, damage exceeding \$50,000, etc., and are primarily associated with incidents involving small packages, such as drums, bottles, cans, boxes, bags, etc. Approximately 79 percent of all incident reports involve small packages.

Nature and Extent of the Existing Hazmat Incident Reporting Data Base

At the beginning of 1983, there were approximately 130,000 hazmat incident reports (DOT Form F 5800.1) in the hazmat incident computerized data base. These reports span the 12-year period 1971-1982. During the two-year period 1981-1982, the data base increased by an average of 7,900 reports per year. Each report (see DOT Form F 5800.1 at the end of this document) contains approximately 30 primary data

fields (e.g., date of incident, mode, name of carrier, name of shipper, commodity released, etc.). The data fields are further broken down by various codes including the following:

- 11,700 Companies (name, duns number, address, etc.)
- 1,400 Specific hazardous materials (e.g., gasoline)
- 328 Package types and specifications
- 27 Failure codes (e.g., dropped in handling)—of which only 15 actually appear on the report (the other 12 codes being inferred and assigned by MTB personnel)
- 25 Violation codes (e.g., driver not in attendance)
- 25 Significance codes (e.g., incidents involving 1–10 injuries)
- 35 Placard codes (e.g., empty)
- 21 Miscellaneous codes (e.g., vandalism suspected)
- 12 Restriction codes (e.g., removable head not authorized)
- 8 Type of Record codes (e.g., generic container type)

The 30 primary data fields on the incident report, plus the detailed and extensive data codes that have been applied to the reports, lead to an extremely vast and varied data base (e.g., the 30 primary data fields alone can be combined in 2.6×10^{32} or 260 million, trillion trillion ways). Even if a minute fraction of such combinations were analytically useful or meaningful, any attempt to analyze all of them would be very difficult, probably impossible, and in any case, enormously costly.

Several salient aspects of the existing hazmat data base are the following:

There were a total of 282 fatalities and 7,150 minor to severe injuries associated with the approximately 130,000 hazmat incident reports in the data base as of the beginning of 1983. Over the last three years, an annual average of 7,154 incidents, 8 fatalities and 172 injuries have been reported to the MTB.

Twenty-one percent of the 130,000 incident reports pertain to bulk packagings (e.g., cargo tanks, rail tank cars). Over the 12-year period, 1971–1982, hazmat incidents involving these containers resulted in 270 fatalities (96 percent of the total of all hazmat fatalities) and 4,305 injuries (60 percent of the total of all hazmat injuries).

Seventy-nine percent, or 102,700 of the 130,000 incident reports in the data base, pertain to small packages, such as bags, boxes, and drums. Of these 102,700 incidents, 84 percent are accounted for by only five DOT drum specifications, and seven generic or

general purpose packages (e.g. cans, jugs, and bottles) which can be used to transport hazardous materials not requiring a DOT specification package. Over the 1971–1982 period, reported incidents involving these small packages resulted in 12 deaths and 2,845 injuries.

Seventy-six percent of all fatalities and 50 percent of all injuries have involved the following 12 selected hazardous materials.

Hazardous material	Percent total fatalities	Percent total injuries
Gasoline.....	40.2	4.9
LP-Gas.....	18.6	8.8
Anhydrous Am (NH ₃).....	5.7	6.5
Corrosive liquid NOS.....	2.7	2.9
Chlorine.....	2.7	5.5
Explosive, A.....	2.7	0.5
Flammable liquid, NOS.....	1.7	3.7
Sulfuric acid.....	0.7	8.5
Sodium hydroxide.....	0.7	3.0
Hydrochloric acid.....	0.3	2.1
Compound cleaning liquid.....		1.7
Poison liquid, NOS.....		1.5

It is MTB's belief that the continued augmentation of the existing data base under current requirements for incident reporting will not significantly increase an understanding of the causes, the nature, and the consequences associated with hazmat incidents. These incidents primarily pertain to incidents involving small packages.

This belief is based on, (1) the vast amount of data on small packages/containers already in the 12-year data base, (2) the diminishing marginal utility associated with the continued growth in the data base, rather than selective and judicious increases in the data base, in terms of the 30 primary data fields contained in the current incident report form, and (3) given the underlying millions of shipments, vehicle transit miles, and the varied nation-wide transportation environment, the fact that incidents involving small package/container of hazardous materials have been largely low consequences events.

Development of New Reporting Criteria

MTB has sought to develop alternatives to the current reporting criteria in terms of the following set of factors.

(A) Characterization of Hazmat Accident/Incident Event

Type of Event (e.g., in-transit, loading/unloading)

Type of Package (e.g., bulk/non-bulk)

Type of Hazmat (e.g., flammable liquid, explosives, etc.)

Mode (e.g., rail, highway, air, etc.)

Severity of Event

Frequency of Event

(B) Definition of Users

DOT/MTB

Other Federal Agencies
State and Local Governments
Public Interest Groups
Industry

(C) Objectives of Users

Public Safety

Product/Container Performance

Research and Development

Determination of Liability

(D) User Data Requirements

Analytic Purposes (e.g., human factor analysis, cause-consequence analysis, fault-tree analysis, procedures analysis, cost/benefit/risk analysis)

Programmatic and Policy Analysis

(e.g., enforcement and compliance, regulatory development, package performance)

(E) Nature of Data Requirements To Meet Purpose (e.g., essential/non-essential, level of detail, usefulness, i.e., multiple/single purpose applications, utilization, i.e., actual/potential, non-duplicative)

(F) Methods of Data Collection (e.g., routine reporting, special studies/surveys, other data sources)

(G) Costs Incurred in Data Collection (e.g., industry, government)

The above factors are all interrelated and entail a large number of considerations. The following summarizes the review team's major findings concerning them.

In terms of the characterization of a hazmat accident/incident event: clearly, an event involving a hazmat accident/incident—e.g., a cargo tank spill during loading/unloading operations—can be described in an extremely large number of ways, and can serve to generate an enormous array of data such as time of day, weather conditions, age of driver, type of truck, type of valve, manufacturer of valve, age of valve, design characteristics of valve, location of incident, type of hazmat released, amount released, etc.

Further distinctions characterizing a hazmat accident/incident event are also possible and useful. One can distinguish between events in which a hazardous material is actually spilled and events in which a hazardous material package is involved, but no spillage occurs. The current reporting requirements of 171.16, for the most part, pertain to events involving the actual spillage of a hazardous material. An event of this kind is termed an "incident." An event involving a hazmat package (e.g., a gasoline cargo tank overturning) but not involving a spillage of a hazardous material is not required to be reported to MTB. It should be noted, however, that this does not necessarily mean that such an event is not reported to the Department

since, in the case of a cargo tank, it may be reported to the Bureau of Motor Carrier Safety as a motor vehicle accident.

Two further and related distinctions concern the "severity" and "frequency" of hazmat accident/incident events. These distinctions lead to the four-fold typology of:

High consequence—high frequency events.

High consequence—low frequency events.

Low consequence—high frequency events.

Low consequence—low frequency events.

Of the four types of events, the first two are considered of greater inherent concern, even though the remaining two types cannot be completely ignored, because certain types of low consequence events may have the potential for producing very high consequences under certain circumstances.

Just what type or arrays of data are to be generated is a function of the objectives of the users of the data, their data requirements, and a host of other considerations, including the cost associated with collecting, storing, and analyzing the data. Cost is a particularly important consideration, since many people find that certain data are "essential" for their purposes, only so long as they do not bear the cost of obtaining and maintaining the data.

With respect to the users of hazmat data and their objectives, the review team found, perhaps not surprisingly, that MTB is now and will continue to be the "primary" user of such data; that its program data requirements have priority over other user requirements; and that, although other user requirements should be accommodated to the extent possible, the hazmat data base cannot be all things to all possible users.

With respect to the primary objectives to be served from the vast array of data that can be generated by a hazmat accident/incident event, the review team found that these data should (1) serve as an aid in evaluating the effectiveness of the existing regulations, (2) assist in determining the need for regulatory changes to cover transportation safety problems, and (3) determine the major problem areas in hazmat transportation so that the attention of the Department may be more suitably directed to those areas.

To accomplish these objectives, the general nature of the data to be reported to MTB should have the following characteristics:

(A) The data should be *essential*, not merely "desirable." Indeed, the essential

nature of the data is implied by the term "requirement."

(B) Because the data are essential, they must be collected on a *routine basis*, rather than on a one-time, or intermittent, basis.

(C) Because it is a routine procedure, it is not practical that each separate report be of an extremely detailed nature. Extremely detailed data should be obtained through special studies or surveys (follow ups). The data should, therefore, be *general purpose data*, which maximizes their *usefulness* and *actual* (as against potential) *utilization*.

(D) The data should be *non-duplicative* with respect to the existence of other data of the same or similar nature and with respect to the *volume* of data (e.g., 100 incident reports may provide as much information as 1,000 reports) if each report contains essentially the same data.

Change Under Consideration

On the basis of the foregoing discussion, MTB is considering changing § 171.16, with respect to criteria for reporting incidents and the content and format of the report form (DOT Form F 5800.1). Under this change, carriers would be required to submit detailed written reports for incidents having the following characteristics:

(A) All incidents involving telephonic notifications required under § 171.15.

(B) All incidents involving bulk packagings.

(C) All incidents involving transportation aboard aircraft.

(D) All incidents involving property damage from the incident, including cleanup and decontamination, resulting in costs equal to or in excess of \$1,000, incurred or anticipated to be incurred within 15 days of the incident.

(E) All incidents involving the evacuation of people.

(F) All incidents involving materials or packages shipped under MTB's exemption program.

(G) All incidents involving the release of hazardous waste.

Under this approach, § 171.16(a) would read as follows:

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 to the Department within 15 days of the discovery, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which, as a direct result of the hazardous materials, any of the circumstances set forth in § 171.15(a) occurs; and all unintentional releases of hazardous materials involving:

(1) Bulk packagings:

(2) Shipments aboard aircraft or in air terminals;

(3) Property damage, including cleanup and decontamination, resulting in costs equal to or in excess of \$1,000 incurred or reasonably anticipated to be incurred within 15 days of the incident;

(4) The evacuation of people;

(5) Packages or hazardous materials shipped under an exemption; and

(6) Any quantity of hazardous waste that has been discharged during transportation.

The current § 171.16(a)(1) and 171.16(a)(2) requirements pertaining to hazardous waste would be retained and redesignated as §§ 171.16(a)(6)(i), and 171.16(a)(6)(ii).

To assist in the selection of appropriate criteria for the submission of detailed, written reports on hazmat incidents, MTB invites interested persons to participate in this rulemaking. In particular, MTB requests comments addressed to the following questions and submission of any substantiating information:

1. In terms of the foregoing discussion and proposed reporting criteria identified herein, are there other criteria that should be considered for purposes of submitting detailed written reports on accidents or incidents involving hazardous materials? If so, what are they?

2. Does the current DOT incident report form (DOT Form F 5800.1) provide an adequate basis for:

a. Identifying major safety performance trends in the transportation of hazardous materials?

b. Providing a source of data for small packages and bulk packages safety design information and optimization in the transportation environment?

3. Should a separate incident report form be developed to focus exclusively on small package failure mechanisms in the transportation environment (in contrast to the present report form, DOT Form F 5800.1, which is used to describe hazmat incident data involving both packages, e.g., cargo tanks and small package incidents)? What data fields or failure mechanisms might such a report form include?

4. Is a \$1,000 damage figure an adequate criterion for determining a threshold for reporting hazmat incidents that are otherwise without consequence? What is an appropriate property damage reporting criterion? Should an environmental damage criterion be included?

5. If no other formal proposal is made to the present incident reporting system, what changes do you recommend to the format and content of the present

incident report form (DOT Form F 5800.1)?

6. Does your organization report, or is your organization now required to report hazardous material or hazardous waste, or hazardous substance accidents/incidents to another organization (e.g., insurance company, state or local

government, other federal agency)? What are the criteria for reporting such accidents/incidents? Is there a standard form to be filled out? (please attach a copy of such form, if appropriate.)

7. To what extent does your organization utilize hazmat incident data? Does your organization collect

hazmat incident data? If so, what is the source and nature of these data? How often are such data collected (routinely, special surveys, etc.)? If any standardized forms are utilized in the collection of such data, we would appreciate receiving a copy of them.

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Form Approved OMB No. 04-5613

HAZARDOUS MATERIALS INCIDENT REPORT

INSTRUCTIONS: Submit this report in duplicate to the Director, Office of Hazardous Materials Operations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, (ATTN: Op. Div.). If space provided for any item is inadequate, complete that item under Section H, "Remarks", keying to the entry number being completed. Copies of this form, in limited quantities, may be obtained from the Director, Office of Hazardous Materials Operations. Additional copies in this prescribed format may be reproduced and used, if on the same size and kind of paper.

A INCIDENT			
1. TYPE OF OPERATION 1 ☐ AIR 2 ☐ HIGHWAY 3 ☐ RAIL 4 ☐ WATER 5 ☐ FREIGHT FORWARDER 6 ☐ OTHER (Identify) _____			
2. DATE AND TIME OF INCIDENT (Month - Day - Year) _____ a.m. _____ p.m.		3. LOCATION OF INCIDENT _____	
B REPORTING CARRIER, COMPANY OR INDIVIDUAL			
4. FULL NAME _____		5. ADDRESS (Number, Street, City, State and Zip Code) _____	
6. TYPE OF VEHICLE OR FACILITY _____			
C SHIPMENT INFORMATION			
7. NAME AND ADDRESS OF SHIPPER (Origin address) _____		8. NAME AND ADDRESS OF CONSIGNEE (Destination address) _____	
9. SHIPPING PAPER IDENTIFICATION NO. _____		10. SHIPPING PAPERS ISSUED BY ☐ CARRIER ☐ SHIPPER ☐ OTHER (Identify) _____	
D DEATHS, INJURIES, LOSS AND DAMAGE			
DUE TO HAZARDOUS MATERIALS INVOLVED			13. ESTIMATED AMOUNT OF LOSS AND OR PROPERTY DAMAGE INCLUDING COST OF DECONTAMINATION (Round off in dollars) \$ _____
11. NUMBER PERSONS INJURED _____	12. NUMBER PERSONS KILLED _____		
14. ESTIMATED TOTAL QUANTITY OF HAZARDOUS MATERIALS RELEASED _____			
E HAZARDOUS MATERIALS INVOLVED			
15. HAZARD CLASS (*Sec. 172.101, Col. 3) _____	16. SHIPPING NAME (*Sec. 172.101, Col. 2) _____	17. TRADE NAME _____	
F NATURE OF PACKAGING FAILURE			
18. (Check all applicable boxes)			
(1) DROPPED IN HANDLING	(2) EXTERNAL PUNCTURE	(3) DAMAGE BY OTHER FREIGHT	
(4) WATER DAMAGE	(5) DAMAGE FROM OTHER LIQUID	(6) FREEZING	
(7) EXTERNAL HEAT	(8) INTERNAL PRESSURE	(9) CORROSION OR RUST	
(10) DEFECTIVE FITTINGS, VALVES, OR CLOSURES	(11) LOOSE FITTINGS, VALVES OR CLOSURES	(12) FAILURE OF INNER RECEPTACLES	
(13) BOTTOM FAILURE	(14) BODY OR SIDE FAILURE	(15) WELD FAILURE	
(16) CHIME FAILURE	(17) OTHER CONDITIONS (Identify) _____	19. SPACE FOR DOT USE ONLY	

G PACKAGING INFORMATION - If more than one size or type packaging is involved in loss of material show packaging information separately for each. If more space is needed, use Section H "Remarks" below keying to the item number.

ITEM		#1	#2	#3
20	TYPE OF PACKAGING INCLUDING INNER RECEPTACLES (Steel drums, wooden box, cylinder, etc.)			
21	CAPACITY OR WEIGHT PER UNIT (55 gallons, 65 lbs., etc.)			
22	NUMBER OF PACKAGES FROM WHICH MATERIAL ESCAPED			
23	NUMBER OF PACKAGES OF SAME TYPE IN SHIPMENT			
24	DOT SPECIFICATION NUMBER(S) ON PACKAGES (21P, 17E, 3AA, etc., or none)			
25	SHOW ALL OTHER DOT PACKAGING MARKINGS (Part 178)			
26	NAME, SYMBOL, OR REGISTRATION NUMBER OF PACKAGING MANUFACTURER			
27	SHOW SERIAL NUMBER OF CYLINDERS, CARGO TANKS, TANK CARS, PORTABLE TANKS			
28	TYPE DOT LABEL(S) APPLIED			
29	IF RECONDITIONED OR REQUALIFIED, SHOW	A	REGISTRATION NO. OR SYMBOL	
		B	DATE OF LAST TEST OF INSPECTION	
30	IF SHIPMENT IS UNDER DOT OR USCG SPECIAL PERMIT OR EXEMPTION, ENTER PERMIT OR EXEMPTION NO.			

H REMARKS - Describe essential facts of incident including but not limited to defects, damage, probable cause, stowage, action taken at the time discovered, and action taken to prevent future incidents. Include any recommendations to improve packaging, handling, or transportation of hazardous materials. Photographs and diagrams should be submitted when necessary for clarification.

31. NAME OF PERSON PREPARING REPORT (Type or print)

32. SIGNATURE

33. TELEPHONE NO. (Include Area Code)

34. DATE REPORT PREPARED

List of Subjects in 49 CFR Part 171

Hazardous materials transportation, incident reporting.

It is requested that persons who desire to present oral comments at the public hearing notify Mr. Nalevanko or Mr. Abis by letter or telephone before April 30, 1984.

Note.—The Materials Transportation Bureau has determined that this document will not result in a significant regulation under DOT's regulatory policy and procedures (44 FR 11034). A preliminary economic evaluation of several alternatives is available for review in the docket. (49 U.S.C. 1804, 1806; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

Issued in Washington, D.C., on March 12, 1984.

Alan I. Roberts,

Associate Director for Hazardous, Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-7026 Filed 3-15-84; 8:45 am]

BILLING CODE 4910-60-M

49 CFR Part 172

[Docket No. HM-126C; Notice 84-2]

Required Use Of Emergency Response Guidebooks and Material Safety Data Sheets

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Advance Notice of Proposed Rulemaking and Notice of Public Hearing.

SUMMARY: This Notice solicits comments on the potential benefits and consequences of required use of Emergency Response Guidebooks (ERG) and/or Material Safety Data Sheets (MSDS's) to communicate information on the hazards of materials while they are moving in commerce. This solicitation is intended not only to address emergency situations involving significant discharges of hazardous materials, but what must be known about them when they are present in transport vehicles (including vessels and aircraft), and facilities associated with transportation such as terminals, piers, warehouses and other places where hazardous materials may be kept during the course of transportation.

DATES: A public hearing pertaining to the matters raised by this notice will be held on May 2, 1984, from 9:30 a.m. to 5:00 p.m. in room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Interested persons are invited to participate in the public hearing. The closing date for

submission of written comments is June 26, 1984.

ADDRESS: Address comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in five copies. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lee E. Metcalfe, Chief, Regulations Development Branch, Standards Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590; (202) 426-2075.

SUPPLEMENTARY INFORMATION: The National Transportation Safety Board (NTSB) has recommended that the Department of Transportation determine, by mode of transportation, the feasibility of requiring comprehensive product-specific emergency response information such as MSDS's for hazardous materials moving in bulk quantities. The American Trucking Associations, Inc. (ATA) has petitioned MTB for a rule requiring placement of Emergency Response Guidebooks in certain transportation facilities. Comments that relate to the ATA petition have been received from other parties. This notice solicits comments on the potential benefits and consequences of required use of the ERG and/or MSDS's to communicate information on the hazards of materials while they are moving in commerce.

This notice contains a substantial amount of material that is directly quoted. Primary sources of the quoted material are as follows:

NTSB—National Transportation Safety Board, 800 Independence Avenue, SW., Washington, D.C. 20594, James E. Burnett, Chairman

ATA—American Trucking Associations, Inc., 1616 P Street, NW., Washington, D.C. 20036, Robert A. Hirsch, Attorney and Richard M. Doyle, Hazardous Materials Specialist

IBT—International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 25 Louisiana Avenue, NW., Washington, D.C. 20001, R. V. Durham, Director, Department of Safety and Health

WTA—Wyoming Trucking Association, Inc., 109 Rancho Avenue, Casper, Wyoming 82602, Larry E. Meredith, Managing Director.

The following are also referenced in this notice:

CIS—NIH/EPA Chemical Information System, CIS User Support Group, Computer Sciences Corporation, P.O. Box 2227, Falls Church, VA 22042, Katherine Noble, Project Manager

CHEMTREC—Chemical Transportation Emergency Center, Chemical Manufacturers Association, 2501 M Street, NW., Washington, D.C. 20037, Joe J. Mayhew, Director

NFPA—National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, Robert W. Grant, President

AAR—Association of American Railroads, Washington, D.C., Thomas Phemister, Director, Bureau of Explosives

ERG—Emergency Response Guidebook, Materials Transportation Bureau, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590, Alan I. Roberts, ERG Project Manager

As background to its Safety Recommendation I-83-2, issued November 29, 1983, NTSB stated the following:

About 11:00 a.m., e.s.t., on October 13, 1982, an eastbound tractor/cargo-tank semitrailer, owned and operated by Matlack, Incorporated, overturned when its driver took evasive action to avoid a head-on collision with a westbound pickup truck with another pickup truck in tow that crossed the centerline on State Route 299 approximately one-fourth mile west of Odessa, Delaware. The tank-trailer contained 5,600 gallons of divinylbenzene (DVB), 150 gallons of which leaked from the tank through a clean-out cap and a pressure relief device in the dome. As a result of the accident, five persons were treated for injuries at a local hospital; four (including the two Matlack drivers) were released and one was admitted for further treatment. In addition, 48 emergency response persons were treated and released for respiratory problems and skin rashes associated with exposure to the DVB.

Police officers were notified of a highway accident but were not informed that a hazardous material was involved. Upon arrival, police and ambulance crews devoted their activities to site security and first-aid to the crash victims.

The first arriving police officers reviewed the shipping papers and then returned them to the driver. The shipping papers described the cargo as "5,600 gallons of COMBUSTIBLE LIQUID, not otherwise specified (n.o.s.) (Divinylbenzene, 55, Inhibited) NA 1993." The truck was properly placarded in accordance with Department of Transportation regulations.

Approximately 100 emergency response personnel responded to the accident, but none of them had either previous experience

or formal training for handling a hazardous materials transportation accident.

About 1 hour after the crash, emergency response persons began complaining of respiratory and skin problems, and 48 of them were evacuated from the accident site and taken to a hospital for treatment, including the police officers who initially examined the cargo's shipping papers. About the same time, Matlack's drivers were also transported to a hospital and carried the shipping papers with them.

The emergency response personnel at the site knew the name of the cargo, but initially were unable to obtain information on its potential hazards and on the emergency response procedures to follow. When Matlack officials arrived on-scene and discovered that the shipping papers were not in the truck cab, a police official called the hospital where the drivers were being treated to obtain a verbatim reading of the papers. The papers confirmed the name of the cargo, but they did not contain emergency response guidance. The hospital treating the 48 emergency response persons did not have medical treatment information on DVB and substituted the medical treatment prescribed for benzene exposure.

The primary, on-scene reference material on hazardous materials was the *Hazardous Materials Emergency Response Guidebook* (Guidebook) 1980 edition, published by the Materials Transportation Bureau, Research and Special Programs Administration, U.S. Department of Transportation.

Divinylbenzene is not one of the hazardous materials listed by name in the Guidebook.

Witnesses stated that emergency personnel looked for divinylbenzene in the Guidebook and, upon discovering that it was not listed, followed the response guidelines prescribed for divinyl ether—the only Guidebook entry with the term "divinyl." The entry for divinyl ether refers the reader to Guide 30, which first describes the material as a poison which may be fatal through inhalation, oral intake, or skin absorption, and second, capable of producing a spreading, flammable vapor. Information contained on the truck's placards (I.D. #1993, U.N. hazard class #3, and a flame symbol over a red background) directs the emergency response personnel to Guide 26 in the Guidebook; however, witnesses reported that the placards, although undamaged and unobscured, were not used to identify the cargo during the early stages of the incident. The appropriate guide, #26, first describes the various commodities in this group, including DVB, as capable of burning, and second, of producing vapors which may cause dizziness or suffocation as well as skin and eye irritation. The difference in the primary risk described in the two guides would explain the limited caution exercised by emergency response personnel.

The absence of shipping papers, the failure to observe placards, and the misuse or misunderstanding of the *Hazardous Materials Emergency Response Guidebook* reportedly combined to increase uncertainty among public officials, to protract the incident both in time and scope, and to lead to a reduced level of cooperation between emergency response personnel and carrier representatives. The lack of experience and

training of those responding to this accident in handling hazardous materials and the lack of emergency response information specific to the transported hazardous material are by no means unique in highway accidents throughout the Nation.

Progress has been made over the last decade in providing information to emergency response groups on hazardous materials involved in accidents; however, critical information available to first arriving emergency personnel is still limited in many respects, especially for n.o.s. products. The Department of Transportation regulations require that hazardous materials shipments be placarded and accompanied by shipping documents. In addition, the Department has expended considerable time and effort in developing, updating, and disseminating nearly one-half million copies of its *Hazardous Materials Emergency Response Guidebook* for use by emergency response personnel. However, this Guidebook (for sound practical reasons) and the required shipping documents lack physical property data, medical treatment guidance, environmental precautions, and detailed hazard conditions which are specific to the commodity in transit. These data sources give emergency responders general information on the potential hazards during the first 20-30 minutes into the accident. In most cases, however, additional references must be identified, quickly accessed, and used to determine the hazards and remedies for the specific commodity being transported.

Specific emergency guidance information is often not readily available when n.o.s. shipments are involved in accidents. For example, the I.D. number on the placard in this incident was "1993" which identifies divinylbenzene also applies to 17 other commodities or groups of commodities listed in the tables of 49 CFR 172. In addition, n.o.s. commodities are less likely to be included in commonly used emergency response guides than are specified commodities. Divinylbenzene, for example, in addition to not being listed in DOT's *Hazardous Materials Emergency Response Guidebook*, is not listed in the U.S. Coast Guard's *Chemical Hazards Response Information System* (CHRIS) manual, the Association of American Railroad's *Emergency Handling of Hazardous Materials in Surface Transportation Guide*, or the National Institute for Occupational Safety and Health/Occupational Safety and Health Administration (NIOSH/OSHA) "Pocket Guide to Chemical Hazards"—some of the most widely used guides. Divinylbenzene is listed in the *Fire Protection Guide on Hazardous Materials*, published by the National Fire Protection Association.

The Safety Board is aware that the development and distribution to emergency responders of an all purpose data sheet for every hazardous material subject to transportation would be a formidable and expensive task. Fortunately, information of this type already exists for most chemicals manufactured in this country. One source is the Material Safety Data Sheet which, in two pages, provides the manufacturer's name, physical property data, medical treatment, fire and explosion hazards, environmental

protection guidance, protective measures, and other hazard information—all specific to the chemical in question. The OSHA recommends that a Material Safety Data Sheet be available at the workplace for each hazardous material which is handled there. An OSHA official reported that it is "rare" to find a manufacturing or shipping facility which does not follow this recommendation. The Safety Board is also aware that these documents are commercially available from a variety of sources. Moreover, one commercial service collects chemical and protective action data from a variety of government and industry sources and provides hard-copy information via a telephone-computer link to subscribers of the service.

The product-specific information available from such sources would be an asset to emergency response personnel if it were to accompany the shipping papers. Such information is widely used and readily available to shippers and manufacturers and could be supplied by carriers at a minimal cost per shipment. The Safety Board believes that use of this type of information as a part of the hazardous materials shipping documents which greatly benefit the effective handling of emergencies involving bulk shipments of hazardous materials. The ranking emergency response official at the Odessa incident obtained a divinylbenzene Materials Safety Data Worksheet on the second day of the emergency. According to the official, had the data sheet been available at the outset, considerable time would have been saved in identifying the cargo, the health effects from exposure to the hazardous materials, and the type of emergency activities necessary to respond to the accident.

Therefore, the National Transportation Safety Board recommends that the U.S. Department of Transportation, Research and Special Programs Administration: Determine, by mode of transportation, the feasibility of requiring comprehensive product-specific emergency response information such as Materials Safety Data Sheets, to be appended to shipping documents for hazardous materials transported in bulk quantities, giving particular attention to the early emergency response problems posed by n.o.s. commodities in transit. For those modes of transportation for which a positive determination results, incorporate necessary requirements into Title 49 of the Code of Federal Regulations. (Class 11, Priority Action) (I-83-2)

The following basic health threat information is stated for divinylbenzene in NFPA's *Fire Protection Guide on Hazardous Materials* (NFPA 49), Seventh Edition: LIFE HAZARD—Moderately toxic by inhalation. Eye and respiratory irritant. Effect on skin unknown but probably little, if any.

The following basic health threat information is taken from the Material Safety Data Sheet prepared by the manufacturer of the divinylbenzene involved in the accident referenced by

the NTSB: TOXICITY—Moderately toxic by inhalation. Irritating to eyes and respiratory tract. Effect on skin unknown, but considered to be negligible.

The following basic health threat information is taken from Guide 26 of the 1980 Emergency Response Guidebook (DOT-P 5800.2): HEALTH HAZARDS—Vapors may cause dizziness or suffocation. Contact may irritate or burn skin and eyes. Fire may produce irritating or poisonous gases.

The following is the initial information on the basic health threat of divinylbenzene that is provided to a caller by CHEMTREC: Inhalation of vapors can cause irritation to eyes and respiratory tract. Contact with liquid can irritate skin and eyes.

The following is the basic health threat data for divinylbenzene contained in the CIS system: DIRECT CONTACT—Potentially [irritating] With Prolonged Contact Skin, Eyes. GENERAL SENSATION—Possible Dizziness Or Drowsiness From Vapors. Mild Eye Irritation But No Corneal Damage. Disagreeable Odor. ACUTE HAZARD LEVEL—Moderate Inhalative Toxicant. CHRONIC HAZARD LEVEL—Moderate Inhalation Hazard When Exposed Chronically At Sublethal Concentrations. Prolonged Skin Contact May Cause Irritation. DEGREE OF HAZARD TO PUBLIC HEALTH—Moderated Inhalative Hazard From Both Acute And Chronic Exposures. 1.5-2 Cupful Estimated Lethal Dose to Man [by ingestion].

By letter dated October 26, 1983, ATA petitioned for amendment to the Hazardous Materials Regulations as follows:

Pursuant to the provisions of 49 CFR 106.31, ATA hereby petitions U.S. Department of Transportation (DOT) to require, by rule, motor carriers involved in the transportation of hazardous materials to maintain a copy of the Emergency Response Guidebook (Guidebook), DOT P5800.2, at each motor carrier facility where hazardous materials shipments are loaded or unloaded from vehicles.

In its introduction, the Guidebook explains that it "was developed for use by firefighters, police and other emergency response officials as a guide for initial actions to be taken to protect themselves and the public when . . . hand[ling] incidents involving hazardous materials." Although the Guidebook was designed primarily for use at the location of incidents occurring on highways or on railroads, the introduction goes on to explain DOT's belief that the Guidebook should also be of value in handling incidents occurring at terminal facilities. The motor carrier industry concurs.

Without question, the Guidebook provides essential information about each of the

materials classified by DOT as hazardous. This information is set forth in the Guidebook in a comprehensive, yet efficient and practical format. The Guidebook transforms the DOT's numerical hazardous (sic) identification system into an effective emergency response system, by providing information that can be quickly located, easily understood, and utilized by any response personnel in any emergency.

Experience has shown that the majority of hazardous materials incidents in the motor carrier industry have occurred at terminal locations; that incidents, in general, occur infrequently; and, that most of these have involved minor spills. Nonetheless, the benefits which emergency response personnel have realized at highway and rail incidents by using the Guidebook—a fact recently testified to by the International Association of Fire Chief¹—should be no less great for incidents occurring at terminals. The Guidebook should prove invaluable during the initial phases of incident response, and it should facilitate both prompt and effective first aid to any terminal worker who may accidentally come into contact with a hazardous material.

At present, many motor carriers have already taken the initiative by voluntarily making the Guidebook available to their terminal workers. However, a DOT requirement that it be made available at all terminal locations will be of industry-wide significance, benefiting the public at the same time.

The DOT's promulgation of this rule will address another industry concern as well. Currently, a growing number of jurisdictions have already required, or are considering requiring, motor carriers to make material safety data sheets available at their terminals.

The necessity that motor carriers maintain and make available a material safety data sheet for each hazardous material that may in the course of a year pass through their terminals poses a substantial burden upon carriers. It does so without realizing benefits in addition to those which the Guidebook already can achieve. The essential emergency response information, and first aid and health risk information contained in each is virtually the same. However, the contents and format of material safety data sheets is not standardized. It can and, indeed, does vary with each manufacturer preparing one. Further, not every chemical manufacturer currently prepares data sheets for its products, nor is a data sheet prepared for every material manufactured. In addition, most data sheets are keyed to the product's trade name rather than to the DOT's proper shipping name. When it is considered that the motor carrier workers, for whom the material safety data sheets are purportedly intended, are already familiar with the DOT proper shipping name, the placarding and labeling requirements, and all of the other relevant DOT regulations, it seems clear that the material safety data sheets would not be

nearly as functional as the Guidebook, especially in an emergency setting. At the same time, the noninclusion of highly technical data in the Guidebook—such as freezing and boiling points; vapor density; vapor pressure; specific gravity; and viscosity—makes the Guidebook more suitable for effective use by lay persons.

Accordingly we urge DOT to adopt this proposed regulations, and that it rule as inconsistent, or otherwise prohibit, the requirements of State and local governments that motor carriers must maintain and make available at their terminal locations material safety data sheets or similar informational guides (excluding the Guidebook) for hazardous materials being transported in commerce.

By letter dated November 7, 1983, ATA supplemented its petition as follows:

On October 26, 1983, American Trucking Associations, Inc. (ATA) petitioned the Materials Transportation Bureau (MTB) regarding the DOT's Emergency Response Guidebook. We asked MTB to adopt a rule requiring "motor carriers involved in the transportation of hazardous materials to maintain a copy of the . . . Guidebook . . . at each motor carrier facility where [such] shipments are loaded or unloaded from vehicles," and to "rule as inconsistent, or otherwise prohibit, the requirements of State and local governments that motor carriers must maintain and make available at their terminal locations material safety data sheets or similar informational guides (excluding the Guidebook) for hazardous materials being transported in commerce."

The purpose of this letter is to supplement our October 26th petition, by clarifying the scope of the relief we requested therein.

As we discussed in our petition, a growing number of State and local governments are requiring that motor carriers maintain and make available to their terminal workers specific information pertaining to chemical and physical properties of and emergency response and first aid information for each hazardous material motor carriers transport. Generally, this information is being required of carriers in the form of a "material safety data sheet."

Pursuant to these State and local laws, a motor carrier's more of several enumerated activities. These activities have included: "transporting"; "distributing"; and, "handling." Additionally, many jurisdictions also regulate "storage."

Without question, motor carriers must perform one or a combination of these activities ("transport", "distribute", "handle") in the normal course of transporting hazardous materials in commerce. Semantics notwithstanding, as a practical matter, such activities (including loading and unloading) embrace the integral functions of a transportation movement.

For the same reason such temporary stoppages in transit as the coming to rest of a container (non-bulk) of a hazardous material in a carrier's terminal while it awaits loading

¹ Proposed Amendments to the Hazardous Materials Transportation Act: Hearing on S. 1106, Title IV, Before the Senate Committee on Commerce, Science and Transportation, 96th Cong., 1st Sess. (1983).

into a vehicle, or the temporary parking in a carrier's terminal area of a fully or partially loaded tank truck prior to its outbound movement should be defined as "transportation." As such, both the activity and the location where they occur should be subject to the Department of Transportation's jurisdiction. These types of temporary cessations in the transportation movement should not be classified as "storage."¹

We want to emphasize that, in petitioning for this rule, the motor carrier industry's intent is not to avoid its responsibility to provide pertinent safety information concerning hazardous materials to its workers. We believe, however, that such information, covering the host of DOT-regulated hazardous materials, is already available through the Guidebook, where it is provided in a format which is provably more effective and efficient than that of material safety data sheets.

By letter dated December 29, 1983, WTA stated the following:

The Wyoming Trucking Association, Inc. endorses the petition filed with your Department by the American Trucking Association, Inc., to require motor carriers involved in the transportation of hazardous materials to maintain a copy of the emergency response guidebook at each facility where hazardous materials are loaded or unloaded from vehicles.

The ATA petition requests that the DOT pre-empt state and local requirements for material data sheets.

Wyoming has many points where hazardous materials are loaded and unloaded, but as a bridge state many more loads cross with closed doors.

By letter dated January 27, 1984, the acting Chief Counsel, Research and Special Programs Administration (RSPA) stated the following in response to the WTA letter:

As the ATA notes in its petition, and as you reiterate in your letter, one purpose of such a requirement is to overcome or forestall the imposition by state or local governments of requirements that motor carriers maintain material safety data sheets for each hazardous material received or shipped at each terminal.

In accepting your letter, and docketing it as a comment on the ATA petition, I wish to point out that the acceptance of the ATA petition, or any subsequent rulemaking arising out of it, would not in and of itself represent the preemption of any current or future state or local requirement. Under provision of the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1812) and the Regulations of the MTB (49 CFR

107.201-107.225), the preemption of a state or local requirement occurs upon a finding that the requirement is inconsistent with the HMTA or a regulation issued thereunder. The administrative process (or, if a party challenging the state or local requirement elects, the judicial process) is separate and distinct from the rulemaking process invoked by the ATA petition. Consequently, the question of the preemption of state and local requirements mandating the use of safety data sheets, would not be relevant to any rulemaking action that might arise from the ATA petition.

By letter dated January 13, 1984, the IBT stated the following:

It has come to our attention that the American Trucking Association (ATA) petitioned the Materials Transportation Bureau (MTB) on October 26, 1983, to require motor carriers involved in the transportation of hazardous materials to maintain a copy of the DOT Emergency Response Guidebook at each facility where hazardous shipments are loaded and unloaded. In its petition (P-922), ATA requested that the DOT requirement preempt state and local requirements for Material Safety Data Sheets (MSDS).

While we support the effort to require motor carriers to maintain copies of the Emergency Response Guidebook, we are concerned about DOT preemption of state and local laws requiring the maintenance of MSDS at transportation facilities. We believe that a DOT regulation requiring the use of the guidebook cannot preempt a state or local law requiring a MSDS because each document provides significantly different information, and therefore a different benefit, to employees involved in the transportation of hazardous materials.

The DOT Emergency Response Guidebook was developed in 1980 for use during the initial stages of a transportation emergency. The guidebook classifies hazardous materials by shipping name and provides acute health hazard information. While MSDS do offer information on acute health hazards and emergency action, unlike the DOT guidebook, however, MSDS provide information on chronic and long latency health effects from exposure to a hazardous material. The differences between the Guidebook and the MSDS can best be illustrated by examining the treatment of a particular hazardous material, benzene.

Benzene solvent is produced in billion gallon quantities per year. Scientific data strongly suggest that benzene is a human carcinogen. The DOT guidebook lists the health effects of benzene in terms of acute health effects. The guidebook states that benzene: "Vapors may cause dizziness and suffocation. Contact may irritate or burn skin and eyes. Fire may produce irritating or poisonous gases. Runoff from fire control or dilution may cause pollution".

The chronic or long latency health effects associated with benzene exposure are not mentioned in the DOT handbook.

Similar to the guidebook, an MSDS for benzene would note the acute effects linked to benzene exposure. In contrast, however,

an MSDS would describe chronic and long latency effects of benzene exposure in terms of leukemia, lymphatic and hematopoietic cancer. We believe that workers transporting hazardous materials have a right to be informed of the chronic health effects associated with exposure to shipped materials as well as the acute health effects. The DOT guidebook alone does not offer complete health hazard information.

In addition to the discrepancy between the guidebook and the MSDS in terms of the completeness of chronic and long latency health effects information, the documents differ in their treatment of chemical mixtures. MSDS generally include health hazard information on all chemicals present in concentrations greater than 1% in a hazardous chemical mixture. In contrast, the guidebook provides health effects information for the major constituent of a chemical mixture, leaving the other minor constituents unnamed and unaddressed. We believe that the health effects associated with exposure to all constituents of a chemical mixture should be made known to employees transporting hazardous materials. This can only be accomplished through the use of an MSDS.

In summary, MSDS generally provide more thorough health hazard information in terms of chronic health effects and chemical mixture information than the DOT guidebook. On balance, the DOT guidebook is particularly useful in emergency incidents. Since the documents are useful for different purposes, we feel it is inappropriate to substitute the guidebook for an MSDS. Instead, we recommend that the shipper be required to maintain both the guidebook and MSDS at all facilities involved in the transportation of hazardous materials. Clearly, the benefits of employee access to complete health hazard information on hazardous materials in transportation outweigh any burden placed on the carrier to obtain and maintain the guidebook and MSDS documents, documents readily available from DOT and chemical manufacturers/shippers, respectively.

In its comments on proposals made under Docket HM-126A (44 FR 32972; June 7, 1979), the IBT stated the following:

More than any other group, Teamster members bear the brunt of the inherent dangers involved in the transportation of hazardous materials. Teamster members package, ship, transport, and receive a major share of all hazardous materials moving in interstate (and intrastate) commerce. Transportation workers stand alone as the vital first link in dealing with hazardous materials incidents. Their actions in the first minutes following an incident may well determine if that incident will remain minor or result in a major catastrophe.

This NPRM recognizes, but does not act upon the fact that transportation workers must be adequately prepared and equipped with the knowledge necessary to prevent this type of catastrophe. If the proposed

¹ The United States Environmental Protection Agency agrees with this proper distinction between "transportation" and "storage." Pursuant to its regulation, 40 CFR 263.12, a carrier's holding of a waste in a specification container for a period of ten days or less at any one location does not constitute storage.

identification system was accompanied by an adequately prepared, and evenly distributed, "Emergency Response Manual," it would go far in improving the emergency response capabilities at all levels of response, including the initial "person at the scene" (i.e., the transportation worker), the responding emergency service personnel, and the special assistance personnel who may be required.

A properly distributed "Emergency Response Manual" would also go far in correcting one of the most neglected aspects of hazardous materials transportation, the health and safety of the transportation workers themselves. Before transportation workers can protect other potential victims, they must first be able to protect themselves. This requires a knowledge of the nature of the hazard and explicit information on how to respond in those first critical minutes. An uninformed, incapacitated, or dead transportation worker will be of little or no use to other potential victims or later, to the arriving emergency service personnel.

It is imperative that the proposed identification system be released only if it is in conjunction with a cross-referenced "number vs. technical name" table, and only if MTB can assure that all likely recipients of emergency calls have such a table at hand. A more practical alternative, and one much more appropriate to the overall purpose of the system, namely, improved emergency response capability, would be the concurrent release and distribution of the cross-referenced "Emergency Response Manual," which MTB has already largely developed. Furthermore, this approach would be more cost-effective in that the necessary cross-referenced table would not have to be published and distributed twice (i.e., once with the number identification rule, and once with the future "Manual").

Acknowledged throughout the text of this NPRM [HM-126] is the fact that the first minutes of a hazardous materials incident are the most critical. Also undisputed is the fact that the actions of the transportation worker at the scene in those critical minutes may mean the difference between a minor incident and a major catastrophe. Based on this, we most strongly urge that distribution of the Manual to certain personnel be made mandatory in the final rule. Mandatory distribution might be achieved in the following manner (for trucking personnel):

1. Operators of vehicles transporting hazardous materials:

a. Single Commodity—The driver would receive only a single "response guide" from the Manual (with the emergency phone number) for the single type of hazardous material being transported.

b. Mixed Commodity—The driver would receive "response guides" from the Manual for any type of hazardous material which he may haul as well as the "identification number vs. guide number" cross-reference table at the front of the Manual. A driver would not need the lengthy alphabetical listings of all the technical names versus the identification and guide numbers.

2. Shipping, receiving, the warehouse personnel—copies of the full Manual, with

cross-referenced lists and all the Emergency Response Guides, would be required in central locations and at any office likely to receive a hazardous materials emergency call.

Similar requirements would, of course, be required for other modes of transportation and specialist in those industries should be consulted as to specific needs.

The material quoted above is provided as background to this notice which is a solicitation of facts and viewpoints rather than a proposal to take any specific action. MTB solicits comment on the following:

1. What material specific information is provided by a MSDS that would mitigate the potential consequences of a discharge beyond the type of information provided by the ERG and CHEMTREC, and how quickly would that information be needed? In commenting, please take into account that the information on file at CHEMTREC is based on MSDSs provided by manufacturers and that CHEMTREC can provide information that is not contained in the ERG e.g., flash-point, boiling point, flammable limits, and vapor density. Also, CHEMTREC has access to shippers and the CIS for more detailed information on hazardous materials. If comments are presented concerning the value of TLV (threshold limit value) data, it is requested that supporting information be provided in support of how such data (TWA—time weighted average; STEL—short-term exposure limit; C—ceiling) can be effectively applied in the transportation environment. For example, what type of monitoring equipment could be reliably used to make an assessment of a spill area? Should MTB imply that confidence may be placed in use of such equipment? Up to the present time, it has been MTB's opinion that this approach would not be appropriate; therefore, current ERG guidance for any cargo (not only regulated hazardous materials) is "Move And Keep People Away From Incident Scene; Do Not Walk Into Or Touch Any Spilled Material; Avoid Inhaling Fumes, Smoke and Vapors Even If No Hazardous Materials Are Involved; Do Not Assume That Gases Or Vapors Are Harmless Because Of Lack Of Smell".

2. (a) Should DOT consider discontinuing distribution of the ERG in favor of MSDSs accompanying shipments of hazardous materials? (b) Should consideration of MSDSs be limited to bulk shipments as suggested by NTSB? In commenting, please consider the possibility of undesirable results in applying both systems to transportation, e.g., the different

language contained in basic health threat information (as demonstrated above for divinylbenzene) as well as differing response information. In preparing for issuance of this notice, MTB reviewed 29 CFR 1915.97 relative to preparation of U.S. Department of Labor Form OSHA 20 and the Occupational Safety and Health Administration's (OSHA) final rule amending 29 CFR Part 1910 (48 FR 53280; November 25, 1983). The information specified for inclusion in MSDSs (§ 1910.1200(g)) does not require manufacturers and importers to use standard language for either the communication of risk or the mitigation of risk. To a significant degree, this is overcome by training (§ 1910.1200(h)) required to be given by employers in Standard Industrial Classification Codes 20 through 39. (c) To what extent could and should DOT rely on training of emergency response and transportation personnel in use of MSDS information rather than the ERG, taking into account that more than 180,000,000 shipments of hazardous materials are made annually in the United States?

3. If, following review of the comments on this notice, MTB decides to propose a mandatory placement of ERG's in transportation facilities: (a) How should MTB describe (define) those facilities in the regulations? (b) Should ERG's be required in vehicles used to transport hazardous materials, as suggested by IBT? (c) What would be the means of acquisition of the ERG's? (d) How much time should be provided for acquisition and implementation? (e) Could such a requirement be implemented without having an effect on necessary revisions and updates of the ERG? (f) In order for MTB to assess the cost of such a program in a regulatory analysis, how many vehicles (including rail), vessels, aircraft, and terminal facilities would be subject to such a requirement (taking into account the last quoted paragraph of IBT's comments above)? The following information is provided for background: There were 750,000 copies of the 1980 ERG (DOT 5800.2) delivered, without charge, by MTB to emergency response (and associated) organizations between 1981 and 1984 and more than 200,000 obtained from commercial sources. More than 600,000 copies of the 1984 ERG (DOT 5800.3) have been distributed by MTB since December 1, 1983. While DOT's distribution costs have been less than \$1.00 per copy, the charge at the Government Printing Office (GPO) for the ERG was set at \$7.00 per copy. Four commercial sources of the ERG base their prices on quantities ordered. It is

contemplated that the ERG will be revised and redistributed at three year intervals if the program is continued following this proceeding.

4. (a) Is there another way to deal with "... emergency response problems posed by n.o.s. commodities ..." as discussed by NTSB in Recommendation I-83-2? On May 22, 1980 MTB published a final rule under Docket HM-126B (preamble page—45 FR 34565) setting forth requirements for more specific identification of poisons, including those covered by n.o.s. entries in § 172.101. The purpose of the rule, which is set forth in § 172.203(k), is to make identification of poisons more specific for immediate response purposes. (b) Should MTB consider expanding the requirements to hazardous materials of all classes? Commenters should note that the present rule does not require the technical names of compounds or principal constituents if the entry on a shipping paper (in association with the n.o.s. entry coming from § 172.101) is a name in the NIOSH Registry (RTECS—Registry of Toxic Effects of Chemical Substances) which contains more than 59,000 substance entries. The reason for providing this option is the problem emergency response personnel could have in dealing with long and complex chemical names (with dozens of letters and numbers in some cases) and the fact that RTECS is a component of the NIH/EPA CIS computer system that may be accessed by CHEMTREC at any time specific identification of a material is necessary. At the time the rule was promulgated, MTB had determined that it was only essential for materials meeting the definition of a class B

poison (regardless of class precedence). Also, a different rule for identification of hazardous substances in mixtures was issued at the same time under Docket HM-145B. (c) What would be the burden of such a requirement? and (d), Can or should such a requirement be construed as deriving the same benefit as possession of a MSDS during transportation?

Commenters are not limited to responding to the questions raised above and may submit any facts and views consistent with the intent of this notice. In addition, commenters are encouraged to provide comments on "major rule" considerations under terms of Executive Order 12291, "significant rule" considerations under the DOT regulatory procedures (44 FR 11034), potential environmental impacts subject to the Environmental Policy Act, information collection burdens which must be reviewed under the Paperwork Reduction Act, and economic impact on small entities subject to the Regulatory Flexibility Act.

It is suggested (but not required) that commenters forward copies of their submissions in response to this notice, as appropriate, to the parties named above.

It is requested that each person who desires to present oral comments at the public hearing notify Mr. Metcalfe by letter or telephone before May 1, 1984.

List of Subjects in 49 CFR Part 172

Hazardous materials, Transportation, Communications.

(49 U.S.C. 1804, 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

Special Note

Since it is expected that this notice will be widely disseminated by several organizations representing emergency services throughout the United States, I take this opportunity to emphasize an important point concerning use of the Emergency Response Guidebook (ERG). Included with NTSB's background to Recommendation I-83-2 is a discussion of the use of Guide 30 rather than Guide 26 in the ERG because the only entry with the term "divinyl" in the ERG was divinylether with a reference to Guide 30. Such a derivation process is contrary to the design and intent of the ERG and could result in serious misinformation and guidance concerning the hazard(s) of a material. On the first page of the ERG (DOT 5800.2) there is the following statement: "If the ID number or shipping name is not listed in this guidebook call CHEMTREC toll-free 800-424-9300." In fact, there are more than 50 references to CHEMTREC and its phone number in the ERG. However, CHEMTREC was not contacted by any emergency response personnel at the scene of the accident discussed above. In order to discourage use of the ERG without first reading the basic instructions for its use, MTB has placed "Read Instructions on First Page" conspicuously on the front cover of the 1984 ERG (DOT 5800.3).

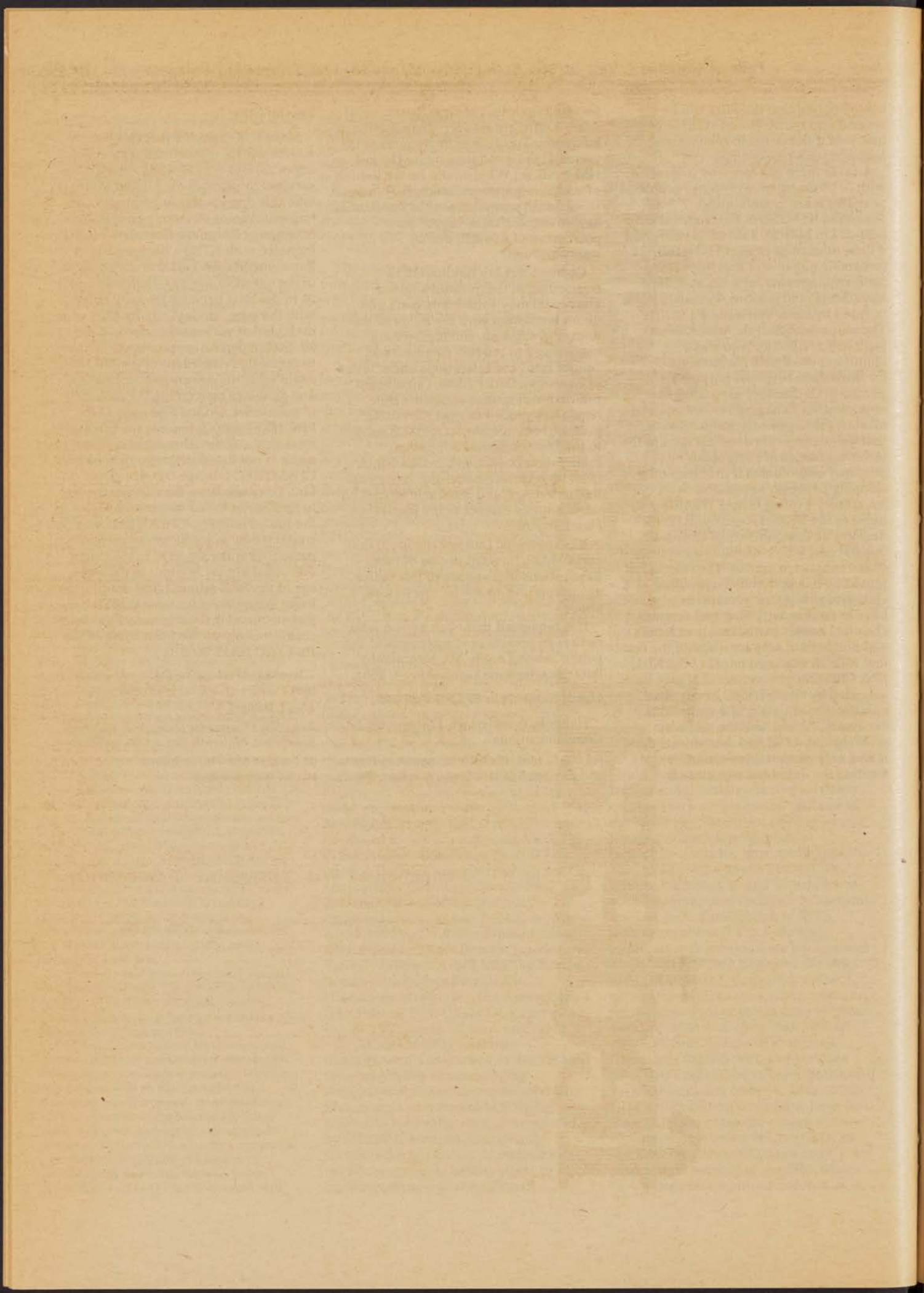
Issued in Washington, D.C. on March 12, 1984.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-7029 Filed 3-15-84; 8:45 am]

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FRIDAY MARCH 16, 1984 Part V Department of the Interior Minerals Management Service 30 CFR Part 256 Outer Continental Shelf Minerals Management; Bid Acceptance Procedures; Final Rulemaking Outer Continental Shelf; Oil and Gas Lease Sales; Notices

Friday
March 16, 1984

Part V

Department of the Interior

Minerals Management Service

30 CFR Part 256

**Outer Continental Shelf Minerals
Management; Bid Acceptance Procedures;
Final Rulemaking**

**Outer Continental Shelf; Oil and Gas
Lease Sales; Notices**

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

Outer Continental Shelf Minerals Management; Bid Acceptance Procedures

AGENCY: Minerals Management Service, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes the procedure for accepting or rejecting bids on Outer Continental Shelf leases in areas subject to another nation's claims of jurisdiction and control which conflict with claims of the United States. Section 256.47(e) gave the "authorized officer" 90 days in which to accept a bid. After 90 days, the bid was considered rejected. This requirement, however, is too inflexible when the Department offers tracts for lease in an area subject to claims of exclusive jurisdiction and control by nations in addition to the United States. To give the United States increased flexibility to resolve these matters in our foreign relations, the rule is amended to permit the Secretary to determine how long the authorized officer may consider the bid before it is deemed rejected.

EFFECTIVE DATE: March 16, 1984.

ADDRESS: Any recommendations or suggestions should be sent to: Director, Minerals Management Service, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Chris Oynes, (202) 343-6906.

SUPPLEMENTARY INFORMATION: This final rulemaking amends 30 CFR 256.47(e), which governs the acceptance or rejection of bids submitted on Outer Continental Shelf (OCS) leases. This section gave the "authorized officer" 90 days in which to accept a bid. After 90 days, the bid was considered rejected. This requirement, however, is too inflexible when the Department offers tracts for lease in an area subject to claims of exclusive jurisdiction and control by nations in addition to the United States. To give the United States increased flexibility to resolve these matters in our foreign relations, the rule is amended to permit the Secretary to determine how long the authorized officer may consider the bid before it is deemed rejected. This determination will appear in the final notice of sale.

The author of this final rulemaking is Poe Leggett, Assistant Solicitor, Offshore Minerals and International Law, Office of the Solicitor.

Administrative Procedure Act

MMS is issuing this rulemaking effective immediately, based upon a number of separate and independent exemptions and exceptions contained in the Administrative Procedure Act (APA), 5 U.S.C. 553. First, the APA rulemaking procedures do not apply "to the extent that there is involved—(1) a military or foreign affairs function of the United States * * *," 5 U.S.C. 553(a). This rulemaking is limited to tracts located in areas of competing claims of exclusive jurisdiction and control between the United States and foreign countries. Because of the sensitive nature of boundary issues, I find that a foreign affairs function is involved in the offering of tracts in these areas and that this concern warrants special treatment under MMS rules.

Second, the rulemaking prescribes internal agency procedures on bid acceptance. Accordingly, the rulemaking constitutes a rule of internal practice or procedure that is specifically excepted from the notice and comment provisions, as well as the 30-day advance publication requirement, prescribed in 5 U.S.C. 553(b)(A) and 5 U.S.C. 53(d)(2).

Third, Interior finds that the importance of making this rule effective immediately provides good cause for waiving the APA notice, comment, and advance publication provisions. This finding is based upon the statutory requirement under the OCSLA to expedite OCS leasing, particularly in frontier areas. Immediate adoption of the rule will allow Interior to apply it to Sale 83, Navarin Basin, in April 1984. The Navarin Basin, is a promising area for hydrocarbon exploration. Prospective bidders should not be discouraged from bidding because of international boundary issues.

Finally, the rulemaking involves "public property," another express statutory exception to the APA procedural requirements, 5 U.S.C. 553(a)(2). Although the Interior Department generally does not exempt rulemaking from the APA where public property is involved, that policy is overridden in the present instance by the importance of implementing the statutory objectives of the OCSLA, as explained in the preceding paragraph.

Executive Order 12291

This final rulemaking is not a "rule" under section 1(a)(2) of the Executive Order. For the information of the public, the Department has determined that this final rule is not a major action and does not require the preparation of a regulatory impact analysis under Executive Order 12291 because it has no

economic impact. The rule will permit the Secretary to keep certain bonus bid deposits in escrow for more than 90 days. The funds will still be available to the U.S. Treasury because they will be invested in public debt securities. And because the funds will be invested, bidders will not lose interest on their bids if their bids are rejected.

Regulatory Flexibility Act

This final rulemaking is not subject to the analyses required by 5 U.S.C. §§ 603 and 604. For the information of the public, the Department has also determined that this rule will not have a significant economic effect on a substantial number of small entities and does not, therefore, require a small entity flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it has no economic impact. Furthermore, small entities generally do not have the resources to bid on OCS leases, especially those in frontier areas adjoining our maritime boundaries.

Paperwork Reduction Act of 1980

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This rule will not have a significant effect on the quality of the human environment. It is not a major federal action.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts.

Under the authority of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*), § 256.47(e) of Title 30 of the Code of Federal Regulations is amended as set forth below.

Dated: March 13, 1984.

Garrey Carruthers,

Assistant Secretary of the Interior, Land and Minerals Management.

PART 256—[AMENDED]

30 CFR 256.47 is amended by redesignating paragraph (e)(2) as (e)(3), a new paragraph (e)(2) added, and paragraph (e)(1) revised to read as follows:

§ 256.47 Award of leases.

(e)(1) The decision of the authorized officer on bids shall be the final action of the Department, subject only to reconsideration by the Secretary,

pursuant to written request, of the rejection of the high bid. The delegation of review authority to the Office of Hearings and Appeals shall not be applicable to decisions on high bids for leases on the Outer Continental Shelf.

(2) In the final notice of sale, the Secretary may identify tracts or blocks

which are subject to another nation's claims of jurisdiction and control which conflict with those of the United States. For a tract or block so identified, the authorized officer must accept or reject the bid within the time specified in the notice of sale. For a tract not so identified, the authorized officer must

accept or reject the bid within 90 days after the date on which bids are opened. Any bid not accepted within the prescribed time shall be considered rejected.

* * * * *

[FR Doc. 84-7139 Filed 3-15-84; 8:45 am]
BILLING CODE 4310-MR-M

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Navarin Basin
Oil and Gas Lease Sale 83 (April 1984)

4310-MR

1. Authority. This Notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Manager, Alaska Outer Continental Shelf (OCS) Region, Minerals Management Service, 620 East 10th Avenue, Anchorage, Alaska 99501. Bids will be received during normal business hours (8:00 a.m. through 4:00 p.m., Yukon Standard Time (Y.S.T.)) from the date of this Notice until 4:00 p.m., April 13, 1984. On April 16, 1984, bids will be received at the above address until 10:00 a.m., the Bid Submission Deadline. Bids will not be received on April 17, 1984, the day of Bid Opening. Delivery by mail should be addressed to P.O. Box 101159, Anchorage, Alaska 99510, and must be received by the Regional Manager by the Bid Submission Deadline. Bids received later than the Bid Submission Deadline as specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the Regional Manager prior to 10:00 a.m., Y.S.T., April 16, 1984. Bids may not be withdrawn unless written withdrawal is received by the Regional Manager prior to 8:30 a.m., Y.S.T., April 17, 1984. Bid Opening Time will be 9:00 a.m., Y.S.T., April 17, 1984, at the William A. Egan Civic and Convention Center, 555 West 5th Avenue, Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 48 FR 45318, on October 4, 1983.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease Sale 83--Navarin Basin; (insert Official Protraction Diagram number(s); Official Protraction Diagram name(s), if applicable, and block number(s)), not to be opened until 9:00 a.m., Y.S.T., April 17, 1984," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 83 Navarin Basin; Np 1-6; Block 273, not to be opened until 9:00 a.m., Y.S.T., April 17, 1984." For those blocks which must be bid on together as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior, Minerals Management Service. No bid for less than a full block or a bidding unit will be considered. Partnerships also need to submit or have on file in the Alaska Regional Office a list of signatories authorized to bind the partnership. All documents must

be executed in conformance with signatory authorizations on file. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of \$150 or more per acre or fraction thereof. All leases awarded from this sale will provide for a yearly rental payment of \$3 per acre or fraction thereof. All leases awarded will provide for a minimum royalty of \$3 per acre or fraction thereof. The following bidding system will be used:

Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the blocks and bidding units offered must be submitted on a cash bonus basis with a royalty of 12-1/2 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982), and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block or bidding unit from this sale prior to issuance of a written acceptance of a bid.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder unless:

- (a) the bidder has complied with all requirements of this Notice and applicable regulations;

Outer Continental Shelf Official Protraction Diagrams.

- (b) the bid is the highest valid bid; and
- (c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of \$150 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or applicable regulations, may be returned to the person submitting that bid by the authorized officer and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease as specified below, pay the balance of the cash bonus bid with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

For this lease sale the Minerals Management Service will implement procedures for the electronic funds transfer (EFT) payment of four-fifths of the cash bonus bid and the first year's annual rental for each lease issued. Detailed instructions on making EFT payments will be provided by the Regional Manager when bidders are qualified to submit bids at the sale.

The following procedures for the payment of four-fifths of the cash bonus and the first year's annual rental by EFT will be in effect for successful bidders at this sale, based on the final rule published in the Federal Register on March 8, 1984, at 49 FR 8602 - 8606.

Bidders are required to submit the balance of the bonus and the first year's annual rental payment by EFT utilizing the Federal Reserve Communications System (FRCS) and the Treasury Financial Communications System, payable to the U.S. Department of the Interior--Minerals Management Service. Each successful bidder must have its bank transfer the balance of the bonus payment and the first year's annual rental through the FRCS to the account of the U.S. Treasury at the Federal Reserve Bank of New York. The Federal Reserve Bank of New York must receive the EFT payment no later than noon, Eastern Standard Time, on the eleventh business day after receipt of the lease forms for execution. The term "business day" is defined as a day on which the Alaska OCS Regional Office is open for business.

11. Official Protraction Diagrams. Blocks and bidding units offered for lease may be located on the following Official Protraction Diagrams which may be purchased for \$2.00 each from the Regional Supervisor, Leasing and Environment, Alaska Outer Continental Shelf Region, at the first address stated in paragraph 2 of this Notice.

NP 1-3 (approved November 2, 1983)
NP 1-4 (approved November 2, 1983)
NP 1-5 (approved November 2, 1983)
NP 1-6 (approved April 30, 1981)
NP 1-7 (approved November 2, 1983)
NP 1-8 (approved December 13, 1976)
NO 1-1 (approved December 17, 1980)
NO 1-2 (approved February 3, 1977)
NO 1-3 (approved December 17, 1980)
NO 1-4 (approved February 18, 1977)

12. Description of the Areas Offered for Lease.

(a) The hectares for all of the blocks offered for lease in this sale appear on Official Protraction Diagrams (OPD). (See paragraph 11.) The area offered for lease includes all of the blocks shown on the OCS OPD's listed in paragraph 11, except those blocks identified below.

BLOCKS NOT OFFERED in the Navarin Basin Lease Sale (April 17, 1984).

Official Protraction Diagram NP 1-7 (approved November 2, 1983)

Blocks

225, 268, 269
311 through 313
354 through 357
397 through 401
441 through 445
485 through 489
529 through 533
573 through 577

Blocks

617 through 621
661 through 665
705 through 709
749 through 754
793 through 798
837 through 842
881 through 886
925 through 930
969 through 974

Official Protraction Diagram NO 1-1 (approved December 17, 1980).

Blocks

2 through 8
46 through 52
89 through 97
133 through 142
177 through 186
221 through 231
265 through 275
309 through 319
353 through 363
397 through 407

Blocks

529 through 539
573 through 583
617 through 627
661 through 671
705 through 715
749 through 759
793 through 803
837 through 848
881 through 893
925 through 937

Official Protraction Diagram NO 1-1 (approved December 17, 1980).
continued.

Blocks

441 through 451
485 through 495
969 through 981
1013 through 1026
1045 through 1048

Official Protraction Diagram NO 1-2 (approved February 3, 1977).

1013 through 1018

Official Protraction Diagram NO 1-3 (approved December 17, 1980).

Blocks

1 through 16
32 through 37
45 through 60
75 through 81
89 through 106
118 through 125
133 through 169
177 through 213
221 through 257
265 through 301
309 through 345
353 through 389
397 through 433
441 through 477
485 through 521
529 through 565
573 through 609
617 through 653
661 through 697
705 through 741
749 through 785
793 through 829
837 through 873
881 through 917
925 through 961
969 through 1005

Blocks

1 through 8
45 through 53
89 through 98
133 through 143
177 through 188
221 through 232
265 through 276
309 through 321
353 through 365
397 through 409
441 through 453
485 through 497
529 through 543
573 through 587
617 through 631
661 through 675
683 through 697
705 through 719
724 through 741
749 through 763
768 through 785
793 through 807
812 through 829
837 through 851
856 through 873
881 through 917
925 through 961
969 through 1005

(b) In several instances two or more blocks have been combined into bidding units and must be bid on together. Bidders are responsible for accuracy of computation of bid amounts based on amount per hectare or fraction thereof and total hectareage within a bidding unit. The hectares for each block are reflected on the OPD's. (See paragraph 11.)

BIDDING UNITS OFFERED in the Navarin Basin Lease Sale (April 17, 1984):

Official Protraction Diagram NP 1-3 (approved November 2, 1983).

Blocks

913, 956, 957, 999, and 1000.

Official Protraction Diagram NP 1-4 (approved November 2, 1983).

Blocks

20 and 21
63 and 64
106 and 107
149 and 150
192 and 193
235 and 236
278 and 279
297, 341, 385, 429,
473, 517, and 561
321 and 322
364 and 365
407 and 408
450 and 451
493 and 494
536 and 537
579 and 580
605 and 649
622 and 623
665 and 666
693 and 737
708 and 709
751 and 752
794 and 795
837 and 838

Official Protraction Diagram NP 1-5 (approved November 2, 1983).

Blocks

31 and 32
74 and 75
117 and 118

Blocks

160 and 161
203 and 204
246 and 247

Official Protraction Diagram NP 1-6 (approved April 30, 1981).

Blocks

254, 298, 342, 386, 430, and 474
518 and 562
606 and 650

Official Protraction Diagram NP 1-8 (approved December 13, 1976).

Blocks

166 and 167
211, 285, 299, 343, 387, and 431
475 and 519
563 and 607

Official Protraction Diagram NO 1-2 (approved February 3, 1977).

Blocks

123 and 124
168, 212, 256, 300, 344, and 388
432 and 476
520 and 564

Official Protraction Diagram NO 1-4 (approved February 18, 1977).

Blocks

36 and 37
81, 125, 169, 213, 257, and 301
345 and 389
433 and 477
521 and 565

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms of 10 years. Leases will be issued on Form MMS-2005 (August 1982). Copies are available from the Regional Supervisor, Leasing and Environment, Alaska Outer Continental Shelf Region, at the first address stated in paragraph 2.

(b) Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale. In the following stipulations the term RSFO refers to the Regional Supervisor, Field Operations, Alaska Outer Continental Shelf Region, Minerals Management Service.

Stipulation No. 1--Protection of Cultural Resources

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Supervisor, Field Operations (RSFO), believes a cultural resource may exist in the leased area, the RSFO will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RSFO, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archeologist and geophysicist, shall be based on an assessment of data from remote sensing surveys and other pertinent cultural and environmental information. The lessee shall submit this report to the RSFO for review.

(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RSFO that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archeological investigation, conducted by an archeologist and geophysicist, using survey equipment and techniques deemed necessary by the RSFO. A report on the investigation shall be submitted to the RSFO for review.

(3) If the RSFO determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, the RSFO will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RSFO has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the leased area, the lessee shall report the discovery immediately to the RSFO. The lessee shall make every reasonable effort to preserve the cultural resource until the RSFO has told the lessee how to protect it.

Stipulation No. 2--Orientation Program

The lessee shall include in any exploration and development and production plans submitted under 30 CFR 250.34 a proposed orientation program for all personnel involved in exploration or development and production activities (including personnel of the lessee's contractors and subcontractors) for review and approval by the Regional Supervisor, Field Operations. The program shall be designed in sufficient depth to inform individuals working on the project of specific types of environmental, social, and cultural

concerns which relate to the adjacent area. The program shall be formulated by qualified instructors experienced in each pertinent field of study and shall employ effective methods to ensure that personnel are informed of archeological, geological, and biological resources, including fisheries, bird colonies, and sea mammal haulout areas, and to ensure that personnel understand the importance of avoidance and nonharassment of wildlife resources. The program shall be designed to increase the sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which such personnel will be operating. The program shall also include information concerning the domestic and foreign fishing industries in order to reduce potential conflicts.

The program shall be attended at least once a year by all personnel involved in on-site exploration or development activities (including personnel of the lessee's agents, contractors, and subcontractors) and all supervisory and managerial personnel involved in lease activities of the lessee and its agents, contractors, and subcontractors.

Stipulation No. 3--Wellhead and Pipeline Requirements

Subsea wellheads on temporary abandonments or suspended operations that leave protrusions above the seafloor are major hazards to fisheries. They shall, as appropriate, be protected in such a manner as to allow commercial fisheries trawling gear to pass over the structures without snagging or otherwise damaging the structures or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the Regional Supervisor, Field Operations. To determine the coordinates of such structures, the lessee shall use state-of-the-art navigation systems with accuracy of at least ± 150 feet at 200 miles.

All pipelines, unless buried, including gathering lines, shall have a smooth-surface design. If an irregular pipe surface is unavoidable because of the need for valves, anodes, or other structures, it shall, as appropriate, be protected in such a manner as to allow trawling gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 4--Protection of Biological Resources

If any biological populations or habitats which may require additional protection are identified on any blocks in the leased area, the Regional Supervisor, Field Operations (RSFO), in consultation with the Bering Sea Biological Task Force, may require the lessee to conduct environmental surveys to determine the extent and composition of such populations or habitats that might require additional protective measures. The RSFO shall notify the lessee in writing of the decision to require such surveys.

Based on any surveys which the RSFO may require of the lessee or on other information available to the RSFO on special biological resources, the RSFO may require the lessee to: (1) relocate the site; (2) establish to the

satisfaction of the RSFO, on the basis of a site-specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist; (3) operate during those periods of time that do not adversely affect the biological resources as established by the RSFO; and/or (4) modify operations to ensure that significant biological populations or habitats deserving protection are not adversely affected.

The lessee agrees that, if any area of biological significance should be discovered during the conduct of any operations on the leased area, the lessee shall immediately report such findings to the RSFO and make every reasonable effort to preserve and protect the biological resource from damage until the RSFO has given the lessee direction with respect to its protection.

The lessee shall submit all data obtained in the course of such surveys to the RSFO with the locational information for drilling or other activity. The lessee may not take any action that might affect the biological populations or habitats surveyed until the RSFO provides written directions to the lessee with regard to permissible actions.

Stipulation No. 5--Protection of Bowhead Whales

Exploratory drilling and testing and other downhole exploratory activities below a predetermined threshold depth*, with the exception of testing through casing, shall be prohibited when located in water depths less than 600-feet and when an ice cover of 30% or greater, as specified in the ice cover index**, is surpassed within 10 miles of the drilling platform unless the Regional Supervisor, Field Operations (RSFO) determines that continued operations are necessary to prevent a loss of well control or to ensure human safety. This authority is very broad and shall be exercised to the full extent necessary to protect the bowhead whale. Once terminated, pursuant to this stipulation, exploratory drilling operations shall not resume until the ice cover of 30% or greater, as specified in the ice cover index, has retreated more than 100 miles from the drilling platform or when it has been determined by the RSFO, after conferring with the National Marine Fisheries Service (NMFS), that bowhead whales are unlikely to be affected by operations. Satellite imagery or the best available and safest technology shall be utilized in establishing the presence of ice.

* The threshold depth is a point above which major accumulations of hydrocarbons are not likely. The RSFO shall determine this depth on a case-by-case basis after a review of all pertinent geological and geophysical data.

** The ice cover index reflects the percentage of ice. The NMFS will determine the ice cover index at least annually after conferring with the NMFS, on the basis of the then most recent information on whale habitat preference relative to ice cover.

14. Information to Lessees.

- (a) The areas adjacent to the blocks offered for lease may fall in areas which may be included in fairways, precautionary zones, or traffic separation schemes which may be established, among other reasons, for the purpose of protecting maritime commerce. Bidders are advised that the United States may designate necessary fairways through leased areas pursuant to the Ports and Waterways Safety Act of 1978 (33 U.S.C. 1221 et seq.).
- (b) Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.
- (c) Lessees are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Both Departments should be consulted for requirements applicable to offshore pipelines.
- (d) Lessees are also advised that in accordance with sec. 16 of each lease the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases.
- (e) Revisions of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005 August 1982) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this notice contain language that would be superseded by revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1).
- Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulation requirements will be deemed to be part of the existing affirmative action forms.
- (f) Lessees are advised that Environmental Protection Agency National Pollutant Discharge Elimination System permits are required for discharge of drilling fluids, produced waters, and other drilling wastes generated during exploration and development/production phases.

(g) Lessees are advised that all activities that are related to this lease sale but located off the leasehold will comply with the National Historic Preservation Act (P.L. 89-665, 80 Stat. 915, 16 U.S.C. 470-470t). The Minerals Management Service will ensure compliance through the review of plans and permits submitted for subsequent developmental activities.

(h) Lessees are advised that the State of Alaska's coastal management program contains policies which may be relevant to activities associated with these leases. In addition, local coastal management programs now being developed may have more specific policies related to energy facility siting; areas with particular shallow hazards, subsistence uses, habitats, transportation uses, and areas which have historic or prehistoric resources. Early consultation and coordination with local Coastal Resource Service Area (CRSA) Boards, local planning agencies, and State agencies involved in coastal management review could prevent unsuitable facility siting. Local coastal districts engaged in program development include the Bering Straits CRSA, Cenailuit CRSA, Bristol Bay CRSA, Aleutian Islands East CRSA, Nome, Bethel, and the Bristol Bay Borough. Other agencies which would be appropriate to contact include, but are not limited to, the Alaska Office of Coastal Management, the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management, the U.S. Fish and Wildlife Service, the Alaska Department of Natural Resources, and the Alaska Department of Community and Regional Affairs.

(i) Lessees are advised that certain areas are especially valuable for biological and cultural reasons. Marine bird and mammal intensive-use areas on and near St. Matthew, St. Lawrence, and the Pribilof Islands and seasonal ice-front habitats and polynyas are among areas of special biological and cultural sensitivity under the terms of Alaska OCS Region OCS Order No. 7 and 30 CFR 250.34-3. Areas of special biological and cultural sensitivity are defined in the public hearing draft of the Cenailuit coastal management plan. Lessees are advised that appropriate local and regional organizations such as CRSA boards, planning offices, village councils, and regional nonprofit corporations may have identified specific sites requiring special biological and/or cultural consideration in oilspill contingency plans.

(j) Lessees are advised that during the conduct of all activities related to leases issued as a result of this lease sale, the lessee and its agents, contractors, and subcontractors will be subject to the provisions of the Marine Mammal Protection Act of 1972, (16 U.S.C. 1361-1407), as amended; the Endangered Species Act of 1973, (16 U.S.C. 1531-1543), as amended; and International Treaties.

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harassment and thereby be in violation of existing laws. Violation under these acts and treaties may be reported to the National Marine Fisheries Service or U.S. Fish and Wildlife Service, as appropriate. Behavioral disturbance of most birds and mammals found in or near the Naverin Basin area would be unlikely if vessels and

(m) Lessees are notified that oilspill contingency plans are required under Alaska OCS Region OCS Order No. 7, pursuant to the authority prescribed in 30 CFR 250.11, 250.34, and 240.43, prior to approval of exploration plans and development and production plans. Furthermore, lessees are required under 30 CFR 250.34-2 to include in development and production plans, descriptions of all vessels, pipelines, and other facilities, and descriptions of all environmental safeguards. Prior to approval of development and production plans, the RSFO will review these items to determine whether those oil transportation facilities described which are regulated by Minerals Management Service can safely transport oil in conditions expected in the leased area.

Lessees are advised that the State of Alaska may review the lessee's consistency certification accompanying oilspill contingency plans specifically for consistency with the State's coastal zone management program and may not agree with a lessee's certification of consistency for those plans under section 307(c)(3) of the Coastal Zone Management Act unless they are adequate to ensure consistency with the State's program. The State has advised the Minerals Management Service that this State review will consider the use of best available and safest technologies for operating in the Navarin Basin environment, and development of contingency plans in the event of an oil well blowout, including relief well plans, and the lessee's ability to timely initiate oilspill recovery operations, as required by applicable U.S. Coast Guard or State regulations, utilizing, to the extent necessary and prudent, prestaged clean-up equipment. While not a part of the review of an individual lessee's plan, the State of Alaska maintains that it may require an industry oilspill cooperative in order to establish sufficient capability to detect, contain and clean up spilled oil before it adversely impacts the State's coastal zone, if such requirements are consistent with authorities vested in it under the Coastal Zone Management Act. The Department agrees to coordinate with the U.S. Coast Guard during the U.S. Coast Guard's technical review of each oilspill contingency plan for the lease area, taking into account any views expressed by the State.

(n) To accommodate the State coastal zone management policies and to ensure that additional protection is provided on those blocks located near the sensitive and biologically productive areas near the Bering Sea National Wildlife Refuge, St. Matthew Island, and the Pribilof Islands, the Department of the Interior will consult and coordinate with the State regarding the method of transportation and the siting and location of oil transfer, storage, and loading facilities to be utilized by lessees during production on their leases. The Minerals Management Service anticipates that the State will also review development and production plans and pipeline right-of-way applications for consistency with the State coastal zone management program pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act. The State also advises that as required by section 307(c)(3)(B), the State specifically reserves the right to disagree with the lessee's certification of consistency for the lessee's plans for development and production or pipeline right-of-way applications, or to recommend inclusion of stipulations that will ensure that the transportation, storage, and loading of produced oil is consistent with the State's coastal management program.

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aircraft maintained at least a 1-mile distance from observed wildlife concentrations or from known wildlife concentration areas such as bird colonies and marine mammal haulout and reproductive areas. Therefore, in concurrence with the U.S. Fish and Wildlife Service, it is recommended that aircraft or vessels operated by lessees maintain at least a 1-mile distance from observed or known wildlife concentrations. For instance when aircraft or vessel operators unexpectedly encounter individuals or groups of bowhead or right whales at sea, they are advised that they should maintain a minimum overflight altitude of 1,500 feet and vessel distances of at least 300 lateral yards from these animals. Human safety will take precedence at all times.

Of particular concern are wildlife populations of St. Matthew, Hall, and Pinnacles Islands; the Pribilof Islands; and other coastal wilderness or refuge areas. For guidance regarding prohibited activities, attention of the lessees is directed particularly to existing National Wildlife Refuge System rules, 50 CFR, Parts 27 and 215, and Part 36, rules for the Alaska National Wildlife Refuge (46 FR 31818, June 17, 1981), wherein 50 CFR 36.21(c) states: "The operation of aircraft at altitudes and in flight paths resulting in the herding, harassment, hazing, or driving of wildlife is prohibited."

Maps locating major wildlife concentration areas in the Navarin Basin suitable for general route planning are available in the Navarin Basin Environmental Impact Statement or from the Regional Supervisor, Field Operations, Minerals Management Service, Alaska OCS Region. Maps showing greater detail suitable for specific route planning and location of facilities are available from this office and appropriate resource agencies.

(k) Lessees are advised that the RSFO has the authority and intends to limit or suspend any operations, including geophysical surveys, on a lease whenever endangered right or bowhead whales are present in the leased area and are near enough to be subject to noise, oilspill, or other disturbance from offshore oil and gas activities which would be likely to jeopardize the species. Lessees are advised to consult Notices to Lessees (NTL), including NTL 83-2 and NTL 84-1, now being developed, and other NTL's developed in the future, for details. Lessees are further advised that in addition to activities that may jeopardize the species, any disturbance of endangered species is prohibited under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), as amended, and the Marine Mammal Protection Act of 1972, (16 U.S.C. 1361-1407), as amended.

(l) In the enforcement of the Protection of the Biological Resources stipulation, the RSFO will receive recommendations from the Bering Sea Biological Task Force (BTF) composed of designated representatives of the Mineral Management Service, U.S. Fish & Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency. The Bering Sea BTF should consult with representatives of the State of Alaska before making recommendations to the RSFO. The RSFO will consult with the Bering Sea BTF on the conduct of biological surveys by lessees, the appropriate course of action after surveys have been conducted, and on the biological/environmental aspects of the above-mentioned stipulation.

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(o) Portions of the lease sale area may be subject to mass movement (slumping) of sediment. Emplacement of platforms or sea floor wellheads for the production or storage of oil and gas will not be allowed on those portions of any block or bidding unit which may be subject to mass movement of sediments unless or until the lessee has demonstrated to the satisfaction of the RSO that the potential for mass movement of sediments does not exist or that structures can be safely designed to withstand such mass movement at the proposed location of the structure.

Based on all shallow hazards data available to the Mineral Management Service, a list has been prepared which identifies lease blocks which have the potential for slope instability. This list is available from the Regional Supervisor, Field Operations, Alaska OCS Office. Adequate data to assess all blocks for this lease sale are not available. However, there is evidence of slope instability in the Holocene sediments.

(p) Lessees are advised that pursuant to 30 CFR 250.34-(a)(3) the lessee shall submit to the Minerals Management Service either an exploration plan or a general statement of exploration intentions prior to the end of the ninth lease year.

(q) Lessees are advised that the orientation program, as required by stipulation no. 2, should be designed to incorporate the views and concerns of local individuals and communities. Lessees should provide opportunities to local individuals, organizations, and governments, including local coastal districts, to participate in development of the environmental training programs.

(r) Lessees are advised and encouraged to hire Alaska residents to perform work done by and for them within the State of Alaska. Lessees are advised that there is considerable local interest in employment associated with petroleum exploration, development, and production activities. Lessees are encouraged, through affirmative action programs or otherwise, to provide opportunities to local individuals and organizations to acquire the skills necessary to participate in exploration, development, and production activities, and are encouraged to provide, through affirmative action programs or otherwise, employment opportunities for qualified local individuals and organizations. Lessees are also advised that employment of local individuals and organizations may be one method of mitigating certain local social and economic impacts.

(s) Lessees are advised that exploration, development, and production activities may directly and indirectly have significant social economic impacts on local individuals and communities. Lessees are encouraged to consult with local individuals, organizations, and governments, including local coastal districts, to identify direct social and economic impacts of exploration, development, and production activities prior to undertaking those activities. Lessees are encouraged to consult with and enter into agreements with local individuals, organizations, and governments to compensate for direct and indirect social and economic impacts of exploration, development, and production activities. Lessees are advised that this may include, among others, support to, or provision of, local community recreation facilities, mental health, drug and alcohol treatment services and facilities, or community safety services, and capital improvements projects.

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(t) Extreme environmental conditions may result from the combination of deep waters with pack and floating ice, high potentials for ice accretion on structures, and severe wave heights and velocities that occur in the Navarin Basin. Lessees are advised that analysis or the technological capability of any drilling structure or drilling ship to withstand conditions found in the Basin is of concern to the State and will be considered in its review of exploration and development plans.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Alaska OCS Orders and any other applicable OCS Order. Final Alaska OCS Orders were published in the Federal Register at 47 FR 47180, on October 22, 1982.

16. Jurisdiction. The United States claims exclusive maritime resource jurisdiction over the area offered. The Soviet Union claims such jurisdiction over a portion of the area. The differing claims relate to differing depictions of the line established by the 1867 Convention Ceding Alaska between the United States and Russia. The United States depicts the 1867 Convention Line as the maritime boundary by arcs of great circles while the Soviet Union depicts the 1867 Convention Line as a rhumb line. Representatives of the United States and of the Soviet Union have had discussions in an effort to resolve their differences. It is anticipated that there will be further such discussions. Maps depicting the respective claims may be inspected at the Office of the Alaska Region, MMS, at the address listed in paragraph 2 of this Notice. Maps are also available for inspection at the Atlantic Regional Office in Vienna, Virginia, the Gulf of Mexico Regional Office in Metairie, Louisiana, the Pacific Regional Office in Los Angeles, California and at room 2515, Department of the Interior, Minerals Management Service, 18th and C Sts., N.W., Washington, D.C.

For any block or bidding unit in the area of U.S.-Soviet difference depicted on these maps, the procedure for bid acceptance will be different from procedures otherwise identified in this Notice. After the MMS completes its bid adequacy review, it will notify bidders of the results of this review. If a bid is found inadequate, it will be rejected; and the bidder's deposit will be returned with interest, as prescribed in 30 CFR 218.155. If a bid is found adequate, the bidder will be so notified; however, this notification will not constitute acceptance of the bid. No bid will be accepted until the United States determines that it is in its best interest to do so. At such time as it is so determined, the authorized officer will promptly accept the bid and require the bidder to execute the lease, pay the remaining 4/5th bonus and the first year's rental by EFT, and file a bond as prescribed in 30 CFR 256.47(f). The remaining 4/5th bonus and the first year's rental must be made by EFT using the procedure described in paragraph 10, subparagraph 4, of this Notice. The Federal Reserve Bank of New York must receive the EFT payment no later than noon, Eastern Standard Time, on the eleventh business day after receipt of the notice of bid acceptance. The term "business day" is defined as a day on which the Alaska Regional Office is open for business.

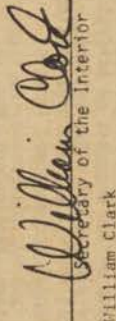
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At such time as the United States may determine that it will not be in its best interests to accept a bid, MMS shall reject such bid within the area of U.S.-Soviet difference and refund the deposit with interest. Interest will accrue and be paid in accordance with 30 CFR 218.155. In any event, if the authorized officer does not accept the bid within 5 years after the date on which bids are opened, the bidder may elect, by notice delivered to the United States within 60 days after expiration of the 5-year period, to withdraw the bid. If the bid is withdrawn, the deposit and accrued interest will then be refunded promptly to the bidder.

Authority for the procedure in this paragraph is in 30 CFR 218.155, 256.46(b), and 256.47(e)(2). Except as set forth in this paragraph, the procedures for submitting bids and awarding leases are the same as for all other blocks or bidding units offered in this sale.


 Director, Minerals Management Service
 William D. Bettenberg

Approved:


 Secretary of the Interior
 William Clark

Date

it would be for the same block under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to yield more rapid production and higher economic profits. The larger cash bonus bids associated with a lower royalty rate are not anticipated to significantly reduce competition, as the higher costs for exploration and development are the primary restraints to competition.

2. Designation of blocks. All blocks in this lease sale will be offered under a 12 1/2-percent royalty system because that system is most appropriate to the resource levels and costs expected in this sale area.

William D. Bettenberg
Director, Minerals Management Service
William D. Bettenberg

Approved:

William Clark
Secretary of the Interior
William Clark

[FR Doc. 84-7141 Filed 3-15-84; 8:45 am]
BILLING CODE 4310-MR-C

UNITED STATES
DEPARTMENT OF THE INTERIOR
Minerals Management Service
Outer Continental Shelf
Navarin Basin

Notice of Leasing Systems, Sale 83

Section 8(a)(8)(43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA), as amended, requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. Identifying the bidding systems to be used and the reasons for such use; and
2. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding system to be used. In the Outer Continental Shelf (OCS) Sale 83, blocks will be offered under the following bidding system as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): bonus bidding with a 12 1/2-percent royalty.

- a. Bonus bidding with a 12 1/2-percent royalty. This system is authorized by section 8(a)(1)(A) of the OCSLA, as amended. This system has been chosen for all blocks proposed for Sale 83 because these blocks are expected to have high exploration, development, and production costs. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in high-cost areas under a 12 1/2-percent royalty system would be less than

Attachment 2

4310-MR

Department of the Interior
Minerals Management Service

Notice

Insignificant Revision in July 1982 5-Year Outer
Continental Shelf Oil and Gas Leasing Schedule
Sale 83, Navarin Basin (March 1984)

AGENCY: Minerals Management Service,
Department of the Interior

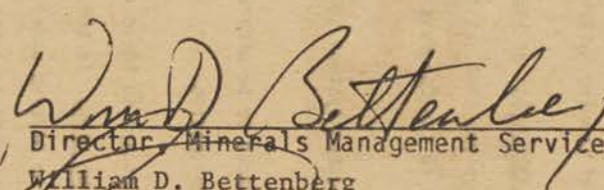
ACTION: Notice

SUMMARY: The 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Schedule issued on July 21, 1982, provided for a Navarin Basin lease sale to be held in March 1984. However, delays in the prelease administrative steps required that the sale be delayed 1 month to April 1984 in order to allow for all subsequent preleasing administrative steps to proceed in an orderly fashion. After considering the relative merits of delaying the sale to April 1984 to allow for the orderly scheduling of the prelease steps, it has been concluded that delaying the sale serves the national interest.

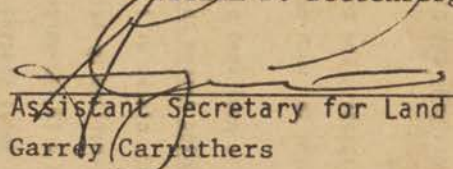
After analyzing whether delaying the sale by such a short period was a significant revision under section 18 of the OCS Lands Act, we have concluded that it would not be a significant revision of the 5-year program. Copies of this analysis are available from the address below.

FOR FURTHER INFORMATION: Contact Chris Oynes, Minerals Management Service (MS-645), 12203 Sunrise Valley Drive, Reston, Virginia 22092, (202) 343-6906.

3/13/84
Date


Director, Minerals Management Service
William D. Bettenberg

3/13/84
Date


Assistant Secretary for Land and Minerals Management
Garrey Carruthers

Registered Trademark

Friday
March 16, 1984

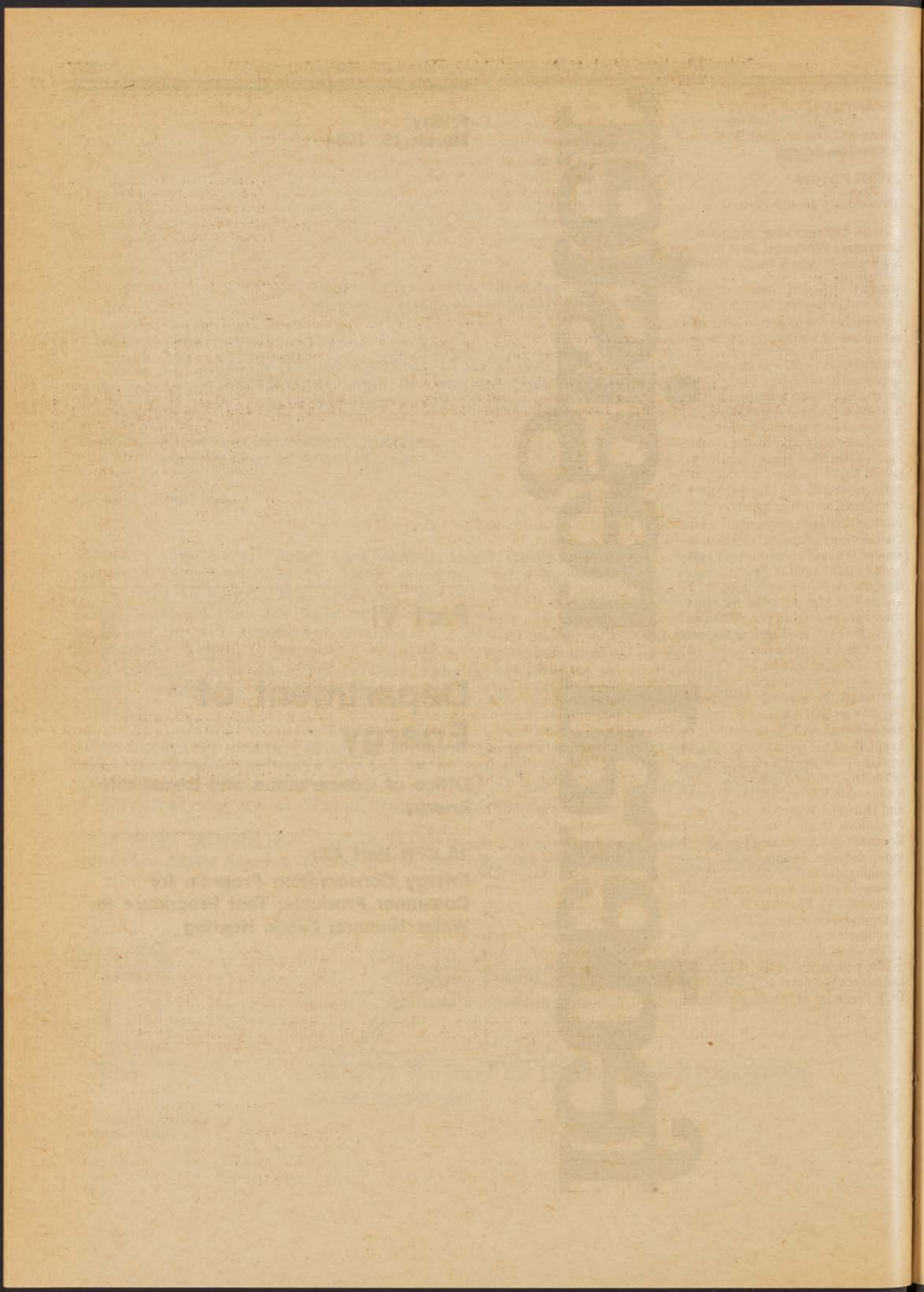
Part VI

Department of Energy

Office of Conservation and Renewable
Energy

10 CFR Part 430

Energy Conservation Program for
Consumer Products; Test Procedure for
Water Heaters; Public Hearing



DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-105]

Energy Conservation Program for Consumer Products; Test Procedure for Water Heaters; Public Hearing

AGENCY: Office of Conservation and Renewable Energy, Energy.

ACTION: Notice of public hearing and extension of written comment period.

SUMMARY: As set forth below, the Department of Energy (Department) hereby schedules a second public hearing to be held regarding its proposed rule to amend its test procedure for water heaters published in the *Federal Register* on February 8, 1984. (49 FR 4870). Further, the Department hereby extends the due date for written comments on this proposed rule.

DATES: Written comments in response to the notice of proposed rulemaking to amend the test procedure for water heaters published in the *Federal Register* on February 8, 1984 (49 FR 4870) are due by May 21, 1984; requests to speak at the second public hearing by April 20, 1984; speakers at the second public hearing to be notified by April 23, 1984; statements to be presented at the second public hearing by April 24, 1984; second public hearing to be held April 26, 1984, at 9:00 a.m.

ADDRESSES: Written comments, requests to speak at the public hearing, and copies of statements to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Water Heater Test Procedure, Docket No. CAS-RM-79-105, Room 6B-025, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9319. Second public hearing to be held at Room 1E-245, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the transcripts of both public hearings and the public comments received may be read in the DOE Freedom of Information Reading

Room; Room 1E-190, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-113.1, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9127;

U.S. Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9319;

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-33, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION: The Department proposed to amend its test procedure for water heaters by notice published in the *Federal Register* on February 8, 1984. (49 FR 4870). The proposed rulemaking contemplates extending coverage of the test procedure to heat pump water heaters, prescribing changes to the existing procedure to allow for more accurate determinations of energy consumption, and prescribing a new method of testing to determine the first hour rating of water heaters equipped with thermal compensating dip tubes. In the February 8, 1984 notice, the due date for written comments was April 9, 1984, and a public hearing was scheduled to be held on March 15, 1984. By letter dated February 29, 1984, the Gas Appliance Manufacturers Association, Inc. (GAMA), an industry trade association which represents a number of manufacturers of gas, electric and oil water heaters, requested, on behalf of its water heater manufacturer members, that the Department extend the written comment period on this rulemaking by 60 days and postpone the public hearing until late April 1984. As justification for its request, GAMA contends that neither it nor its water heater manufacturer members can provide meaningful comments or testimony without performing tests to

collect data to assess the impact of the proposed amendments. In particular, GAMA cites a need to compare the test procedure currently used by its members to rate heat pump water heaters with the different test method proposed by the Department for this type of water heater. GAMA also cites a need for testing to investigate the proposed changes to the first hour rating water draw test and the treatment of water heaters equipped with heat traps.

In consideration of GAMA's request, the Department finds that industry testing to investigate the proposed changes to the test procedure for water heaters would be beneficial to the rulemaking process, that the 60 day written comment period originally established for the proposed rule may be too short for the affected industry to thoroughly investigate the effects of the proposal but that a written comment period extension of 60 days would be excessive, and that a public hearing held at a time when more laboratory test data is available to quantify the impacts of the proposal also would be beneficial to the rulemaking process.

Consequently, the Department, by this notice, is scheduling a second public hearing to be held on April 26, 1984, regarding its proposed amendments to its test procedure for water heaters and has extended the due date for written comments on this proposal to May 21, 1984. The May 21 date for written comments gives interested parties the same time interval that existed previously between the public hearing and the filing of comments. The Department is not canceling the first public hearing scheduled for March 15, 1984.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

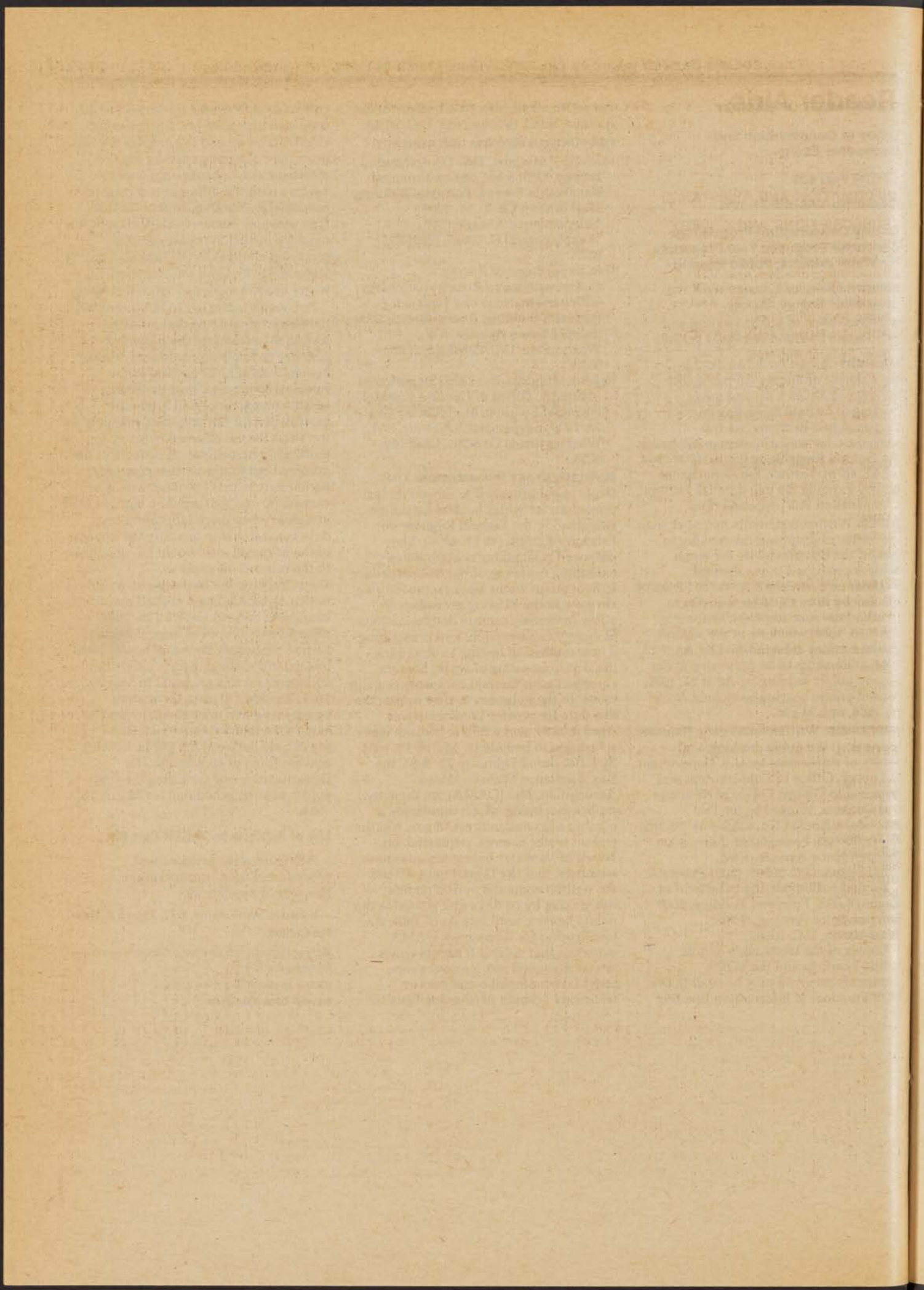
Issued in Washington, D.C., March 9, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 84-7333 Filed 3-15-84; 10:02 am]

BILLING CODE 6450-01-M



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Federal Register

Vol. 49, No. 53

Friday, March 16, 1984

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S. 2354 / Pub. L. 98-231

To rename the "River of No Return Wilderness" in the State of Idaho as the "Frank Church—River of No Return Wilderness". (Mar. 14, 1984; 98 Stat. 60) Price: \$1.50

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