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federal register

Monday
March 18, 1985

Selected Subjects

- Administrative Practice and Procedure**
 - Federal Maritime Commission
- Air Pollution Control**
 - Environmental Protection Agency
- Authority Delegations (Government Agencies)**
 - Environmental Protection Agency
- Banks, Banking**
 - Federal Deposit Insurance Corporation
- Commodity Futures**
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 - Federal Reserve System
- Environmental Impact Statements**
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 - Agricultural Marketing Service
- Grant Programs—Health**
 - Public Health Service
- Grant Programs—Indians**
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- Imports**
 - Animal and Plant Health Inspection Service

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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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Coast Guard

Meat Inspection

Food Safety and Inspection Service

Motor Vehicle Safety

National Highway Traffic Safety Administration

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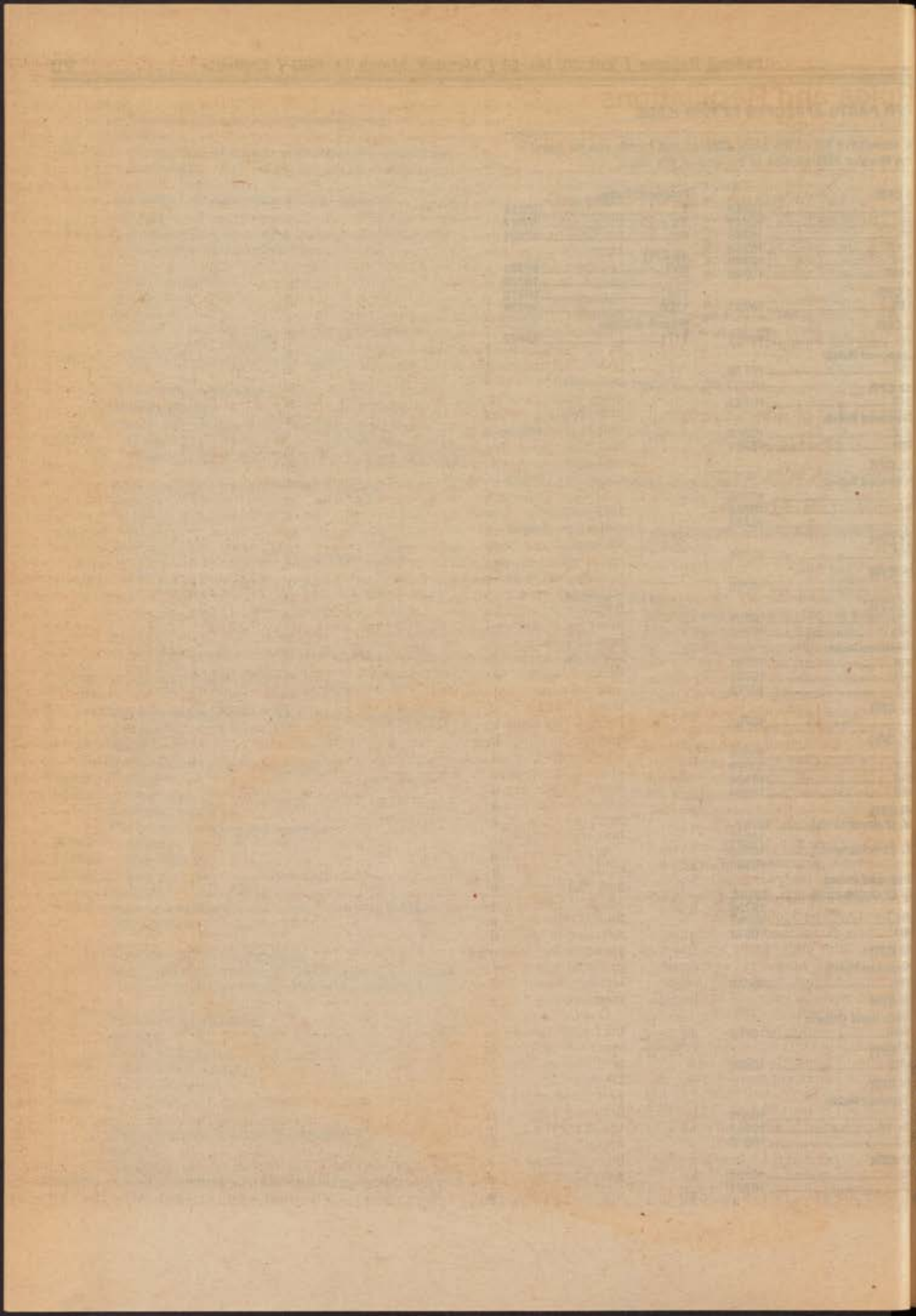
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, 59, and 70

Increase in Fees and Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The interim rule with request for comments published January 28, 1985 (50 FR 3735) which increased fees and charges for poultry, rabbit, and egg grading, laboratory services, and egg products inspection is made final. These changes are necessary to cover increased costs associated with the programs. This document finalizes charges for the Federal voluntary egg products inspection and egg, poultry, and rabbit grading; laboratory services; and Federal mandatory egg products inspection overtime and appeal services as revised in the interim final rule.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: D.M. Holbrook, (202) 447-3506.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291, and has been classified "nonmajor" as it does not meet the criteria contained therein for major regulatory actions. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (i) the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services; and (ii) competitive effects are

offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

Each fiscal year, the fees for services rendered to operators of official poultry, rabbit, shell egg, and egg products plants by the Agricultural Marketing Service (AMS) are reviewed. A cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services. The fees are determined by the employee's salary and fringe, cost of supervision, travel, and other overhead and administrative costs.

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing Federal voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and laboratory services. The Egg Products Inspection Act requires that the cost for overtime and appeal inspections be borne by the user of the service.

The last fee increase, effective February 1, 1984, was based primarily on a 3.5-percent salary increase in January 1984 in conformity with the Federal Pay Comparability Act of 1970. Since then, unemployment compensation and medicare increased about 0.5 percent each. In May there was a 0.5-percent salary increase retroactive to January 1984, and a 3.5-percent salary increase was received in January of this year.

With respect to laboratory fees, the coliform analysis previously listed in § 55.550(a) is obsolete. Under the newly adopted methodology, additional testing time is required. The charges are adjusted to reflect this change. Two separate fees are now listed for the *E. coli* analysis. In the past, the fee for testing without coliform analysis was inadvertently omitted.

Due to the situations described above, the hourly rate for nonresident voluntary grading and inspection service is increased from \$20.76 to \$21.88. Likewise, the rate for such services performed on Saturdays, Sundays, or holidays is increased from \$21.84 each to \$23.68. The hourly rate for voluntary appeal gradings or inspections is increased from \$17.32 to \$19.92. The hourly rate for laboratory analyses for other than individual tests is increased

from \$24.24 to \$25.48, and the fees for individual tests are increased approximately 4.8 percent. The hourly rate for mandatory overtime inspection service is increased from \$17.20 to \$17.32. The hourly rate for certain mandatory appeal egg product inspections is increased from \$17.32 to \$19.92.

Overall, fees and charges will be increased about 5.0 percent.

Because increased revenues were needed to cover costs of services, an interim final rule published January 28, 1985, with an effective date of February 1, 1985, was necessary. The interim rule invited comments until February 15, 1985. However, no comments were received during the comment period. And, since this document does not alter the regulations which have been in effect since February 1, 1985, there is no reason to postpone its effective date for 30 days. Thus, good cause is found to make this document effective upon publication.

Information Collection Requirements and Recordkeeping

Information collection requirements and recordkeeping provisions contained in 7 CFR Parts 55, 56, 59, and 70 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35, and 7 CFR Part 55 has been assigned OMB No. 0581-0146; and 7 CFR Part 56 has been assigned OMB No. 0581-0128; and 7 CFR Part 59 has been assigned OMB Nos. 0581-0113 and 0581-0114; and 7 CFR Part 70 has been assigned OMB No. 0581-0127.

List of Subjects

7 CFR Part 55

Egg products, Voluntary inspection service.

7 CFR Part 56

Shell eggs, Voluntary grading service.

7 CFR Part 59

Shell eggs, Egg products, Mandatory inspection service.

7 CFR Part 70

Poultry, Poultry products, Rabbit products, Voluntary grading services.

Accordingly, for reasons and purposes stated above and in the interim final rule published January 28, 1985, (50 FR

3735), the amendments made to §§ 55.510 and 55.550 of Part 55; §§ 56.46 and 56.47 of Part 56; §§ 59.126 and 59.370 of Part 59; and §§ 70.71 and 70.72 of Part 70; Title 7, Code of Federal Regulations, by the said interim rule are hereby made final, without and change.

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*); Egg Products Inspection Act (21 U.S.C. 1031-1056))

Done at Washington, D.C., on: March 13, 1985.

William T. Manley,
Deputy Administrator, Marketing Programs.
[FR Doc. 85-6317 Filed 3-15-85; 8:45 am]
BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 84-338]

Deletion of Approved Treatments Using EDB on Citrus Fruits, Papayas, and Other Fruits and Vegetables

Correction

In FR Document 85-5801, beginning on page 9786 in the issue of Tuesday, March 12, 1985, make the following correction: On page 9788, in the first column, under the heading "Subpart 319.56—[Amended]", the fifth line of the paragraph designated "1." should have read, "319.56-2n, 319.56-2r, 319.56-2s, 319.56-2t".

BILLING CODE 1505-01-M

Commodity Credit Corporation

7 CFR Part 1446

General Regulations Governing 1982 Through 1985 Crops Peanut Warehouse Storage Loans and Handler Operations (Amendment 3)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this Final Rule is to revise the regulations governing the peanut price support program with regard to the eligibility of additional loan collateral peanuts which grade Segregation 2 or Segregation 3 to be transferred to a quota loan pool. Specifically, the regulation at 7 CFR 1446.66 are being revised to recognize waivers of the right to transfer such additional loan collateral peanuts to the quota loan pool which have been executed by peanut producers in order to receive certain indemnity payments

from the Federal Crop Insurance Corporation (FCIC).

EFFECTIVE DATE: August 1, 1984.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Program Specialist, (202) 382-0154.

SUPPLEMENTARY INFORMATION: This Final Rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State and local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

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

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

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, or land use and appearance. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Section 358 of the Agricultural Adjustment Act of 1938, as amended (the 1938 Act), provides for the establishment of farm poundage quotas and defines "quota peanuts" as any peanuts produced on a farm having an established quota which are: (1) Eligible for domestic edible use as determined by the Secretary; (2) marketed or considered marketed from a farm; and (3) not in excess of the farm poundage quota of such farm. The 1938 Act also

defines "additional peanuts" as any peanuts which are marketed from a farm which are in excess of the marketings of quota peanuts from such farm or are marketed from a farm for which no farm poundage quota has been established. Section 108A of the Agricultural Act of 1949, as amended, provides for a two-price price support program for quota and additional peanuts. Under the present peanut program, the levels of price support for 1984-crop peanuts are \$550 per ton for quota peanuts and \$185 per ton for additional peanuts.

Under the peanut price support program, peanuts are graded as Segregation 1, Segregation 2 or Segregation 3. Segregation 2 and Segregation 3 peanuts are peanuts which are less valuable since they are either damaged or are not free of a mold (*Aspergillus flavus*). Producers who deliver Segregation 2 and Segregation 3 peanuts for marketing must pledge such peanuts as collateral for an additional price support loan or otherwise dispose of the peanuts for restricted seed or oil use.

However, under the provisions of the regulations which govern the peanut price support program (i.e., 7 CFR 1446.66), peanuts which have been graded Segregation 2 or Segregation 3 and pledged as collateral for an additional price support loan may be transferred to a quota loan pool after all producers have completed marketings from the farm. Such a transfer under § 1446.66 cannot exceed the smaller of: (1) The undermarketing of quota peanuts from the farm, or (2) the effective farm poundage quota for the farm minus the production of Segregation 1 peanuts on the farm. The support value for peanuts so transferred to the quota loan pool is the computed quota support value based upon the applicable quota support schedule (the schedule of quota price support differentials) minus certain discounts.

FCIC, which like CCC is a Government corporation within the U.S. Department of Agriculture, provides crop insurance to peanut producers under which they insure their peanut production at values based on whether the production is indemnified as quota or as non-quota (additional) peanuts. FCIC indemnifies the producer first for the difference between the quota portion of the guarantee and the actual peanut production. Any amount in excess of this difference is indemnified as non-quota production. In quality calculations used by FCIC to determine the actual peanut production, all Segregation 1 peanuts are valued as quota peanuts. The production of Segregation 1 peanuts

is reduced by FCIC when the grade price of such production falls below the established support price. A similar reduction in the Segregation 2 and 3 production is possible using a value/price support relationship determined by FCIC.

In order to facilitate the orderly marketing by producers of the peanut poundage quota established for a farm, Segregation 2 and Segregation 3 peanuts are permitted to be marketed under the price support program in two stages. In the first stage the producer receives the price support advance for additional loan collateral peanuts during the harvest season. In the second stage, the producer is allowed to make a paper transfer (i.e., a § 1446.66 transfer) of Segregation 2 and Segregation 3 peanuts to the quota loan pool and receive a supplemental price support loan advance at the end of the harvest season. However, due to the quality of Segregation 2 and Segregation 3 peanuts which are transferred to the quota pool in this manner, CCC must sell such peanuts for crushing into oil and meal at a potential loss to CCC.

The contemporaneous availability of FCIC insurance and a "disaster transfer" under the provisions of § 1446.66 has led to a duplication of benefits. This is the result of producers obtaining indemnity benefits from FCIC with respect to Segregation 2 and Segregation 3 peanuts placed in the additional price support loan pool in the initial phase of marketing and then making a disaster transfer of the same peanuts and obtaining a supplementary price support loan from CCC at the quota support price.

This situation produces a return to the producer above that which would have been realized had the peanuts involved in the disaster transfer not graded Segregation 2 or Segregation 3 because of quality defects and may encourage producers to purposely lower the quality of the peanuts through poor harvesting practices in order to receive a duplication of benefits.

In order to eliminate this practice and to determine the actual insurable loss incurred by the producer, FCIC now provides that producers making an indemnity claim must execute a form agreeing to waive the right to make a disaster transfer and apply for the supplemental price support loan advance under the provisions of § 1446.66 with regard to that quantity of peanuts which is the smaller of: (1) The difference between the producer's effective quota and the production of Segregation 1 peanuts on the farm or (2) the quantity of Segregation 2 and

Segregation 3 peanuts available for transfer.

Since the only purpose of this rule is to amend § 1446.66 to recognize waivers of the right to make a disaster transfer which are voluntarily given by producers in order to receive certain FCIC indemnity benefits, it has been determined that no further public rulemaking is required. Accordingly, this final rule is effective August 1, 1984, with respect to the marketing of the 1984 and subsequent crops of peanuts.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Warehouses.

PART 1446—[AMENDED]

Final Rule

Accordingly, 7 CFR 1446.66 is amended by: (1) inserting "(a)" before the existing paragraph and revising the first sentence thereof, and (2) adding a new paragraph (b), as follows:

§ 1446.66 Producer transfers of additional loan stock to quota pools.

(a) Except as provided in paragraph (b) of this section, producers may transfer Segregation 2 and Segregation 3 additional loan collateral peanuts to the quota loan pool after the producer has completed marketing and returned his marketing card to the county office.

(b) Effective with respect to the 1984 and subsequent crops of peanuts, no transfer of Segregation 2 and Segregation 3 additional loan collateral peanuts to a quota loan pool shall be permitted under the provisions of paragraph (a) of this section for a farm with respect to that quantity of peanuts for which the producers on the farm have executed a waiver of the right to make such a transfer in order to obtain indemnity benefits from the Federal Crop Insurance Corporation.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); Secs. 101, 108A, 401 *et seq.*, 63 Stat. 1051, as amended, 95 Stat. 1254, 63 Stat. 1054 *et seq.*, as amended (7 U.S.C. 1441, 1445c-1, 1421 *et seq.*); Secs. 359, 375, 52 Stat. 31, 64, as amended (7 U.S.C. 1359, 1375).

Signed at Washington, D.C. on March 12, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-6344 Filed 3-15-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization; Updated Listing of Border Patrol Sectors

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the listing of Border Patrol sector headquarters and stations to include the latest organizational changes. These changes were made to bring the operational jurisdiction in line with the principles of good management.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT:

Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633-3291.

SUPPLEMENTARY INFORMATION: With a view toward better Service management and enhancement of community relations, the name of Border Patrol Sector No. 11—Chula Vista, Calif. was changed to Sector No. 11—San Diego, Calif. The name change more aptly describes the area of operation and allows for a greater degree of public identification.

This amendment also reflects that the following stations/substations have been closed: Browning, Mont. in Sector No. 7 and Corpus Christi, Tex. and Galveston, Tex. in Sector No. 18.

New border patrol stations/substations that have been opened include: Imperial Beach, Ca. in Sector No. 11, Midland/Odessa, Tx. in Sector No. 16, and Freer, Texas in Sector No. 18.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment relates to agency organization and merely updates an existing list.

This order is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure. Authority delegation (government agencies). Organization and functions (government agencies).

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION**§ 100.4 [Amended]**

In § 100.4, paragraph (d) is amended by:

1. Changing the name of sector No. 11—Chula Vista, Calif. to read "Sector No. 11—San Diego, Calif."
2. Removing the substation "Browning, Mont." from Shelby, Mont. under Sector No. 7—Havre, Mont.
3. Removing "Corpus Christi, Tex." and "Galveston, Tex." from Sector No. 18—Laredo, Tx.
4. Adding in alphabetical sequence a new station "Imperial Beach, Ca." under Sector No. 11—San Diego, Calif.
5. Adding to the Pecos, Tex. station under Sector No. 16—Marfa, Tex. "(Midland/Odessa, Tex.)" to indicate a substation.
6. Adding in alphabetical sequence a new station "Freer, Tex." under Sector No. 18—Laredo, Tex.

(Sec. 103 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103)

Dated: March 7, 1985.

Raymond M. Kisor,

Associate Commissioner, Enforcement,
Immigration and Naturalization Service.
[FR Doc. 85-6309 Filed 3-15-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 94**

[Docket No. 85-022]

Change in Disease Status of Belgium Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations concerning the importation into the United States of pork and pork products by adding Belgium to the list of countries where African swine fever (ASF) exists or where there is reason to believe that ASF exists. The effect of this action is to add certain restrictions on the importation of pork and pork products from Belgium. This is necessary in order to help prevent the introduction of ASF into the United States.

DATES: Effective date is March 12, 1985. Written comments must be received on or before May 17, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal

Building, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION:**Background**

African swine fever (ASF) is potentially the most dangerous and destructive of all communicable swine diseases. The causative virus is highly virulent and may be present in swine, pork, and pork products originating in countries where the disease exists.

On March 8, 1984, the Department was notified by the International Office of Epizootics that an outbreak of ASF has been diagnosed in swine in Belgium. The outbreak was confirmed by the Government of Belgium. The diagnosis of ASF was based on clinical signs and laboratory confirmation.

The importation of swine, pork, and pork products is regulated under the regulations set forth in 9 CFR Parts 92 and 94 (referred to below as the regulations). In order to help prevent the introduction of ASF into the United States, this document amends § 94.8 of the regulations to add Belgium to the list of countries where ASF exists or where there is reason to believe that ASF exists. With this amendment, pork and pork products from Belgium are subject to the provisions of § 94.8 of the regulations which provide, in part, that:

(a) No pork or pork product will be permitted entry into the United States from any country listed in this section unless:

(1) Such pork or pork product has been fully cooked by a commercial method in a container hermetically sealed promptly after filling but before such cooking, so that such cooking and sealing produced a fully-sterilized product which is shelf-stable without refrigeration; or

(2) Such pork or pork product is not otherwise prohibited importation under this part (9 CFR Part 94) and is consigned directly from the port of entry in the United States to a meat processing establishment operating under Federal meat inspection, approved by the Deputy Administrator, Veterinary Services for further processing of such pork or pork product by heat.

(b) Pork or pork products consigned from the port of entry to an approved establishment under the provisions of paragraph (a)(2) of this section shall be moved from the port of entry to the approved establishment under Customs seals or seals of the Deputy Administrator, Veterinary Services and shall be otherwise handled as the Deputy Administrator, Veterinary

Services may direct in order to guard against the introduction and dissemination of the contagion of African swine fever. Seals applied under this section shall not be broken except by persons authorized to do so by the Deputy Administrator, Veterinary Services.

(c) Pork or pork products imported into the United States from a country listed in this section which . . . [does] not meet the requirements specified in this section shall be seized, quarantined, and disposed of as the Deputy Administrator, Veterinary Services may direct in order to guard against the introduction and dissemination of the contagion of the disease.

Pork and pork products from Belgium are also subject to other restrictions in the regulations because of foot-and-mouth disease, hog cholera, and swine vesicular disease.

Also, it should be noted that under the regulations, swine from Belgium (with certain exceptions for wild swine in accordance with § 92.4(c)) have been prohibited from being imported into the United States because of the existence of foot-and-mouth disease, hog cholera, and swine vesicular disease. Further, under the regulations, the existence of ASF in Belgium provides an independent basis for prohibiting the importation into the United States of swine (with certain exceptions for wild swine in accordance with § 92.4(c)) from that country.

Emergency Action

Dr. John K. Atwell, Deputy Administrator, VS, APHIS, USDA, has determined that an emergency situation exists that warrants publication without prior opportunity for a public comment period. Under the circumstances explained above, it is necessary that the rule be made effective immediately in order to help prevent the introduction of ASF into the United States.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this interim rule effective upon signature. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the Federal Register.

Executive Order 12291 and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures for Executive Order 12291 with respect to this interim rule. Immediate action is warranted in

order to help prevent the introduction of ASF into the United States.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of the Regulatory Flexibility Act.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 94

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

PART 94—[AMENDED]

Accordingly, 9 CFR Part 94 is amended as follows:

1. The authority citation for § 94.8 is revised to read as follows:

Authority: 21 U.S.C. 111; 7 CFR 2.17, 2.51, and 371.2(d).

2. "Belgium" is added in alphabetical order to the list of countries in the introductory material in § 94.8.

Done at Washington, D.C., this 12th day of March 1985.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-6318 Filed 3-15-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 333

Extension of Corporate Powers

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interpretive rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") has amended an interpretive ruling (12 CFR 333.101(b)) that prevents an insured nonmember bank not exercising trust powers from offering self-directed Individual Retirement and Keogh Plan accounts without the prior written consent of the FDIC. As amended, the interpretive ruling permits the offering of such accounts with certain limitations. **EFFECTIVE DATE:** March 11, 1985.

FOR FURTHER INFORMATION CONTACT: William G. Hrandac, Examination Specialist, Planning and Program Development Branch, Division of Bank Supervision (202-389-4761), Room NY-770B, 550 17th Street, NW Washington, D.C. 20429, or Joseph A. DiNuzzo, Senior Attorney, Legal Division (202-389-4171), Room 4126B, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Section 333.2 of the FDIC's regulations (12 CFR 333.2) prohibits an insured nonmember bank from changing the general character of its business without the prior written consent of the FDIC. Exercising trust powers constitutes a change in the general character of the business of an insured nonmember bank that requires the prior written consent of the FDIC. Prior to the issuance of this amendment, FDIC interpretive ruling § 333.101(b) ("§ 333.101(b)") permitted insured nonmember banks not exercising trust powers to act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 and Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (IRAs and Keogh Plan accounts) without the prior written consent of the FDIC provided, among other things, that the bank was required to invest the funds held in such accounts only in its own time or savings deposits. This proviso effectively precluded insured nonmember banks not exercising trust powers from offering self-directed IRAs and Keogh Plan accounts in which the holder directed investments to be made in assets other than the time or savings deposits of the bank.

Toward the end of 1984 the FDIC received a petition and other requests to amend § 333.101(b) to permit insured nonmember banks not exercising trust powers to offer self-directed IRAs and Keogh Plan accounts without the prior written consent of the FDIC. Those requesting the amendment noted that the offering of self-directed IRAs and Keogh Plan accounts would involve only custodial activities with no exercise of investment discretion by the bank. It was also noted that a variety of other financial institutions not exercising trust powers, including nationally chartered banks, were able to offer self-directed IRAs and Keogh Plan accounts where account assets were not limited to deposits of the custodial institution.

In response to the above-noted petition and other requests, the FDIC published in the *Federal Register* on January 31, 1985, a proposed revised

interpretive ruling permitting FDIC-insured nonmember banks not exercising trust powers to offer self-directed IRAs and Keogh Plan accounts. 50 FR 4522 (1985). Specifically, the proposed amendment revised § 333.101(b) to permit FDIC-regulated banks not exercising trust powers to offer IRAs and Keogh Plan accounts where the customer could direct the bank to invest the funds from such plans in assets other than the bank's own deposits "at the discretion of the customer provided the bank does not exercise any investment discretion or provide any investment advice with respect to account assets." The proposed revision of § 333.101(b) retained the requirements that the bank's duties be merely custodial or ministerial, and that the acceptance of such accounts without trust powers be consistent with the applicable state law.

The comment period for the proposed amendment closed on March 4, 1985. The FDIC received six comments on the proposal, all of which supported the adoption of the proposed amendment as a final interpretive rule. In general, the comments noted that the ability of all FDIC-regulated banks to offer self-directed IRAs and Keogh Plan accounts would significantly benefit consumers and would present no adverse risk to the bank or to the IRA or Keogh Plan customers. It was stated that insured nonmember banks may presently engage, without the prior written consent of the FDIC, in the types of transactions on behalf of individual customers (such as the purchase of Treasury or other securities) that would be involved in the administration of self-directed IRAs and Keogh Plan accounts. The comments also noted that, if adopted in final form, the proposed amendment would enable insured nonmember banks to compete on an equal footing with national banks, which already may offer self-directed IRAs and Keogh Plan accounts irrespective of whether they are exercising trust powers. One commenter, the American Bankers Association, stated that the proposed amendment would also enable FDIC-regulated banks to compete with other financial intermediaries, notably brokerage firms, which currently offer retirement plans permitting customers to make investment decisions among a broad range of investment vehicles. The Department of Commerce of the State of Michigan noted that since June 1984 state-chartered banks in Michigan without trust powers have been authorized to offer self-directed IRAs and Keogh Plan accounts, and that the

FDIC's proposed amendment comported with that state's current position. A letter from the Savings Banks' Association of Connecticut voiced general approval of the proposed amendment and noted that there is great interest among its membership to sponsor such investment accounts.

The FDIC agrees with the views expressed in the comments on the desirability of permitting all FDIC-regulated banks, irrespective of whether they are exercising trust powers, to offer self-directed IRAs and Keogh Plan accounts without obtaining prior approval from the FDIC. The proposed amendment to § 333.101(b) is therefore being issued as a final interpretive ruling. The FDIC wishes to emphasize that, as required in § 333.101(b), banks may neither exercise investment discretion nor provide investment advice in connection with the offering of self-directed IRAs and Keogh Plan accounts authorized under § 333.101. Also, as still required by § 333.101(b)(3), the bank's acceptance of such accounts without trust powers must not be contrary to the applicable state law. With respect to the questions posed in the preamble to the proposed amendment, the FDIC does not deem it necessary at this time to require that banks segregate assets and maintain a separate system of records in connection with self-directed IRAs and Keogh Plan accounts. As noted in the comments received on these issues, current banking practices and regulations of the Internal Revenue Service impose sufficient guidelines within which self-directed IRAs and Keogh Plan accounts are and would be offered. Moreover, Part 344 of the FDIC's regulations (12 CFR Part 344) imposes upon insured nonmember banks recordkeeping and confirmation requirements for securities transactions. Part 344 would be applicable to the offering of self-directed IRAs and Keogh Plan accounts. At this time, therefore, the FDIC deems it unnecessary to prescribe additional, specific requirements on the recordkeeping and segregation of assets relative to the offering of self-directed IRAs and Keogh Plan accounts. The FDIC fully expects, however, that insured nonmember banks availing themselves of the expanded authority to offer such accounts will do so in a manner consistent with principles of sound trust administration, including the segregation and/or adequate identification of corresponding assets of these accounts.

The Board of Directors has concluded that a delayed effective date of thirty days from the date of publication of this

amendment, as ordinarily prescribed by section 553(b) of Title 5 of the United States Code, is not required in this situation because the amendment is an interpretive ruling and serves merely to relieve a current restriction on insured nonmember banks. The final interpretive ruling, therefore, will be effective as of March 11, 1985. The Board of Directors' waiver of the delayed effectiveness rule is consistent with the comments received on this issue, which asked that the banking industry be permitted to offer self-directed investment products before the filing deadline for 1984 individual income tax returns, April 15, 1985.

Paperwork Reduction Act

The amendment to Interpretive ruling § 333.101(b) will not entail any reporting or recordkeeping requirements and, hence, the Paperwork Reduction Act of 1980 is not applicable.

Final Regulatory Flexibility Analysis

Pursuant to section 5 of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (September 19, 1980), the Board of Directors hereby certifies that the amendment to Interpretive Rule § 333.101(b) will not have a significant economic impact on a substantial number of small entities because the changes will require no specific action by any bank and instead represent a liberalization of current constraints likely to be more important to larger institutions in a position to commit the resources necessary to offer self-directed IRAs and Keogh Plan accounts.

The FDIC is promulgating this regulatory change under its authority granted in sections 8 and 9 of the Federal Deposit Insurance Act (12 U.S.C. 1816, 1819).

List of Subjects in 12 CFR Part 333

Banks, banking, State nonmember banks, Trusts and trustees.

Accordingly, the FDIC hereby amends 12 CFR Part 333 as set forth below.

PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for Part 333 reads as follows:

Authority: 12 U.S.C. 1816, 1819.

§ 333.101 [Amended]

2. Section 333.101(b) is revised to read as follows:

(b) An insured State nonmember bank, not exercising trust powers may act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement

Income Security Act of 1974 and Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 without the prior written consent of the Corporation provided: (1) The bank's duties as trustee or custodian are essentially custodial or ministerial in nature, (2) the bank is required to invest the funds from such plans only (i) in its own time or savings deposits, or (ii) in any other assets at the direction of the customer provided the bank does not exercise any investment discretion or provided any investment advice with respect to such account assets, and (3) the bank's acceptance of such accounts without trust powers is not contrary to State law.

By Order of the Board of Directors this 11th day of March, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-8215 Filed 3-15-85; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 83N-0303]

Antibiotic Drugs; Gentamicin Sulfate Injection; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) amended the antibiotic drug regulations to provide for the inclusion of accepted standards for two new strengths of gentamicin sulfate injection (48 FR 44775; September 30, 1983). An additional amendment to those regulations, which was inadvertently omitted, published December 19, 1984 (49 FR 49287). This document corrects an oversight in that additional amendment.

EFFECTIVE DATE: December 19, 1984.

FOR FURTHER INFORMATION CONTACT:

Joan Eckert, 301-443-4290.

SUPPLEMENTARY INFORMATION: In FR Doc. 84-32958, appearing on page 49287 in the Federal Register of Wednesday, December 19, 1984, the following correction is made: On page 49287, in the middle column under § 444.220 *Gentamicin sulfate injection*, in paragraph (b)(4), fourth line, "50 milligrams" is corrected to read "10 milligrams".

Dated: March 8, 1985.

Daniel L. Michels,
Director, Office of Compliance, Center for
Drugs and Biologics

[FR Doc. 85-6271 Filed 3-15-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 667

[FHWA Docket No. 84-15]

Public Lands Highways Funds; Project Administration Procedures and Eligibility Guidance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rulemaking.

SUMMARY: The FHWA has requested and received comments on proposed revisions to its regulation on Public Lands Highways. Public Lands Highways are Federal-aid highways which are bounded on both sides by unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations. The regulation specifies procedures for project administration and provides guidance on eligibility of work. The revisions will bring the existing regulation up to date considering recent legislative and administrative changes in the program.

EFFECTIVE DATE: April 17, 1985.

FOR FURTHER INFORMATION CONTACT:

Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering, (202) 426-0450, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0762, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On September 19, 1984 the FHWA published Docket No. 84-15, a notice of proposed rulemaking for Public Lands Highways. The policies, procedures and requirements for administering the Public Lands Highways program are set forth in 23 CFR 667. In carrying out the requirements of § 126(a) of Pub. L. 97-424, 96 Stat. 2113, to provide funds to pay for the cost of construction and improvement of Public Lands Highways, the Secretary of Transportation is authorized by 23 U.S.C. 315 to prescribe and promulgate rules and regulations. This authority is delegated to the Federal Highway Administrator by 49 CFR 1.48. The regulation, 23 CFR 667,

establishes the authority and responsibility of the Federal Highway Administrator to allocate funds on the basis of need as determined upon application of the State highway agency (SHA). It is necessary to have candidate projects sufficiently outlined in writing to permit comparison and selection.

The Public Lands Highways program is part of the Federal Lands Highways program which provides for a coordinated effort for construction of forest highways, public lands highways, park roads, parkways and Indian reservation roads. The Public Lands Highways program provides funds only for roads on a Federal-aid system which are bounded on both sides by Federal lands. Annually, the FHWA solicits candidate projects for Public Lands Highways funding. Upon identification by the SHA's of appropriate projects in consultation with FHWA and other Federal agencies and submission of candidates by the SHA's, the FHWA makes selections based on need and other criteria according to the information provided. Maintenance provisions of legislation have been rescinded and although rehabilitation type activities may be funded, maintenance, per se, is no longer eligible. The FHWA allocates Public Lands Highways funds to the States, on the basis of need in such States as determined by FHWA upon application of the SHA. Preference is given to those projects which significantly benefit or improve Federal land and resource management activities and similar consideration is given management activities regardless of the type of resource involved. Since candidate projects are on Federal-aid systems, appropriate classes of regular Federal-aid funds as well as other appropriate classes of Federal Lands funds are available. This permits greater flexibility in the development of viable improvements.

Three responses were received within the 30-day comment period provided in the notice of proposed rulemaking. However, several additional comments were received within several weeks after the close of the comment period and these have also been included. Most of the comments were resolved by incorporation of explanatory language in § 667.3, ALLOCATION OF FUNDS. Specifically, one commenter stated that it would be highly desirable to have joint consultation with the State Highway Engineers in the selection process; this was resolved by including wording in § 667.3(b) regarding the State role in the development of candidates. A commenter stated that consideration in the selection process should be given to

route continuity, traffic safety and the State Transportation Plan; this was resolved by including these elements in § 667.3(c)(2). A commenter noted that since all programming for projects is done on a yearly basis, an annual call would be more appropriate; this was resolved by substituting the word "Annually" for "Periodically" in § 667.3(b). Another comment documented a concern that the emphasis placed by the FHWA in selecting projects significantly impacted by Federal land and resource management activities is weighted to favor routes serving national forests. The FHWA's response to this comment is that the implementing legislation as amended does not suggest any favoritism toward a particular category of Federal lands and since impacts on resources is subjective, the FHWA does not intend to favor any one type of Federal lands. Wording in the Final Rule has been modified to assure similar consideration is given regardless of the type of lands impacted. In related comments, it was suggested that § 667.3(b) mandate consultation by the SHA with officials of the agencies having jurisdiction over Federal lands and that § 667.5 require the SHA to include letters from the involved Federal land management agencies indicating that the State's proposal is consistent with the plans and responsibilities of those agencies. The FHWA does not consider this to be a matter for regulation. However, the annual solicitation memorandum contains instructions which identify the need to coordinate with the Federal agency having jurisdiction of the Federal lands involved. In addition, the inclusion of consideration of State and Federal planning assures Federal agency input. Another comment was that States with large expanses of public lands should receive special emphasis under this program. This factor is already included in § 667.3 (c)(1) and (d).

In response to the comment that the internal procedures for central allotment of funds does not need to be contained in regulation, FHWA concurs and although this process is intended to continue, language has been removed from this rulemaking.

It was suggested by one commenter that the language invoking Federal-aid Primary procedures should be changed to " * * * established Federal-aid procedures." This would provide for Public Lands projects to be monitored under established certification acceptance or modified Secondary Road plan procedures. Our response is that Public Lands projects receive very close

attention at all levels of government. If a State normally processes Primary projects under certification acceptance, Public Lands projects would not be excepted. The FHWA monitoring should continue to be at least as diligent as on a primary system project.

Several other comments received could not be accommodated. One commenter was concerned that the wording of § 667.5(d) (i.e., "No fund transfers or changes to project termini or description as approved will be permitted without prior approval from Washington Headquarters.") would lead to considerable paperwork, as projects often cannot be estimated accurately for future construction. It is possible that if there isn't sufficient funding at the time of bid call, the project would have to be cancelled. The FHWA's response to this comment is that approval action by Washington Headquarters does not necessitate paperwork. Small adjustments are accomplished upon verbal notification and verbal approval. The provision for Washington Headquarters approval is necessary to assure that a close account of funds allocated is kept for each project. The States are made aware at the time of the solicitation that these conditions exist due to the limited funds available. Planning is necessary to assure supplemental funds are available if a contingency condition arises. Another comment which could not be incorporated was that eligibility should be broadened to include public lands under other than Federal jurisdiction if they are: contiguous to Federal lands, are part of a regional park system and the primary access road serves as an arterial route for the public lands' area. The FHWA's response to this comment is that public lands must be under Federal jurisdiction. Legislation would be required to modify the definition of public lands and there is no intention to seek a redefinition. An additional suggestion was that Preliminary Engineering be excluded from the program. This could not be accommodated since it is FHWA's interpretation of 23 U.S.C. 204 that Preliminary Engineering (PE) may be included as an eligible expense. Although the FHWA does not encourage a State to submit PE projects since criteria would normally preclude selection in favor of a project which is ready to go to construction, PE is permitted by law and to administratively limit eligibility would be presumptuous.

There was one comment to the effect that the law should be modified to remove the requirement that highways

be bordered on both sides by public lands. The FHWA does not intend to seek changes to existing law on this matter.

One commenter mentioned that the program is not defined with criteria and objectives specific enough to insure stability of the program and that the FHWA should clearly delineate the criteria for Public Lands Highways fund grants to insure stability for State highway agency programs. The FHWA response is that this seems to suggest that the discretion in the program be reduced, if not eliminated. The FHWA does not intend to administratively weaken the discretionary nature of this program by tightening criteria beyond that provided in the Final Rule. Congress established the program with a great deal of flexibility and discretion given to the Secretary, and any significant change toward "formula" funding must be initiated by Congress. The Final Rule does contain language regarding the State and Federal Transportation Plans which provides for consideration along these lines in the selection process.

Summary of Revisions

After a review of comments received, the following revisions are being made to the regulation. The revisions are intended to bring the existing regulation up to date considering recent legislative and administrative changes in the program. Specifically, the changes include (1) recent legislative provisions in the 1982 Surface Transportation Assistance Act [Pub. L. 97-424, 96 Stat. 2113] for giving preference to projects which significantly benefit or improve Federal land and resource management activities, and removing maintenance and certain ancillary facilities as eligible items of work, (2) deletion of the consideration previously given to the needs of FHWA direct Federal forces to perform work, (3) clarification of the wording of several sections to assure candidate projects are within Federal lands, on a public road and on the Federal-aid system, and (4) clarification of the criteria on which the review of candidate projects are based to more accurately reflect the priority of factors considered.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation.

These revisions will impose no additional burdens on the States or local agencies and could reduce

implementation burdens by providing a more current and simplified regulation. For these reasons, the anticipated economic impact, if any, will be minimal. Therefore, a full regulatory evaluation is not required. For the same reasons and under the criteria of the Regulatory Flexibility Act [Pub. L. 96-354], the FHWA has certified that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing and under the authority of 23 U.S.C. 202(c), 204, and 315; and 49 CFR 1.48(b); the FHWA revises Part 667 of title 23, Code of Federal Regulations, to read as set forth below. (Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 667

Grant programs—Transportation, Highways and roads, Public lands.

Issued on: March 5, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

Part 667 of Title 23 is revised to read as follows:

PART 667—PUBLIC LANDS HIGHWAYS FUNDS

Sec.

- 667.1 Purpose.
- 667.3 Allocation of funds.
- 667.5 Project procedures.
- 667.7 Eligibility.

Authority: 23 U.S.C. 202(c), 204 and 315; and 49 CFR 1.48(b).

§ 667.1 Purpose.

The purpose of this regulation is to outline procedures to be followed in administering Public Lands Highways funds.

§ 667.3 Allocation of funds.

(a) Funds authorized for Public Lands Highways shall be allocated among the States on the basis of need as determined by the Federal Highway Administrator upon application of the State highway agency (SHA). Preference will be given to those projects which significantly benefit or improve Federal land and resource management and similar consideration will be given regardless of the type of Federal lands involved.

(b) Annually a call will be issued by the Federal Highway Administration (FHWA) to the respective SHA's for

candidate projects. The SHA's may identify and prioritize candidate projects in consultation with FHWA and other Federal agencies as appropriate.

(c) All candidate projects submitted in response to the above call will be reviewed by FHWA Washington Headquarters and a priority of need determined on the basis of supporting information submitted with the application dealing with the following considerations:

(1) Relationship to Federal land and resource management plans and activities including traffic carrying capacity and other effects on land use and resource development.

(2) Current status and adequacy of the present road with regard to route continuity, capacity, safety and State and Federal agency transportation plans.

(3) Relationship of proposed improvement to the adequate development of a complete highway section, and

(4) Schedule for physical construction, particularly, how soon physical construction will begin.

(d) After reviewing the applications based on the above criteria, the FHWA will also give some consideration to the equitable distribution to States of available funds.

§ 667.5 Project procedures.

(a) Except as noted herein, work is to be administered by the SHA in accordance with Federal-aid procedures applicable to Federal-aid primary projects or by the FHWA in accordance with procedures applicable to forest highway projects. The method chosen will be determined by agreement between the SHA and the FHWA Division Administrator.

(b) The Administrator's approval of a specific project constitutes program approval. There is no need for subsequent inclusion in the statewide program of projects.

(c) Upon receipt of advice of project approval, the project should be advanced expeditiously. Projects shall be constructed through contracts awarded by competitive bidding unless the FHWA Division Administrator (or Direct Federal Division Engineer) finds that another method is cost effective for a particular project.

(d) The amount of Public Lands Highways funds available for the construction of a specific project is limited to the amount of funds allotted for that project. No fund transfers or changes to project termini or descriptions as approved by the Administrator will be permitted without

prior approval from the Washington Headquarters.

§ 667.7 Eligibility.

(a) Funds authorized for Public Lands Highways are available for public roads on the Federal-aid system which are entirely within Federal lands.

(b) Funds may be used for engineering and construction of the mainline roadway including adjacent vehicular parking areas and construction elements related to scenic easements.

(c) Funds may not be used for right-of-way costs, maintenance or other ancillaries such as sanitary, water and fire control facilities.

[FR Doc. 85-6407 Filed 3-15-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of Permanent Program Amendments From the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of an amendment to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By letters dated July 10 and 23, 1984, Ohio submitted program amendments to OSM consisting of changes to the regulations concerning use of explosives. OSM published a notice in the *Federal Register* on August 9, 1984, announcing receipt of the amendments and inviting public comment on the adequacy of the proposed amendments (49 FR 31912). The public comment period ended September 10, 1984.

OSM's review of Ohio's proposed amendments identified concerns relating to the preparation of blasting designs, preblasting surveys, conduct of the blast, and availability of blast records. OSM notified Ohio about its concerns on October 17, 1984, and on November 26, 1984, Ohio responded by revising the proposed amendments.

On January 3, 1985, OSM reopened and extended the comment period on Ohio's July 10 and 23, 1984, proposed amendment as modified on November

26, 1984 (50 FR 284). The public comment period ended on January 18, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meets the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendments. The Federal regulations at 30 CFR Part 935 which codify decisions on the Ohio program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA. Immediate effectiveness will facilitate early promulgation of these rules by Ohio.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT:

Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227, Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved by the Secretary of the Interior effective August 16, 1982, by notice published in the August 10, 1982 *Federal Register* (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 *Federal Register*.

II. Discussion of the Amendment

By letters dated July 10 and 23, 1984, Ohio submitted a program amendment consisting of a revision to Ohio rule 1501:13-9-06 concerning performance standards for the use of explosives. The revision is intended to parallel the revised Federal regulations at 30 CFR 816.61-68 and 817.61-68.

OSM published a notice in the *Federal Register* on August 9, 1984 (49 FR 31912), announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendments. The notice stated that a public hearing would be held only if requested. Since

there were no requests for a hearing, a hearing was not held. The public comment period closed September 10, 1984.

OSM's review of Ohio's proposed amendment identified concerns relating to the preparation of blasting designs, preblasting surveys, conduct of the blast, and availability of blast records. OSM notified Ohio about its concerns on October 17, 1984, and on November 26, 1984, Ohio responded by revising the proposed amendments.

OSM's concerns about the Ohio rules included the following:

Federal regulation 30 CFR 816.61(d)(4) allows only a certified blaster to prepare and sign a blast design. Ohio has amended its rule 1501:13-9-06(B)(4) to make a certified blaster responsible for approving any blast design.

Federal regulation 30 CFR 816.62(a) has a broad definition of "permit area" relating to preblasting surveys. Ohio has deleted the language in 1501:13-9-06(C)(1) that excluded sections of the permit area from consideration in a preblasting survey.

Federal regulation 30 CFR 816.64(a) requires notifying local governments of surface blasting incident to underground mining. Ohio has revised 1501:13-9-06(D)(6) to remove the limiting language of notifying only local governments "within one-half mile of the blasting site" of such blasting.

Federal requirements in section 515(b)(15)(C) of SMCRA and 30 CFR 816.67 establish design parameters intended to keep airblast and ground vibration at or below the levels predicted to cause damage. The large number of variables, even if the parameters are adhered to, make it impossible to say with 100% statistical confidence that no damage will occur. Therefore, Ohio has deleted section 1501:13-9-06(F)(2) that presumed blasting was being conducted in a manner to prevent damage if the performance standards were being met.

Federal regulation 30 CFR 816.68 requires that blasting records be made available to the public. Ohio rule 1501:13-9-06(G)(1) has been modified to allow inspection of blast records by the public.

Accordingly, OSM reopened and extended the comment period on Ohio's July 10 and 23, 1984, proposed amendment as modified on November 26, 1984. This action was announced in the Federal Register on January 3, 1985, to provide the public an opportunity to reconsider the adequacy of the proposed amendments (50 FR 284). The public comment period closed January 18, 1985.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on July 10 and 23, 1984, and modified on November 26, 1984, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed in the findings below. However, the Ohio rules have not been promulgated as final rules. The Chief of the Division has indicated that Ohio intends to adopt the rules by emergency rulemaking as soon as they are approved by OSM. The Director is approving the rules provided that they are fully promulgated in identical form to the rules submitted to and reviewed by OSM.

OAC Section 1501:13-9-06 Standards for Use of Explosives.

OAC Section 1501:13-9-06

Ohio has amended the standards for use of explosives to reflect the standards contained in 30 CFR 816.61-68 and 817.61-68. This rule sets the standards for all blasting operations on surface coal mining operations and for surface blasting operations incident to underground mining. The standards cover blast design, preblast survey, blasting schedule, blasting signs, warnings, and access control, control of adverse effects and blast records. The Federal regulations cited above also define standards for use of explosives on surface and underground coal mining operations including preblasting survey, blasting schedule, blasting signs, warnings, and access control, control of adverse effects, and blasting operation records. Therefore, the Director finds that the Ohio rule is no less effective than the Federal regulations.

IV. Public Comments

No public comments were received. Acknowledgments were received from the following Federal agencies: Soil Conservation Service, Farmers Home Administration, the Mine Safety and Health Administration and the Army Corp of Engineers. This disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings is approving the July 10 and 23, 1984, amendment as modified on November 26, 1984. The Director is amending Part 935 of 30 CFR Chapter VII to reflect approval of the State program amendment. However, as noted above, because the Ohio rules have not been fully promulgated, the rules will not take effect for purposes of the Ohio

program until the revised rules have been promulgated as final rules by Ohio.

VI. Procedural Matters

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 12291 and the Regulatory Flexibility Act: On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from section 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 935

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

Dated: March 1, 1985.

John D. Ward,

Director, Office of Surface Mining.

PART 935—OHIO

30 CFR 935.15 is amended by adding a new paragraph (o) as follows:

§ 935.15 Approval of regulatory program amendments.

(o) The following amendment submitted to OSM on July 10 and 23, 1984, and modified on November 26, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule is adopted in identical form as submitted to and reviewed by OSM: Ohio Administrative Code Section: 1501:13-9-06, (Standards for Use of Explosives).

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

[FR Doc. 85-6201 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 936

Approval of Amendment to the Oklahoma 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: OSM is announcing the approval of a program amendment submitted by Oklahoma as an amendment to the State's permanent regulatory program (hereinafter referred to as the Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to Oklahoma's coal exploration requirements. Oklahoma submitted the proposed program amendment on July 8, 1983. The Director, OSM, pending his decision on the status of the Oklahoma program pursuant to 30 CFR Part 733, delayed action on the entire amendment submitted by Oklahoma. After publication of the Director's decision on the status of Oklahoma's program in the April 12, 1984 *Federal Register* (49 FR 14674), OSM published a notice in the *Federal Register* on August 16, 1984 announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period ended September 17, 1984.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations and is approving it. The Federal rules at 30 CFR Part 936 codifying decisions concerning the Oklahoma program are being amended to implement this action. This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Room 3014, 333 West Fourth Street, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981, (46

FR 4910). 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 Oklahoma program can be found in the January 19, 1981 *Federal Register* (46 FR 4910), in the April 2, 1982 *Federal Register* (47 FR 14152), in the May 4, 1983 *Federal Register* (48 FR 20050) and the August 28, 1984 *Federal Register* (49 FR 34000).

Additional information pertinent to the action taken by the Director, OSM, under the authority of 30 CFR Part 733 with regard to the status of Oklahoma's permanent regulatory program was published in the April 12, 1984 *Federal Register* (49 FR 14674).

II. Submission of Revisions

On July 8, 1983, Oklahoma submitted to OSM and amendment to its approved permanent regulatory program at Sections 776, 815, and 816 of the Oklahoma regulations that would require any person who intends to conduct coal exploration in which more than 250 tons of coal is to be removed to obtain the written approval of the Oklahoma Department of Mines (ODM), comply with certain public participation requirements and post performance bond.

The proposed amendment consists of proposed regulations governing application requirements for exploration operations of more than 250 tons, criteria for the State's approval or disapproval of exploration applications, ODM's public notification requirements for actions taken on exploration applications, application of required performance standards and enforcement provisions for coal exploration operations, public availability of coal exploration operation information, bonding requirements for coal exploration operations and general responsibilities of persons conducting coal exploration. The August 16, 1984 *Federal Register* (49 FR 32772) announced receipt of the materials and opened the initial public comment period. In that same notice, OSM announced that a public hearing would be held only if requested. No requests were received and no hearing was held. A review by OSM identified minor deficiencies in the Oklahoma submission. The State was notified October 24, 1984, of OSM's concerns and subsequently provided clarifying material to OSM on January 2, 1985. OSM announced receipt of the new material in the February 6, 1985 *Federal Register* (50 FR 5080) and reopened the

public comment period until February 21, 1985. No additional comments were received.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the revised program amendment to the Department of Mines, Rules and Regulations (DOM/RR) as submitted by Oklahoma on July 8, 1983, and clarified on January 2, 1985, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

The clarifying material submitted by Oklahoma on October 24, 1984, addressed minor concerns raised by OSM in its review of the Oklahoma amendment. The clarifying material addressed the following: The State added language at § 776.12(a)(3)(vi) of its proposed regulations requiring any person who intends to remove more than 250 tons of coal from an exploration operation to provide a statement and appropriate documentation as to why the removal of more than 250 tons is necessary; the State added language at § 776.12(b)(1) of its proposed regulations requiring public notification by the applicant of his filing of an exploration application to remove coal in excess of 250 tons; and, Oklahoma added language at § 776.14(a) of its proposed regulations requiring that written notification of the regulatory authority's decision to approve or disapprove an exploration application be made to all individuals who provided comments on the application.

Specific Findings

A. Section 776.12 has been expanded to identify the necessary general application requirements for an exploration operation of more than 250 tons. This section also addresses the public participation requirements. The Director finds that these changes are no less effective than the Federal regulations at 30 CFR 772.11 and 772.12 and in accordance with section 512 of SMCRA.

B. Section 776.13 has been amended to identify ODM's responsibilities for approving or disapproving, including the criteria for approval and terms of approval of applications for coal exploration operations in excess of 250 tons. The Director finds that these changes are no less effective than the Federal regulations at 30 CFR 772.12 and in accordance with section 512 of SMCRA.

C. Section 776.14 has been added to identify ODM's public notification requirements for actions taken on applications for exploration operations

in excess of 250 tons. This new rule also provides for administrative and judicial review for any person whose interests are or may be adversely affected by a decision of ODM. The Director finds that these changes are no less effective than the Federal regulations at 30 CFR 772.12(c) and in accordance with section 512 of SMCRA.

D. Section 776.15 has been amended to apply the appropriate performance standards and enforcement provisions to coal exploration operations of over 250 tons. The Director finds that these changes are no less effective than the Federal regulations at 30 CFR 772.13 and in accordance with section 512 of SMCRA.

E. Section 776.17 concerning public availability of information has been amended to provide for public availability of information at all offices of ODM. The Director finds that these changes are no less effective than the Federal regulations at 30 CFR 772.15 and in accordance with section 512 of SMCRA.

F. Section 776.18 has been added which establishes bonding requirements. Under the new rule, any coal exploration activities which either remove more than 250 tons of coal or which substantially disturb the land surface shall file a minimum bond of \$10,000 with ODM. No equivalent provision is found in the Federal regulations. The Director finds that this requirement is not inconsistent with any Federal regulation or any provision of SMCRA.

G. Section 815.11 entitled "General responsibility of persons conducting coal exploration" has been amended to correctly reference the amended coal exploration application sections of amended Oklahoma rule Part 776. The Director finds that these changes are no less effective than the Federal regulations at 30 CFR 772.13 and in accordance with section 512 of SMCRA.

H. Sections 816.1 and 816.2 have been revised to track the Federal language concerning the scope and objectives of the performance standards. Under the revised State rules, coal exploration activities would be excluded from the performance standards of Part 816, but would still have to comply with the performance standards of § 815.15 of the Oklahoma rules. The State of Oklahoma made these changes to the Oklahoma rules in response to comparable revisions to the Federal regulations at sections 30 CFR 816.1 and 816.2. The Director finds that these changes are no less effective than the Federal

regulations at 30 CFR 816.1 and 816.2 and in accordance with section 512(a) of SMCRA.

IV. Public Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal Agencies invited to comment, none choose to do so. No additional public comments were received.

The disclosure of Federal agency comments is made pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above finding, is approving the July 8, 1983 amendment to the Oklahoma program. The Director is amending Part 936 of 30 CFR Chapter VII to reflect approval of the above program modification.

VI. Procedural Requirements

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. 602 *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 936

Coal mining, Intergovernmental

relations, Surface mining, Underground mining.

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

Dated: March 11, 1985.

John D. Ward,

Director, Office of Surface Mining.

PART 936—OKLAHOMA

30 CFR 936.15 is amended by adding a new paragraph (d) as follows:

§ 936.15 Approval of regulatory program amendment

(d) The following amendment submitted to OSM on July 8, 1983, is approved effective March 18, 1985. Oklahoma's regulations governing application requirements for exploration operations of more than 250 tons at section 776.12 of the Oklahoma Department of Mines, Rules and Regulations (DOM/RR); the State regulatory authority's responsibility for approving or disapproving, including the criteria for approval and terms of approval of application for coal exploration operations in excess of 250 tons at section 776.13 of DOM/RR; the Department of Mines' public notification requirements for actions taken on applications for exploration operations in excess of 250 tons at section 776.14 of DOM/RR; the application of appropriate performance standards and enforcement provisions for coal exploration operations in excess of 250 tons at section 776.15 of DOM/RR; the public availability of information relating to coal exploration operations at section 776.17 of DOM/RR; the minimum bonding requirement for coal exploration operations which either remove more than 250 tons or substantially disturb the land surface at section 776.18 of DOM/RR; the general responsibility of persons conducting coal exploration operations at section 815.11 of DOM/RR, to reflect the amended coal exploration application sections of DOM/RR Part 776; and the revised scope and objectives of applicable performance standards of section 815.5 at section 816.1 and 816.2 of DOM/RR.

[FR Doc. 85-6203 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD 85-009]

Written Warnings by Coast Guard Boarding Officers for Violation of 33 CFR 88.05

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation amends Subpart 1.08 of Title 33 Code of Federal Regulations to include a provision for the issuance of a written warning given by Coast Guard Boarding Officers to operators of vessels 12 meters or more in length for failure to carry on board, a copy of the Inland Navigation Rules (33 CFR 88.05). The intended effect of the amendment is to emphasize the educational rather than the punitive nature of the Coast Guard's enforcement posture for minor infractions.

EFFECTIVE DATE: This final rule is effective April 17, 1985.

SUPPLEMENTARY INFORMATION: Since this amendment relates solely to agency policy and procedure, it is exempt from the notice and public comment requirements of 5 U.S.C. 553(b)(3)(A). This final rule is considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that a full regulatory evaluation is unnecessary. Since this final rule allows for the issuance of a written warning for failure to maintain a copy of the Inland Navigation Rules as opposed to the assessment of a civil penalty, the public will benefit from its promulgation. Because no notice of proposed rulemaking is required under 5 U.S.C. 553(b)(3)(A), this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 603, 604). However, the requirements of the Act were taken into consideration and it is certified that this rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal persons involved in drafting this rulemaking are LCDR Charles K. Bell, Project Manager, Office of Navigation, and LT Sandra Sylvester, Office of Chief Counsel.

Discussion

There is a specific list of violations in Subpart 1.08 for which Coast Guard Boarding officers may issue written warnings. This amendment will extend

that list to include § 88.05 of Title 33 Code of Federal Regulations. It authorizes written warnings in lieu of civil penalties in Subpart 1.07 of Title 33 Code of Federal Regulations, to operators of vessels 12 meters or more in length who fail to maintain for ready reference, a copy of the Inland Navigation Rules. The intended effect of the amendment is to emphasize the educational rather than the punitive nature of the Coast Guard's enforcement posture for minor infractions. This document also updates the authority cites for § 1.08 to reflect recent statutory revisions.

List of Subjects in 33 CFR Part 1

Marine safety.

Final Regulations

For the reasons stated above, Part 1 of Title 33, the Code of Federal Regulations is amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for Subpart 1.08 is revised to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.46(b).

2. In § 1.08-1, paragraph (a)(11) is added to read as follows:

§ 1.08-1 Applicability.

(a) * * *

(11) 33 CFR 88.05 Copy of Rules.

Dated: March 11, 1985.

T. J. Wojnar.

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 85-6101 Filed 3-15-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-9-FRL-2798-6]

Delegation of New Source Performance Standards (NSPS); State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the Nevada Department of Conservation and Natural Resources (NDCNR). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the

public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATES: December 14, 1984 for November 28, 1984 letter; January 2, 1985 for December 18, 1984 letter; February 4, 1985 for January 21, 1985 letter.

FOR FURTHER INFORMATION CONTACT:

Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The NDCNR has requested authority for delegation of certain NSPS categories. Delegation of authority was granted by letters dated November 29, 1984, December 18, 1984, and January 21, 1985 and are reproduced in their entirety as follows:

November 28, 1984.

Mr. Richard Serdoz, P.E.,
Air Quality Officer, Division of
Environmental Protection, Nevada State
Department of Conservation and Natural
Resources, Capitol Complex, Carson
City, NV.

Dear Mr. Serdoz: In response to your request of October 29, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart JJJ—Standards of Performance for Petroleum Dry Cleaners. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures.

The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

December 18, 1984.

Mr. Richard Serdoz, P.E.,
Air Quality Officer, Nevada Department of
Conservation and Natural Resources,
Division of Environmental Protection,
Capitol Complex, Carson City, NV.

Dear Mr. Serdoz: In response to your request of November 28, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart CC—Standards of Performance for Glass Manufacturing Plants. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

January 21, 1985.

Mr. Richard Serdoz, P.E.,
Air Quality Officer, Division of
Environmental Protection, Nevada
Department of Conservation and Natural
Resources, Capitol Complex, Carson
City, NV.

Dear Mr. Serdoz: In response to your request of December 18, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS). We have reviewed your request for delegation and have found your present programs and procedures to be acceptable. This delegation includes authority for the following source category:

NSPS	40 CFR Part 60, subpart
Steel plants: Electric arc furnaces	AAa

In addition, we are redelegating the following NSPS categories since your revised programs and procedures are acceptable:

NSPS	40 CFR Part 60, subpart
Secondary brass and bronze ingot production plants	M
Iron and steel plants (electric arc furnaces)	AA

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the NDCNR, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the NDCNR at the address shown in the letters of delegation.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 7, 1985.

Judith E. Ayres,
Regional Administrator.
[FR Doc. 85-6331 Filed 3-15-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 60

[A-9-FRL-2798-71]

Delegation of New Source Performance Standards (NSPS); State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the Clark County Health Department (CCHD), State of Nevada. This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: October 10, 1984.

FOR FURTHER INFORMATION CONTACT:

Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CCHD has requested authority for delegation of certain NSPS categories. Delegation of authority was granted by a letter dated September 27, 1984 and is reproduced in its entirety as follows:

Michael H. Naylor, P.E.,
Director, Air Pollution Control Division,
Clark County Health District, P.O. Box
4426, Las Vegas, NV.

Dear Mr. Naylor: In response to your request of September 14, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) categories in 40 CFR Part 60: Subpart LL—Standards of Performance for Metallic Mineral Processing Plants and Subpart VV—Standards of Performance for Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry. We have reviewed your request for

delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,
Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the CCHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the CCHD at the address shown in the letter of delegation.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

Dated: March 7, 1985.

John Wise,
Acting Regional Administrator.
[FR Doc. 85-6332 Filed 3-15-85; 3:45 am]
BILLING CODE 6560-50-M

40 CFR Part 60

[A-9-FRL-2798-8]

Delegation of New Source Performance Standards (NSPS); State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the Washoe District Health Department (WDHD), State of Nevada. This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: January 2, 1985.

FOR FURTHER INFORMATION CONTACT:

Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION:

The WDHD has requested authority for delegation of certain NSPS categories. Delegation of authority was granted by a letter dated December 18, 1984 and is reproduced in its entirety as follows:

David J. Minedew,
Director, Environmental Health Services,
Washoe District Health Department,
1001 East Ninth Street, Post Office Box
11130, Reno, NV.

Dear Mr. Minedew: In response to your request of December 3, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce two New Source Performance Standard (NSPS) categories in 40 CFR Part 60: Subpart LL—Standards of Performance for Metallic Mineral Processing Plants and Subpart XX—Bulk Gasoline Terminals. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the WDHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the WDHD at the address shown in the letter of delegation.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 7, 1985.

Judith E. Ayres,
Regional Administrator.

[FR Doc. 85-8333 Filed 3-15-85; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Part 60

[A-9-FRL-2798-1]

Delegation of New Source Performance Standards (NSPS); State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice to its delegation of NSPS authority to the Maricopa County Health Department (MCHD). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT:

Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The MCHD has requested authority for delegation of certain NSPS categories. Delegation of authority was granted by a letter dated February 15, 1985 and is reproduced in its entirety as follows:

Mr. Robert W. Evans, Chief,
Bureau of Air Pollution Control, Maricopa
County Health Department, 1825 East
Roosevelt, Phoenix, AZ 85006.

Dear Mr. Evans: In response to your request of January 30, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) in 40 CFR Part 60. We have reviewed your request for delegation and redelegation and have found your present programs and procedures to be acceptable.

NSPS	40 CFR Part 60 Subpart
Secondary Brass and Bronze Production Plants...	M
Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After Oct. 21, 1984 and On or Before Aug. 17, 1983.	AA
Electric Arc Furnaces and Vessels Constructed After Aug. 17, 1983.	AAa
Glass Manufacturing Plants.	CC
Flexible Vinyl and Urethane Coating and Printing.	FFF
Petroleum Dry Cleaners.	JJJ

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of

this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the MCHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the MCHD at the address shown in the letter of delegation.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 7, 1985.

John Wise,
Acting Regional Administrator.
[FR Doc. 85-8351 Filed 3-15-85; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Part 60

[A-9-FRL-2798-2]

Delegation of New Source Performance Standards (NSPS); State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the Arizona Department of Health Services (ADHS). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: September 28, 1984.

FOR FURTHER INFORMATION CONTACT:

Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The ADHS has requested authority for

delegation of certain NSPS categories. Delegation of authority was granted by a letter dated September 13, 1984 and is reproduced in its entirety as follows:

Mr. Charles Anders,

Assistant Director for Environmental, Health Services, Division of Environmental Health, Arizona Department of Health Services, State Health Building, 1740 West Adams Street, Phoenix, AZ 85007.

Dear Mr. Anders: EPA is delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS). We understand that these regulations are presently in the State Attorney General's office waiting to be certified. To speed up program transfer to you, this delegation will be effective on the date the Secretary of State certifies the regulations. This delegation will include authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Surface Coating of Metal Furniture	EE
Graphic Arts Industry: Publication Rotogravure Printing	QQ
Industrial Surface Coating: Large Appliances	SS
Metal Coil Surface Coating	TT
Bulk Gasoline Terminals	XX

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA's test methods and procedures. The delegation is effective upon the date the regulations are certified by the Secretary of State. Please let us know as soon as possible what date the certification takes place. A notice of this delegated authority will be published in the *Federal Register* after we receive notification that the regulations have been certified.

If you have any questions, please have your staff call Julie A. Rose of my staff.

Sincerely,

Judith E. Ayres,

Regional Administrator.

The Secretary of State for Arizona certified the regulations on September 28, 1984, therefore, the delegation was effective as of that date.

With respect to the areas under the jurisdiction of the ADHS, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the ADHS at the address shown in the letter of delegation in this notice.

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

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 7, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85-6350 Filed 3-15-85; 8:45 am]

BILLING CODE 8560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-2798-5]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS), State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the Hawaii Department of Health (HDOH). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATES: November 12, 1984 (paragraph 1. j., k. and l.); February 18, 1985 (paragraph 2. b. and c.).

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont, Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The HDOH has requested authority for delegation of four additional NSPS categories and two additional NESHAPS categories. Delegation of authority was granted by letters dated October 25, 1984, December 18, 1984, and February 8, 1985 and are reproduced in their entirety as follows:

October 25, 1984.

Mr. Melvin K. Koizumi,

Deputy Director for Environmental Health, Post Office Box 3378, Honolulu, HI.

Dear Mr. Koizumi: In response to your request of September 25, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce three New Source Performance Standard (NSPS) categories in 40 CFR Part 60. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable. This delegation amends the NSPS/NESHAPS agreement between the U.S. EPA and the Hawaii Department of Health dated August 15, 1983.

The agreement is amended by adding subparagraphs j., k., and l., as follows under the heading "Permits":

j. Bulk Gasoline Terminals, Subpart XX.
k. Beverage Can Surface Coating Industry, Subpart WW.

l. Equipment Leaks of VOC in Petroleum Refineries, Subpart CCG.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the *Federal Register* in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

December 18, 1984.

Mr. Melvin K. Koizumi,

Deputy Director for Environmental Health, Hawaii Department of Health, Post Office Box 3378, Honolulu, Hawaii.

Dear Mr. Koizumi: In response to your request of November 23, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce one New Source Performance Standard (NSPS) category in 40 CFR Part 60. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable. This delegation amends the NSPS/NESHAPS agreement between the U.S. EPA and the Hawaii Department of Health dated August 15, 1983 and the amendment dated October 25, 1984. The agreement is further amended by adding subparagraph m., as follows under the heading "Permits":

m. Petroleum Dry Cleaners, Subpart JJJ.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the *Federal Register* in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

February 8, 1985.

Mr. Melvin K. Koizumi,

Deputy Director for Environmental Health, Hawaii Department of Health, Post Office Box 3378, Honolulu, Hawaii.

Dear Mr. Koizumi: In response to your request of January 21, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce three additional New Source Performance Standard (NSPS) categories in 40 CFR Part 60 and two additional National Emission Standards for Hazardous Air Pollutants (NESHAPS) categories in 40 CFR Part 61. We have reviewed your request for delegation

and have found your present programs and procedures to be acceptable.

This delegation amends the NSPS/NESHAPS agreement between the U.S. EPA and the Hawaii Department of Health dated August 15, 1983 and the amendments dated October 25, 1984 and December 18, 1984. The agreement is amended by adding subparagraphs n and o to paragraph No. 1 under "Permits" as follows:

n. Steel Plants: Electric Arc Furnace and Argon-Oxygen Decarburization Vessels constructed after October 21, 1974 and on or before August 17, 1983, Subpart AA.

o. Steel Plants: Furnaces and Vessels constructed after August 17, 1983, Subpart AAa.

The agreement is further amended by revising paragraph No. 2 under "Permits" by revising the wording of the last sentence and adding the two new NESHAPS categories as follows: "The categories of sources covered by this Agreement are:"

- a. Mercury, Subpart E.
- b. Equipment Leaks (Fugitive Emission Sources) of Benzene, Subpart J.
- c. Equipment Leaks (Fugitive Emission Sources), Subpart V.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the HDOH, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the HDOH at the address shown in the letters of delegation.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq.).

Dated: March 7, 1985.

Judith E. Ayres,
Regional Administrator.

[FR Doc. 85-6330 Filed 3-15-85; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-2798-3]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Fresno County Air Pollution Control District (FCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: February 21, 1985.

ADDRESS: Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the FCAPCD. Delegation of authority was granted by a letter dated February 8, 1985 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of January 23, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Fresno County Air Pollution Control District (FCAPCD). We have reviewed your request for delegation and have found the FCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Metallic Mineral Processing Plants	LL
Pressure Sensitive Tape and Label Surface Coating Operations	RR
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC	VV
Beverage Can Surface Coating Industry	WW
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry	GGG
Synthetic Fiber Production Facilities	HHH
NESHAPS	40 CFR Part 61 Subpart
Asbestos	M

In addition, we are redelegating the following NSPS and NESHAPS categories since the FCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General Provisions	A
Fossil-Fuel Fired Steam Generators	D
Electric Utility Steam Generators	Du
Incinerators	E
Portland Cement Plants	F
Nitric Acid Plants	G
Sulfuric Acid Plants	H
Asphalt Concrete Plants	I
Petroleum Refineries	J
Storage Vessels for Petroleum Liquids	K
Petroleum Storage Vessels	Ka
Secondary Lead Smelters	L
Secondary Brass & Bronze Ingot Production Plants	M
Iron and Steel Plants (BOPF)	N
Sewage Treatment Plants	O
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction Plants	S
Phosphate Fertilizer Industry: Wet Process	T
Phosphoric Acid Plants	U
Phosphate Fertilizer Industry: Superphosphoric Acid Plants	U
Phosphate Fertilizer Industry: Diammonium Phosphate Plants	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate	X
Coal Preparation Plants	Y
Ferroalloy Production Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces)	AA
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Surface Coating of Metal Furniture	EE
Stationary Gas Turbines	GG
Lime Manufacturing Plants	HH
Lead-Acid Battery Manufacturing Plants	KK
Automobile & Light-Duty Truck Surface Coating Operations	MM
Phosphate Rock Plants	NN
Ammonium Sulfate	PP
Graphic Arts Industry: Publication Rotogravure Printing	QQ
Industrial Surface Coating: Large Appliances	SS
Metal Coil Surface Coating	TT
Asphalt Processing and Asphalt Roofing Manufacture	UU

NESHAPS	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E

HESHAPS	40 CFR Part 61 Subpart
Vinyl Chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the *Federal Register* in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: Fresno County Air Pollution Control District.

With respect to the areas under the jurisdiction of the FCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the at the address shown in the **ADDRESS** section of this notice.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 7, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85-6347 Filed 3-15-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 61

[A-9-FRL-2798-4]

Delegation of National Emission Standards for Hazardous Air Pollutants (NESHAPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Kern County Air Pollution Control District (KCAPCD). This action is necessary to bring the NESHAPS program delegations up to date with recent EPA promulgations and

amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: February 4, 1985.

ADDRESS: Kern County Air Pollution Control District, 1601 H Street, Suite 250, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NESHAPS categories on behalf of the KCAPCD. Delegation of authority was granted by a letter dated January 24, 1985 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board,
1102 Q Street, P.O. Box 2815,
Sacramento, CA 95812.

Dear Mr. Boyd: In response to your request of January 11, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Kern County Air Pollution Control District (KCAPCD). We have reviewed your request for delegation and have found the KCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NESHAPS	40 CFR Part 61 Subpart
Equipment Leaks (Fugitive Emission Sources) of Benzene	J
Asbestos	M
Equipment Leaks (Fugitive Emission Sources)	V

In addition, we are redelegating the following NESHAPS categories since the KCAPCD's, revised programs and procedures are acceptable:

NESHAPS	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any

objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the *Federal Register* in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

With respect to the areas under the jurisdiction of the KCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NESHAPS source categories should be directed to the KCAPCD at the address shown in the **ADDRESS** section of this notice.

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

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Judith E. Ayres,
Regional Administrator.

[FR Doc. 85-6352 Filed 3-15-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6590

Revocation of Withdrawals Affecting Land Conveyed Out of Federal Ownership in Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This public land order authorizes the revocation of withdrawals of public lands in Alaska to the extent that such lands including minerals, have been conveyed out of Federal ownership.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 "C" Street, Anchorage, Alaska 99513, 907-271-3240.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Except as provided in paragraph 2 of this order, all withdrawals in Alaska heretofore made, or hereafter made, so far as they affect lands in which all right, title, or interest therein has been

conveyed out of Federal ownership, are hereby revoked; the following interests retained by the United States, as listed in paragraphs 1a through 1d, shall not be a bar to such revocation:

a. Easements including but not limited to ditches and canals, railroads, telegraph and telephone lines, and rights-of-way existing at time of conveyance.

b. Right to create easements in the future.

c. Covenants and servitude.

d. Right of reversion.

2. This authority may be invoked for all withdrawals except: (1) Powersite reserves and powersite classifications; (2) land within the boundary of any national forest; and (3) areas withdrawn by act of Congress, including but not limited to conservation system units and the National Petroleum Reserve in Alaska.

3. This order supersedes PLO No. 5444, as amended in the State of Alaska, and any applications of PLO No. 5444 heretofore made in Alaska shall have full force and effect of this order.

Robert N. Broadbent,

Assistant Secretary of the Interior.

March 7, 1985.

[FR Doc. 85-6342 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-64-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA 6651]

44 CFR Part 64

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency
Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this

rule, the suspension will be withdrawn by publication in the *Federal Register*.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the *Federal Register*.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of

communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 84.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I					
Massachusetts:					
Dukes	Edgartown, town of	250069D	July 7, 1975, Emerg.; July 2, 1980, Reg.; Mar. 18, 1985, Susp.	May 31, 1974, Oct. 22, 1976, July 2, 1980 and Oct. 1, 1983.	Mar. 18, 1985.
Do	Oak Bluffs, town of	250072C	Feb. 6, 1974, Emerg.; July 2, 1980, Reg.; Mar. 18, 1985, Susp.	Mar. 22, 1974, July 19, 1977 and July 2, 1980.	Do.
Bristol	Westport, town of	255224B	Sept. 7, 1970, Emerg.; July 16, 1971, Reg.; Mar. 18, 1985, Susp.	July 16, 1971, July 1, 1977, May 14, 1976 and Oct. 1, 1983.	Do.
Region II					
New Jersey: Monmouth	Aberdeen, township of	340312A	Apr. 12, 1974, Emerg.; Mar. 18, 1985, Reg.; Mar. 18, 1985, Susp.	Feb. 28, 1975.	Do.
New York: Allegany	Scio, town of	360034C	June 18, 1975, Emerg.; Mar. 18, 1985, Reg.; Mar. 18, 1985, Susp.	May 3, 1974, June 3, 1977 and Oct. 24, 1975.	Do.
Region III					
West Virginia: Kanawha	Unincorporated areas	540070B	Apr. 2, 1976, Emerg.; Mar. 18, 1985, Reg.; Mar. 18, 1985, Susp.	Apr. 25, 1975, Dec. 12, 1975 and Dec. 24, 1982.	Do.
Region V					
Illinois: LaSalle	LaSalle, city of	170401B	Jan. 16, 1975, Emerg.; Mar. 18, 1985, Reg.; Mar. 18, 1985, Susp.	Mar. 22, 1974 and Mar. 19, 1978.	Do.
Region VI					
Texas:					
Refugio	Bayside, city of	481566A	Aug. 16, 1984, Emerg.; Mar. 18, 1985, Reg.; Mar. 18, 1985, Susp.		Mar. 18, 1985.
San Patricio	Ingleside, city of	485480C	Sept. 16, 1984, Emerg.; June 25, 1971, Reg.; Mar. 18, 1985, Susp.	June 26, 1971, July 1, 1974 and May 2, 1975.	Mar. 18, 1985.
Matagorda	Unincorporated areas	485489C	June 19, 1970, Emerg.; Apr. 30, 1971, Reg.; Mar. 18, 1985, Susp.	May 1, 1971, July 1, 1974, Mar. 5, 1976 and Oct. 1, 1983.	Do.
Nueces	do.	485494C	June 19, 1970, Emerg.; Sept. 22, 1972, Reg.; Mar. 18, 1985, Susp.	Sept. 27, 1972, Nov. 30, 1973, July 1, 1974 and Sept. 3, 1976.	Do.
Nueces	Port Aransas, city of	485498E	June 19, 1970, Emerg.; June 25, 1971, Reg.; Mar. 18, 1985, Susp.	June 26, 1971, Sept. 8, 1972, July 1, 1974, Aug. 13, 1976 and Dec. 8, 1976.	Do.
Refugio	Unincorporated areas	485501C	Aug. 7, 1970, Emerg.; Oct. 6, 1976, Reg.; Mar. 18, 1985, Susp.	Oct. 22, 1971, July 1, 1974 and Sept. 17, 1976.	Do.
San Patricio	do.	485506C	June 19, 1970, Emerg.; Nov. 26, 1971, Reg.; Mar. 18, 1985, Susp.	Nov. 27, 1971, July 1, 1974 and Sept. 3, 1976.	Do.
Calhoun	Seadrift, city of	480100C	Dec. 4, 1970, Emerg.; Dec. 4, 1970, Reg.; Mar. 18, 1985, Susp.	Dec. 4, 1970, July 1, 1974 and May 2, 1975.	Do.
Region VII					
Missouri: Taney	Hollister, city of	290437B	Feb. 14, 1975, Emerg.; Mar. 18, 1985, Reg.; Mar. 18, 1985, Susp.	June 7, 1974 and Nov. 14, 1975.	Do.
Region X					
Idaho: Idaho	Kootenai, city of	160070B	Apr. 4, 1975, Emerg.; Mar. 18, 1985, Reg.; Mar. 18, 1985, Susp.	Nov. 30, 1973 and Dec. 19, 1975.	Do.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(44 CFR 64.6)

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: March 12, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-6495 Filed 3-15-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-293; RM-4611]

FM Broadcast Stations in Oak Beach and Bay Shore, NY

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots FM Channel 276A to Bay Shore, New York, as its first local service, in response to a request by Long Island Music Broadcasting Corporation.

DATE: April 22, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, or Stanley

Schmulewitz, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Oak Beach and Bay Shore,¹ New York); MM Docket No. 84-293, RM-4611.

Adopted: March 1, 1985.

Released: March 14, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 14541, published April 12, 1984, proposing the allotment

¹ This community has been added to the caption.

of FM Channel 276A to Oak Beach, New York² as a first local service, in response to a request filed by Long Island Music Broadcasting Corporation ("petitioner"), licensee of AM Station WLIM, Patchogue, New York. Comments were filed by the petitioner, in which it indicated its intention to apply for the channel if assigned. Comments in opposition were filed by Doubleday Broadcasting Company, Inc. ("Doubleday"), licensee of Station WAPP-FM (Channel 278) Lake Success, New York; Metromedia, Inc., licensee of Station WNEW-FM (Channel 274), New York, New York; and Long Island Radio Co. ("Long Island Radio"), licensee of Station WBAB-FM (Channel 272A), Babylon, New York. Reply comments were filed by all parties.³

Background

2. On two previous occasions, the Commission considered requests to allot FM Channel 276A to Bay Shore, New York, a nearby community. On both occasions the requests were denied due to the petitioning parties' inability to overcome certain environmental constraints while simultaneously satisfying the Commission's technical rules. The history of those attempts, which span a period of approximately 15 years, and the circumstances surrounding the previous denials have been discussed extensively in various documents, and need not be fully repeated here.⁴ However, in order to place this proceeding in perspective, a summary of the events leading to the instant proposal to allot Channel 276A to this area of Long Island, New York is appropriate.

3. In 1970, the Commission granted a request to allot Channel 276A to Bay Shore, New York, with a restricted site on the Fire Island National Seashore. Due to spacing requirements, the closeness of the Atlantic Ocean and environmental considerations, that area was the only available location from which a city grade signal could be supplied to Bay Shore utilizing a 300'

tower. Earlier, the National Environmental Policy Act⁵ was enacted which, *inter alia*, directed affected agencies to interact by invoking or implementing an environmental impact statement process before settling matters that could have a momentous effect on the quality of the human environment. Consequently, the Department of the Interior objected on esthetic grounds to the erection of a 300' tower on Fire Island. Lacking the availability of an alternate transmitter location to implement the proposal, the Commission rescinded its action and deleted the channel in the Table of Allotments.

4. In 1982, the instant petitioner requested that Channel 276A be allotted to Bay Shore, which, due to spacing considerations, required the previous site restriction on Fire Island. In recognition of the transmitter site constraints, the Commission requested the petitioner to supply documentation from pertinent governmental officials indicating approval of a proposed transmitter on Fire Island. Petitioner did not supply the necessary evidence, and thus the petition was denied.

Proposal

5. In the instant request, petitioner has overcome the objections of the Department of the Interior by participating in an open bidding process, conducted under the National Historic Preservation Act of 1980 (Pub. L. 96-515). As a result, it has obtained a lease agreement with the National Park Service to rent a portion of the Fire Island Lighthouse, a national historic landmark, as its operating tower. In return for the use of such facility, it has agreed to lease payments which would be used as a source of revenue for restoring the deteriorating structure.

6. Because the Department of the Interior previously objected to the construction of a 300' tower on Fire Island, petitioner proposes to erect a tower of 205' above average terrain, 25' of which is proposed atop the Fire Island Lighthouse. However, the petitioner discovered that such reduction from its original proposal would alter the predicted coverage pattern of its signal, and fail to provide a city grade signal to the Bay Shore community. Upon realizing this deficiency, petitioner modified its request to specify Oak Beach, New York for the allotment of Channel 276A.

7. In its request, petitioner claimed that because Oak Beach is a part of the Hamlet of Copiague, a Census

designated place, and a part of the Town of Babylon, such inclusion signified its existence as a geographically identifiable population grouping, citing *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982). However, the Commission's *Notice* requested additional information to verify that Oak Beach qualified as a community for allocation purposes. In this connection, since Oak Beach is not incorporated nor included in the U.S. Census, petitioner was requested to demonstrate the existence of social, economic, or cultural indicia or governmental units that identify themselves with Oak Beach. See, *North Naples, Florida*, 41 R.R. 2d 1549 (1977); *Coker, Alabama*, 43 R.R. 2d 190 (1978); and *Cascade Village, Colorado*, 48 FR 19917 (1983).

8. In response to the *Notice*, petitioner advises that the Long Island Regional Planning Board, as well as the Long Island Lighting Company, have identified "Gilgo-Oak Beach" as a locally designated census place, based on data included in the 1980 U.S. Census, and that the former has included it in its Census Tract. Petitioner claims that the population of Gilgo-Oak Beach (379) was based on a 1982 population survey by the utility company. Thus, petitioner asserts that such recognition reinforces its belief that Oak Beach is a geographically identifiable population grouping.

9. Petitioner claims that community status can be demonstrated by the existence of business dwellings in Oak Beach,⁶ as well as a contractually-operated post office, a zip code, its own tax identification number and its specific location with defined boundaries as depicted on area maps. Further, petitioner comments that, as with various communities within the Fire Island region, local identity is established by the existence of a business center, even though government services are provided by other larger entities, in this case the Town of Babylon, and that Oak Beach is a local government subdivision of Babylon. To evidence this claim, petitioner provided an extract from an area telephone directory listing that instructs residents of Oak Beach, as well as other surrounding areas, where to dial in the event of emergencies.

10. Finally, petitioner claims that even though Oak Beach functions year round, its vast seasonal population increase transforms it into a summer resort community. In support of its stated

² The request was embodied in a "Supplement" to "Petition for Modification and/or Petition to Reopen Proceedings and Request to Reinstate Channel 276A at Bay Shore, New York."

³ Petitioner's reply comments were filed three days after the period provided for such filings. No reason for the late filing was given, nor was it accompanied by a motion to accept. Moreover, the filing elicited additional comments from Metromedia and Doubleday, to which petitioner responded. We have reviewed these filings and find that they contain no new information which would aid us in making a final determination. Thus they have not been accepted.

⁴ See, Docket No. 18345, 20 F.C.C. 2d 988 (1970); 25 F.C.C. 2d 877 (1970); Docket No. 82-350, 47 FR 23850; and *Report and Order*, 48 FR 7740, published February 24, 1983.

⁵ 42 U.S.C. 4321-4347 (1966).

⁶ Petitioner made reference to a light grocery store and restaurant-lounge facility.

attraction, petitioner provided a survey from the Town of Babylon, Department of Parks, Recreation and Cultural Affairs, which depicts Oak Beach as one of four ocean beaches located within the confines of Babylon. Therein is listed the various amenities available to visitors to Oak Beach such as boating slips and a launching ramp, picnic facilities, surf fishing, children's recreational area, as well as parking accommodations for 250 cars. Petitioner alleges that due to the close proximity of Oak Beach to the other beaches on Fire Island, the overall transient population in those areas could greatly benefit as well from the provision of a first local service if the channel is allotted as proposed.

11. The opposing comments of Doubleday, Long Island Radio and Metromedia ("opponents") are in accord in their belief that since Oak Beach is neither incorporated nor listed as an official U.S. Census designated place, nor contains any indicia traditionally associated with establishing community status,⁷ it does not qualify as a community for allotment purposes.⁸ Noting that Oak Beach is merely a beach retreat portion of Babylon, New York, Doubleday argues that the petitioner has failed to relate attributable services to the residents, or to show that such services are designed to respond to the community's needs.^{9 10}

12. Opponents further comment that contrary to petitioner's portrayal of government services, the Oak Beach post office serves as a depository only, and is operated under a contractual agreement. Doubleday claims that, in actuality, the residents of Oak Beach

receive mail delivery via the Town of Babylon. Doubleday adds that the Oak Beach postal facility is housed in a single, communal structure which is shared with a community center, chapel, yacht club and civic association. Moreover, opponents point out that the zip code listing for Oak Beach is also assigned to Babylon and West Gilgo, New York. To further discredit Oak Beach's independent status, Doubleday asserts that the Town of Babylon is the governmental entity from which Oak Beach residents lease or buy land, and to which taxes are paid.

Discussion

13. A thorough analysis of the record reveals that Oak Beach does not contain the characteristic indicia generally needed to determine community status. In the *Declaratory Ruling Concerning the Meaning and Effect of § 73.642(a)(3)*, 55 F.C.C. 2d 187, 189 (1975), the Commission held, in pertinent part:

Although broadly speaking, a community consists of an identifiable population grouping with common local interests, there is no hard and fast rule to apply in deciding whether a particular population grouping constitutes a community and all relevant facts in each case must be weighed. Incorporation is not a prerequisite, and while a community need not have a clearly delineated area and population, it is no doubt correct to state that in most cases a community is a city, town, village or other political subdivision, citing, *Mercer Broadcasting Co.*, 22 F.C.C. 1009 (1957); *Musical Heights, Inc.*, 37 F.C.C. 82 (1964); *Holston Broadcasting Corp.*, 1 R.R. 2d 962 (1964); and *Hymen Lake*, 46 F.C.C. 2d 560 (1974).

14. The Commission has traditionally held that "... the term community means a specific locality, with defined boundaries, where the residents share common interests." See, *Naples, Florida*, supra. In *Coker, Alabama*, supra, at 193, we held that absent other evidence "... which demonstrates that [local] businesses, organizations or services meet the needs of a recognizable group with common interests, we will not make an FM assignment."

15. Although Oak Beach's geographical location is clearly depicted on area maps, including the 1984 Rand McNally Road Atlas Index, and it is locally recognized as a census designated place, it is not listed in the U.S. Census, nor is it incorporated. Moreover, petitioner has not established that Oak Beach contains the indicia normally associated with determining "community" status. Therefore, we do not believe that petitioner has successfully demonstrated that Oak

Beach qualifies as a community for allotment purposes.

16. However, we do believe that petitioner's unique proposal is meritorious and warrants further consideration. Therefore, we have further examined petitioner's initial proposal to allot Channel 276A to Bay Shore, New York. As indicated previously, in 1970 we allocated that channel to Bay Shore. Such action was later rescinded due solely to the unavailability of a transmitter site which could overcome certain environmental constraints while simultaneously satisfying our technical rules. Here, petitioner has demonstrated it has an available site from which environmental considerations can be satisfied. Petitioner has obtained a lease agreement with the National Park Service, whereby it proposes to rent space at the Fire Island Lighthouse, a national historic landmark, for its operating tower. The revenue to be generated therefrom is to be used as a source of funding for the restoration and preservation of the deteriorating structure. We believe this union of governmental and business purposes could result in a dual public interest benefit if Channel 276A is allotted to Bay Shore, New York, as that community's first local service, while simultaneously contributing to the Department of Interior's preservation efforts to restore an endangered historic site.

17. We have considered the fact that petitioner's initial engineering report indicates that, operating as proposed from the Fire Lighthouse, a predicted 70 dBu signal will fail to cover the entire community of Bay Shore. The study claims that only 45% of the community will be encompassed within the 70 dBu contour. However, our staff engineering analysis reveals that, because the area between the lighthouse and Bay Shore consists of water, the actual signal will likely reach the entire community. In this regard, the predicted 70 dBu signal should extend beyond Bay Shore under normal conditions. However in consideration of the limitations placed on the height of the transmitter on the lighthouse, we believe an appropriate waiver request of § 73.315 of the Commission's Rules concerning the requisite city grade signal or of § 73.20 which limits the station's power output would be appropriate for consideration at the application stage.

18. Although not raised by any party hereto, we believe one final matter requiring comment is petitioner's lease agreement with the National Park Service. Traditionally, the addition of a

⁷ Citing *North Naples, Florida*, supra.

⁸ Citing *Cascade Village, Colorado*, supra.

⁹ Citing *Coker, Alabama*, supra.

¹⁰ Among other things, Doubleday and Metromedia claim that the Oak Beach proposal fails to meet the new minimum distance separation requirements specified in BC Docket No. 80-90 (94 F.C.C. 2d 152 (1983); *recons. denied* 97 F.C.C. 2d 279 (1984)), with regard to their Stations WAPP, Lake Success, New York, and WNEW-FM, New York City. However, such allegations are without merit since the instant proposal was filed under the rules in effect prior to those established in Docket 80-90. Thus, the earlier established spacing requirements apply.

Moreover, Doubleday alleges that since the petitioner's proposed transmitter site (the Fire Island Lighthouse) is listed in the National Register of Historic Places, it is not sufficient that it has the approval of the National Park Service. Rather, Doubleday remarks that the proposal requires evaluation to determine if it complies with other Federal and agency laws relating to historic preservation and environmental considerations (see 36 CFR 800.1 *et seq.* and § 1.1305 of the Commission's Rules). This matter is more appropriate for consideration by the Commission in connection with the application process.

new channel at a community requires that the allotment be made available for competing applications. Therefore, even though petitioner was the successful bidder in obtaining a lease agreement to utilize a portion of the Fire Island Lighthouse to implement its proposal, it will have no greater rights to apply than other potential applicants for Channel 276A. The channel is not foreclosed to other applicants which may develop equally creative ideas in obtaining a transmitter site in this area. Additionally, while we recognize that the owner of a potential transmitter site can, for any lawful purpose, selectively refuse to make such site available to potential licensees, the Commission will not, at the license application stage, look favorably upon circumstances that effectively preclude more than one party from filing an application.

§ 73.202 [Amended]

19. In view of the above considerations, we believe the public interest would be served by providing Bay Shore, New York with a first local service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It Is Ordered, that effective April 22, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, Is Amended to include the community listed below, as follows:

City	Channel No.
Bay Shore, New York	276A

20. It is further ordered, that this proceeding is Terminated.

21. For further information concerning the above, contact Nancy V. Joyner or Stanley Schmulowitz, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission,
Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 85-6412 Filed 3-15-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

Editorial Amendment Concerning Authorized Frequencies and Emissions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes the 2310-2390 MHz frequency band from Part 97 of the Commission's Rules in order to protect the primary usage of this band, which is for the aeronautical telemetry and telecommand operations associated with the flight test of manned or unmanned aircraft and missiles or their major components. The intended effect of this action is to protect aeronautical telemetry and telecommand operation from possible interference by amateur radio operations.

EFFECTIVE DATE: November 6, 1984.

FOR FURTHER INFORMATION CONTACT: John T. Small, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

Order

In the matter of Editorial Amendment of 47 CFR Part 97, Amateur Radio Service.

Adopted: November 6, 1984.

Released: November 8, 1984.

1. The 1979 World Administrative Radio Conference (WARC '79) allocated the 2310-2390 MHz band on a primary basis for flight test telemetry operations in the United States. The *Second Report and Order* in Gen. Docket No. 80-739, released December 8, 1983,¹ amended § 2.106 of the Commission's Rules to implement this allocation in the Table of Frequency Allocations. Additionally, the use of the band on a secondary basis by the Amateur Radio Service was deleted. Petitions for reconsideration requesting that this secondary usage be retained for the Amateur Radio Service were denied in the *Memorandum Opinion and Order* in Gen. Docket No. 80-739, FCC 84-306, released July 2, 1984.

2. Although the allocation of the 2310-2390 MHz band for flight test telemetry operations has been implemented in the Aviation Service rules,² the band has not been deleted from the Amateur Radio Service rules. Therefore, to correct this oversight we are amending Part 97 of the Commission's Rules by deleting the 2310-2390 MHz band from the table of frequencies allocated to the Amateur Radio Service.

3. Since these amendments are editorial in nature, the notice and comment provisions of section 553(b) of the Administrative Procedure Act are not applicable. Further, the editorial

¹ 49 FR 2357.

² *Report and Order*, Gen. Docket No. 84-186, released September 28, 1984; 49 FR 39330.

nature of this change, together with the possibility of harmful interference if these provisions are not immediately effective, constitute good cause to dispense with the 30-day publication requirement of 5 U.S.C. 553(d).

4. Authority for this action is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's Rules.

5. Accordingly, it is ordered, that 47 CFR Part 97 is amended as set forth in the attached Appendix.

6. These rule amendments become effective on November 6, 1984.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Edward J. Minkel,
Managing Director.

Appendix

PART 97—[AMENDED]

Title 47 of the Code of Federal Regulations, Part 97, Amateur Radio Service, 47 CFR Part 97, is amended as follows:

In § 97.61, the entry 2300-2450 Megahertz is removed, and the following two entries are substituted:

§ 97.61 Authorized frequencies and emissions.

Frequency band	Emissions	Limitations ¹
Megahertz*		
2300-2310	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	5, 6
2390-2450	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	5, 6

¹ See paragraph (b).

[FR Doc. 85-6191 Filed 3-15-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

[Docket No. 82-14; Notice 2]

Temporary Exemption From Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction.

SUMMARY: This notice amends the temporary exemption regulations to correct an error appearing in the Code of Federal Regulations which has left incomplete the wording required for certification labels on exempted vehicles. The error has appeared in § 555.9 of Title 49 CFR in volumes revised as of October 1, 1982, 1983, and 1984. Since this amendment simply corrects the CFR text, it is effective upon publication without notice or opportunity to comment.

EFFECTIVE DATE: March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Z. Taylor Vinson, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202-426-9511).

SUPPLEMENTARY INFORMATION: On July 22, 1982, NHTSA issued an amendment to 49 CFR Part 555 updating the certification requirements for exempted vehicles to include certification to Federal bumper requirements (47 FR 31694). These requirements are found in § 555.9(c)(1) and (c)(2). In amending the portion of those sections containing the specified certification label wording, NHTSA added the words "and bumper" at the appropriate places, but did not consider it necessary to recite at length in the Federal Register notice the sentences in the regulation which were unchanged after that point. In the drafting style accepted for indicating no further change in text, NHTSA indicated the omission of sequential and unchanged sentences by " * * * ". The purpose of this indication was apparently misunderstood by the editors of the CFR and the 1982, 1983, and 1984 revisions of Title 49 of the Code of Federal Regulations quoted verbatim the 1982 notice, ending the requirements with " * * * " and omitting the remaining language. It is therefore necessary to amend § 555.9(c)(1) and (c)(2) to correct the error. Because of the technical nature of this amendment, the agency finds for good cause shown that prior notice and public comment on this amendment is unnecessary, and that it may be made effective upon publication.

List of Subjects in 49 CFR Part 555

Administrative practice and procedure, Labeling, Motor vehicle safety, Motor vehicles.

PART 555—TEMPORARY EXEMPTION FROM MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, Title 49 Code of Federal Regulations Part 555, *Temporary Exemption From Motor*

Vehicle Safety Standards is amended as follows:

Section 555.9 (c)(1) and (c)(2) are revised to read:

§ 555.9 Temporary exemption labels.

(c) * * *

(1) Instead of the statement required by § 567.4(g)(5) of this chapter, the following statement shall appear: "THIS VEHICLE CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY (AND BUMPER) STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE SHOWN ABOVE EXCEPT FOR STANDARDS NOS. [listing the standards by number and title for which an exemption has been granted] EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____."

(2) Instead of the statement required by § 567.5(c)(7)(iii), the following statement shall appear: "THIS VEHICLE CONFORMS TO ALL APPLICABLE FEDERAL MOTOR VEHICLE SAFETY (AND BUMPER) STANDARDS IN EFFECT IN [Month, Year] EXCEPT FOR STANDARD NOS. [Listing the standards by number and title for which an exemption has been granted] EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____."

The author of this notice is Z. Taylor Vinson, Office of Chief Counsel.

(Secs. 114, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1403, 1408); sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); secs. 102, 105, Pub. L. 92-513, 56 Stat. 947 (15 U.S.C. 1912, 1915); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on March 12, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-6308 Filed 3-15-85; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Parts 571 and 574

[Docket No. 84-10; Notice 2]

Tire Identification and Recordkeeping; New Pneumatic Tires for Motor Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 119, *New pneumatic tires for motor vehicles other than passenger cars* and Part 574, *Tire identification and recordkeeping*, to permit the marking required by that standard to appear at a point other than between the maximum section width and the bead of the tire.

This amendment, which responds to a petition for rulemaking from Michelin Tire Corporation, will permit the manufacture of tires where the maximum section width of the tire is at the bead. The purpose of the current requirements is to locate certain safety markings in an area where they would not be scuffed off when the sidewall of the tire hits a curb or other objects, and so that accurate information would remain on the sidewall after a tire has been retreaded. However, we have concluded that alternatives are available to solve these concerns, and therefore, the rule should be amended to permit the introduction of a new tire technology.

DATES: Petitions for reconsideration must be received by April 17, 1985. This amendment will be effective on May 2, 1985.

ADDRESS: Petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Arturo Casanova, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 426-1715.

SUPPLEMENTARY INFORMATION: On September 26, 1984 (49 FR 37815) NHTSA published a notice proposing an amendment to Standard No. 119, *New pneumatic tires for motor vehicles other than passenger cars* and Part 574, *Tire identification and recordkeeping*, in response to a petition for rulemaking from Michelin Tire Corporation (Michelin). Michelin petitioned the agency for a change in those standards because of a new tire that it had developed. As currently written, those standards require certain marking to appear between the maximum section width and the bead of a tire. However, Michelin's new tire has its maximum section width at the bead and thus it could not mark these tires at the location currently specified in the agency's standards.

The purpose of the current requirement is that the marking be located in an area where the safety marking would not be scuffed off when the sidewall of the tire hits a curb or other objects. In addition, the requirement was meant to ensure that accurate information would remain on the sidewall after the tire has been retreaded. The September 1984 notice has an extensive discussion of the

rationale underlying the agency's proposal and readers are referred to that notice for further details. In brief, the September notice explained that while the reasons underlying the requirement are still valid, there are alternatives available to solve these concerns, and therefore, the rule should be amended to permit the introduction of a new concept in tires.

The agency received no comments on the proposal. The agency, therefore, is adopting it for the reasons set forth in the September notice.

Cost and Benefits

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other effects of this final rule are so minimal that a full regulatory evaluation is not required. These amendments will remove a burden on those manufacturers wishing to introduce new tire designs. Those manufacturers not wishing to produce such tires will not be affected by the final rule. No effects are foreseen for tire dealers or the public.

Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant

economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

Few, if any, tire manufacturers would qualify as small entities. To the extent that some tire manufacturers qualify as small entities, those wishing to produce this new tire design will be free to do so, and those which do not choose to produce these tires will be unaffected by this final rule. Small organizations and governmental units should not be significantly affected by this final rule, since there should be no cost increases associated with the change in the marking requirements.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended as set forth below:

PART 571—[AMENDED]

1. Section S6.5 of § 571.119 is revised to read as follows:

§ 571.119 [Amended]

S6.5 *Tire markings.* Except as specified below, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings shall be in letters and numerals not less than 0.078 inch high and raised above or sunk below the tire surface not less than 0.015 inch, except that the marking depth shall be not less than 0.010 inch in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with Part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat, baggage, and special trailer tires.

PART 574—[AMENDED]

§ 574.5 [Amended]

1. Figure 1 in § 574.5 of Part 574 is revised to appear as follows:

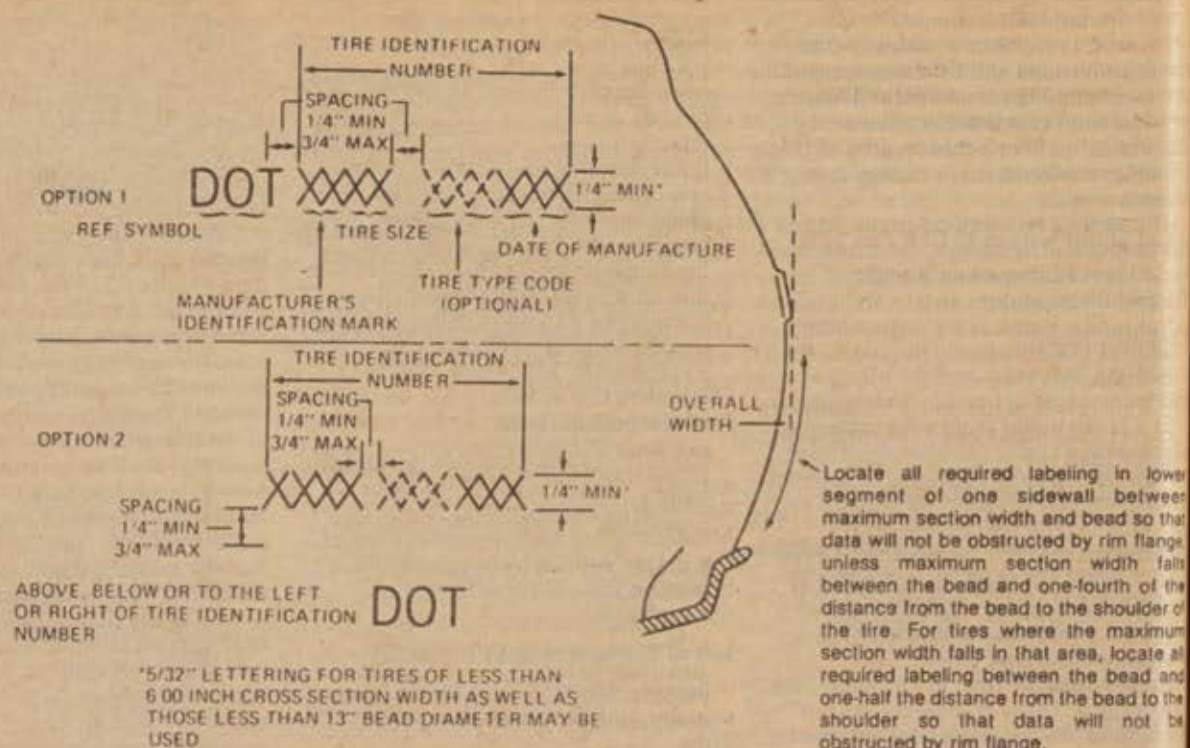


FIGURE 1 IDENTIFICATION NUMBER FOR NEW TIRES

Notes:

1. Tire identification number shall be in Futura Bold, Modified Condensed or Gothic characters permanently molded (0.020 to 0.040" deep, measured from the surface immediately surrounding characters) into or onto tire at indicated location on one side. (See Note 4)
2. Groups of symbols in the identification number shall be in the order indicated. Deviation from the straight line arrangement shown will be permitted if required to conform to the curvature of the tire.
3. When Type Code is omitted, or partially used, place Date of Manufacture in the unused area.
4. Other print type will be permitted if approved by the administration.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued on March 12, 1985.

Diane K. Steed,
Administrator.

[FR Doc. 85-6307 Filed 3-15-85; 8:45 AM]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1220

[No. 38849 (Sub-1)]

Elimination of Preservation of Records Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: This proceeding revises the current Preservation of Record Rules, 49 CFR Part 1220. The objective was to determine whether these rules should be eliminated in their entirety. This was found to be inappropriate. The changes include removing the prescribed record retention periods which merely document corporate history or otherwise have minimal regulatory value (See Appendix). This will allow each regulated company more discretion in determining how long to retain certain records.

DATES: The revised rules will become effective upon approval by the Office of Management and Budget. A Notice of that effective date will be issued at a later date.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee, (202) 275-7448.

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.

Regulatory Flexibility Act

As noted above, this proceeding stems from the Commission's review of rules pursuant to 5 U.S.C. 610. We have determined that this rule will have a significant economic impact upon a substantial number of small entities. The economic impact is beneficial because many cost reducing provisions have been adopted such as allowing management more autonomy in deciding which records to keep and for how long.

and requiring only records and retention periods that are needed to verify costs and promote the National Transportation Policy. The effect of these revisions will be a lessening of the expense and burden of recordkeeping.

The final rule will not have a significant effect on the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1220

Express Companies, Freight forwarders, Motor carriers and brokers, Railroads, Ratemaking organizations subject to Commission oversight, Water carriers.

This rule is made under the authority of 49 U.S.C. 10321 and 11145 and 5 U.S.C. 553.

Decided: February 28, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lambole, and Strenio. Commissioner Andre commented with a separate expression. Vice Chairman Gradison, dissenting in part, would have eliminated the rules.

James H. Bayne,
Secretary.

Appendix

Part 1220 of Title 49 of the Code of Federal Regulations is revised to read as follows:

PART 1220—PRESERVATION OF RECORDS

Sec.

- 1220.0 Applicability.
- 1220.1 Records required to be retained.
- 1220.2 Protection and storage of records.
- 1220.3 Preservation of records.
- 1220.4 Companies going out of business.
- 1220.5 Waiver of requirements of these regulations.
- 1220.6 Schedule of records and periods of retention.

Authority: 49 U.S.C. 10321 and 11145, and 5 U.S.C. 553.

§ 1220.0 Applicability.

The preservation of record rules contained in this part shall apply to the following:

Railroad companies
Electric railway companies
Express companies
Persons furnishing cars to railroads
Motor carriers and brokers
Water carriers
Freight forwarders
Ratemaking organizations

This part applies also to the preservation of accounts, records and memoranda of traffic associations, demurrage and car service bureaus, weighing and inspection bureaus, and other joint activities maintained by or

on behalf of companies listed in the above paragraph of this subpart.

§ 1220.1 Records required to be retained.

Companies subject to this Part shall retain records for the minimum retention periods required by § 1220.6, Schedule of records and periods of retention. After the required retention periods, the records may be destroyed at the discretion of each company's management. It shall be the obligation of the subject company to maintain records that adequately support financial and operational data required by the Commission. The company may request a ruling from the Commission on the retention of any record. The provisions of this part shall not be construed as excusing compliance with the lawful requirements of any other governmental body prescribing longer retention periods for any category of records.

§ 1220.2 Protection and storage of records.

(a) The company shall protect records subject to this part from fires, floods, and other hazards, and safeguard the records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of ventilation.

(b) The company shall notify the Commission if prescribed records are substantially destroyed or damaged before the term of the prescribed retention periods.

§ 1220.3 Preservation of records.

(a) All records may be preserved on hard-copy paper stock, microfilm or other forms of micrographics. It is not necessary to create paperstock or micrographic media if the records are initially prepared on machine-readable media such as punch cards, magnetic tape, disks and so on. However, these machine-readable media shall be preserved for the required retention periods.

(b) Each machine-readable form of media shall be accompanied by a statement clearly indicating the type of data included in the media. This statement shall be executed by a person having personal knowledge of the facts contained in the records. The records shall be indexed and retained in such a manner as will render them readily accessible. The company shall have facilities available to locate, identify and reproduce legible paper copies of the records.

(c) Any record may be transferred to micrographics (including microfiche, computer output microfilm, and aperture cards) at any time. Records so maintained shall satisfy the minimum requirements listed in paragraphs (b) through (f) of this section.

(d) The micrographics used shall be of a quality that can be easily read and that reproduction in paperstock can be similar in size of an original and sufficient clarity of detail during the period the records are required to be retained.

(e) These records shall be indexed and retained in such a manner as will render them readily accessible, and the company shall have facilities available to locate, identify and read the microfilm, and reproduce in paper form.

(f) Any significant characteristic, feature, or other attribute which micrographic media will not preserve shall be clearly indicated at the beginning of the applicable micrographic records as appropriate.

(g) The printed side of forms, such as instructions, need not be preserved for each record as long as the printed matter is common to all such forms and an identified specimen of the form is maintained on the film for reference.

§ 1220.4 Companies going out of business.

The records referred to in these regulations may be destroyed after business is discontinued and the company is completely liquidated. The records may not be destroyed until dissolution is final and all pending transactions and claims are completed. When a company is merged with another company under jurisdiction of the Commission, the successor company shall preserve records of the merged company in accordance with these regulations.

§ 1220.5 Waiver of requirements of these regulations.

A waiver from any provision of these regulations may be made by the Commission upon its own initiative or upon submission of a written request by the company. Each request for waiver shall demonstrate that unusual circumstances warrant a departure from prescribed retention periods, procedures, or techniques, or that compliance with such prescribed requirements would impose an unreasonable burden on the company.

§ 1220.6 Schedule of records and periods of retention.

The following schedule shows periods that designated records shall be preserved. The descriptions specified under the various general headings are for convenient reference and identification, and are intended to apply to the items named regardless of what the records are called in individual companies and regardless of the record media. The retention periods represent

the prescribed number of years from the date of the document and not calendar years. Records not listed below shall be retained as determined by the management of each company.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION

Item and category of records	Retention period
A. CORPORATE AND GENERAL	
1. Incorporation and reorganization:	
(a) Charter or certificate of incorporation and amendments	Note A.
(b) Legal documents related to mergers, consolidations, reorganization, receiverships and similar actions which affect the identity or organization of the company	Do.
2. Minutes of Directors, Executive Committees, Stockholders and other corporate meetings	Do.
3. Titles, franchises and authorities:	
(a) Certificates of public convenience and necessity issued by regulating bodies	Until expiration or cancellation.
(b) Operating authorizations and exemptions to operate	Do.
(c) Copies of formal orders of regulatory bodies served upon the company	Note A.
(d) Deeds, charters, and other title papers	Until disposition of property.
(e) Patents and patent records	Note A.
4. Annual reports or statements to stockholders	3 years.
5. Contracts and agreements:	
(a) Service contracts, such as for operational management, accounting, financial or legal services, and agreements with agents	Until expiration or termination plus 3 years.
(b) Contracts and other agreements relating to the construction, acquisition or sale of real property and equipment except as otherwise provided in (a) above	Do.
(c) Contracts for the purchase or sale of material and supplies except as provided in (a) above	Until expiration.
(d) Shipping contracts for transportation or caretakers of freight	Do.
(e) Contracts with employees and employee bargaining groups	Until expiration.
(f) Contracts, leases and agreements, not specifically provided for in this section	Until expiration or termination plus 1 year.
6. Accountant's auditor's, and inspector's reports:	
(a) Certifications and reports of examinations and audits conducted by public accountants	3 years.
(b) Reports of examinations and audits conducted by internal auditors, time inspectors, and others	Do.
7. Other: (See Note A)	
B. TREASURY	
1. Capital stock records:	
(a) Capital stock ledger	Note A.
(b) Capital stock certificates, records of or stubs of	Do.
(c) Stock transfer register	Do.
2. Long-term debt records:	
(a) Bond indentures, underwritings, mortgages, and other long-term credit agreements	Until redemption plus 3 years.
(b) Registered bonds and debenture ledgers	Do.
(c) Stubs or similar records of bonds or other long-term debt issued	Note A.
3. Authorizations from regulatory bodies for issuance of securities including applications, reports, and supporting papers	Do.
4. Records of securities owned, in treasury, or held by custodians, detailed ledgers and journals, or their equivalent	Until the securities are sold, redeemed or otherwise disposed of.
5. Other: (See Note A)	
C. FINANCIAL AND ACCOUNTING	
1. Ledgers:	
(a) General and subsidiary ledgers with indexes	Until discontinuance of use plus 3 years.
(b) Balance sheets and trial balance sheets of general and subsidiary ledgers	3 years.
2. Journals:	
(a) General journals	Until discontinuance of use plus 3 years.
(b) Subsidiary journals and any supporting data, except as otherwise provided for, necessary to explain journal entries	3 years.
3. Cash books:	
(a) General cash books	Until discontinuance of use plus 3 years.
(b) Subsidiary cash books	3 years.
4. Vouchers:	
(a) Voucher registers, indexes, or equivalent	Do.
(b) Paid and canceled vouchers, expenditure authorizations, detailed distribution sheets and other supporting data including original bills and invoices, if not provided for elsewhere	Do.
(c) Paid drafts, paid checks, and receipts for cash paid out	3 years.
5. Accounts receivable:	
(a) Record or register of accounts receivable, indexes thereto, and summaries of distribution	3 years after settlement.
(b) Bills issued for collection and supporting data	Do.
(c) Authorization for writing off receivables	1 year.
(d) Reports and statements showing age and status of receivables	Do.
6. Records of accounting codes and instructions	3 years after discontinuance.
7. Other: (Note A)	
D. PROPERTY AND EQUIPMENT	
NOTE.—All accounts, records, and memoranda necessary for making a complete analysis of the cost or value of property shall be retained for the periods shown. If any of the records elsewhere provided for in this schedule are of this character, they shall be retained for the periods shown below, regardless of any lesser retention period assigned.	
1. Property records:	
(a) Records which maintain complete information on cost or other value of all real and personal property or equipment	3 years after disposition of property.
(b) Records of additions and betterments made to property and equipment	Do.
(c) Records pertaining to retirements and replacements of property and equipment	Do.
(d) Records pertaining to depreciation	Do.
(e) Records of equipment number changes	Do.
(f) Records of motor and engine changes	Do.
(g) Records of equipment lightweighed and stenciled	Only current or latest records.
2. Engineering records of property changes actually made	3 years after disposition of property.
3. Other: (Note A)	
E. PERSONNEL AND PAYROLL	
1. Personnel and payroll records	1 year.
F. INSURANCE AND CLAIMS	
1. Insurance records:	
(a) Schedules of insurance against fire, storms, and other hazards and records of premium payments	Until expiration plus 1 year.
(b) Records of losses and recoveries from insurance companies and supporting papers	1 year after settlement.
(c) Insurance policies	Until expiration of coverage plus 1 year.
2. Claims records:	
(a) Claim registers, card or book indexes, and other records which record personal injury, fire and other claims against the company, together with all supporting data	1 year after settlement.
(b) Claims registers, card or book indexes, and other records which record overcharges, damages, and other claims filed by the company against others, together with all supporting data	Do.

SCHEDULE OF RECORDS AND PERIODS OF RETENTION—Continued

Item and category of records	Retention period
(c) Records giving the details of authorities issued to agents, carriers, and others for participation in freight claims	3 years
(d) Reports, statements and other data pertaining to personal injuries or damage to property when not necessary to support claims or vouchers	Do.
(e) Reports, statements, tracers, and other data pertaining to unclaimed, over, short, damaged, and refused freight, when not necessary to support claims or vouchers	1 year
(f) Authorities for disposal of unclaimed, damaged, and refused freight	3 years
3. Other: (See Note A)	
G. TAXES	
1. Taxes, (Note A)	
H. PURCHASES AND STORES	
1. Purchases and stores, (Note A)	
I. SHIPPING AND AGENCY DOCUMENTS	
1. Bills of lading and releases:	
(a) Consignors' shipping orders, consignors' shipping tickets, and copies of bills of lading freight bills from other carriers and other similar documents furnished the carrier for movement of freight	1 year
(b) Shippers' order-to-notify bills of lading taken up and cancelled	Do.
2. Freight waybills:	
(a) Local waybills	Do.
(b) Interline waybills received from and made to other carriers	Do.
(c) Company freight waybills	Do.
(d) Express waybills	Do.
3. Freight bills and settlements:	
(a) Paid copy of freight bill retained to support receipt of freight charges:	
(1) Bus express freight bills provided no claim has been filed	Do.
(2) All other freight bills	Do.
(b) Paid copy of freight bill retained to support payment of freight charges to other carriers:	
(1) Bus express freight bills provided no claim has been filed	Do.
(2) All other freight bills	Do.
(c) Records of unsettled freight bills and supporting papers	1 year after disposition
(d) Records and reports of correction notices	1 year
4. Other freight records:	
(a) Records of freight received, forwarded, and delivered	Do.
(b) Notice to consignees of arrival of freight; tender of delivery	Do.
5. Agency records (to include conductors, pursers, stewards, and others):	
(a) Cash books	Do.
(b) Remittance records, bank deposit slips and supporting papers	Do.
(c) Balance sheets and supporting papers	Do.
(d) Statements of corrections in agents' accounts	Do.
(e) Other records and reports pertaining to ticket sales, baggage handled, miscellaneous collections, refunds, adjustments, etc.	Do.
J. Transportation	
1. Records pertaining to transportation of household goods:	
(a) Estimate of charges	1 year
(b) Order for service	Do.
(c) Vehicle-load manifest	Do.
(d) Descriptive inventory	Do.
2. Records and reports pertaining to operation of marine and floating equipment:	
(a) Ship log	3 years
(b) Ship articles	Do.
(c) Passenger and room list	Do.
(d) Floatmen's barge, lighter, and escrow captain's reports, demurrage records, towing reports and checks sheets	2 years
3. Car distribution and movement—railroads only:	
(a) Records of car allotment and distribution	Do.
(b) Records of cars ordered, furnished and loaded	Do.
(c) Records showing dates and numbers of trains, initials and number of cars, movement of cars, and mileage of cars and trains	Do.
(d) Report of cars interchanged with connecting lines	Do.
(e) Reports of unfilled car orders	1 year
(f) Per diem and mileage reports made and received, including reclaims and discrepancy and adjustment reports	2 years
(g) Demurrage and storage records	Do.
4. Dispatchers' sheets, registers, and other records pertaining to movement of transportation equipment	3 years
5. Import and export records including bonded freight and steamship engagements	2 years
6. Records, reports, orders and tickets pertaining to weighing of freight	3 years
7. Records of loading and unloading of transportation equipment	2 years
8. Records pertaining to the diversion or reconsignment of freight, including requests, tracers, and correspondence	Do.
9. Other: (See Note A)	
K. TARIFFS AND RATES	
1. Official file copies of tariffs, classifications, division sheets, and circulars relative to the transportation of persons or property	3 years after expiration or cancellation
2. Authorities and supporting papers for transportation of property or passengers free or at reduced rates	3 years
3. Records and documents required by provisions of § 1253.20 to be maintained	2 years
L. SUPPORTING DATA FOR REPORTS AND STATISTICS	
1. Supporting data for reports filed with the Interstate Commerce Commission and regulatory bodies:	
(a) Supporting data for annual financial, operating and statistical reports	3 years
(b) Supporting data for periodical reports of operating revenues, expenses, and income	Do.
(c) Supporting data for reports detailing use of proceeds from issuance or sale of company securities	Do.
(d) Supporting data for valuation inventory reports and records. This includes related notes, maps and sketches, underlying engineering, land, and accounting reports, pricing schedules, summary or collection sheets, yearly reports of changes and other miscellaneous data, all relating to the valuation of the company's property by the Interstate Commerce Commission or other regulatory body	3 years after disposition of the property
2. Supporting data for periodical reports of accidents, inspections, tests, hours of service, repairs, freight car locations, etc.	3 years
3. Supporting data for periodical statistical of operating results or performance by tonnage, mileage, passengers carried, piggyback traffic, commodities, costs, analyses of increases and decreases, or otherwise	Do.
M. MISCELLANEOUS	
1. Index of records	Until revised as record structure changes
2. Statement listing records prematurely destroyed or lost	For the remainder of the period as prescribed for records destroyed

NOTE A.—Records referenced to this note shall be maintained as determined by the designated records supervisory official. Companies should be mindful of the record retention requirements of the Internal Revenue Service, Securities and Exchange Commission, state and local jurisdictions and other regulatory agencies. Companies shall exercise reasonable care in choosing retention periods, and the choice of retention periods shall reflect past experiences, company needs, pending litigation, and regulatory requirements.

Proposed Rules

Federal Register

Vol. 50, No. 52

Monday, March 18, 1985

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 352

[Docket No. 83-038P]

Voluntary Inspection of Buffalo

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to adopt regulations providing for voluntary inspection of buffalo (American bison) under the Agricultural Marketing Act of 1946, as amended. The proposed regulations would incorporate parts of the Federal meat inspection regulations to permit more flexible options for ante-mortem inspection of buffalo under the voluntary inspection program.

The proposed rule would allow three inspection of buffalo: (1) In the field in a designated area of an owner's premises; (2) on an appropriate transport vehicle at an official buffalo establishment; and (3) in ante-mortem pens at an official buffalo establishment. The ante-mortem inspection performed on buffalo which is either in the field or on a transport vehicle would be dependent on the adequacy and safety of the particular situation. Humane handling of buffalo during ante-mortem inspection shall be in accordance with the provisions of 9 CFR 313.2.

The post-mortem inspection procedure would be performed in an official buffalo inspection establishment by a USDA inspector or an inspector of a cooperating State, with the post-mortem disposition determined by the authorized veterinarian. The proposed rule would allow the utilization of Federal and State inspection personnel for ante-mortem and post-mortem inspection. A newly designed triangular brand would be used to identify buffalo meat inspected under the voluntary inspection program. The triangular

brand would be allowed to be applied to buffalo carcasses, meat and meat food product inspected and passed by authorized USDA or State employees in an official buffalo inspection establishment. The proposal would facilitate the sale and export of buffalo carcasses, meat, and meat food products. The proposal is a result of petitions from buffalo organizations to allow new inspection procedures for buffalo under a voluntary inspection program.

DATE: Comments must be received on or before June 13, 1985.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Dr. John C. Prucha, Director, Slaughter Inspection Standards and Procedures Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" under Executive Order 12291. This proposed rule would not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United State-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because currently only approximately 6,000 buffalo are slaughtered annually compared to over 33,500,000 cattle slaughtered in fiscal year 1983. It is not expected that the number of buffalo

slaughtered annually will substantially increase.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent in duplicate to the Regulations Office. Comments should refer to the docket number that appears in the heading of this document. All comments submitted in response to this proposal will be made available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Agricultural Marketing Act of 1946, as amended, provides the Secretary of Agriculture with the authority to furnish a voluntary inspection service for buffalo (American bison) as well as for other game animals (7 U.S.C. 1622). Under regulations contained in 9 CFR Part 350, the Department provides inspection and certification services for domesticated reindeer and other game animals such as buffalo. These inspection services enable persons to bring game animals to an official establishment for ante- and post-mortem inspection. The inspected and passed game meat is branded with a USDA mark of inspection and can be sold interstate or exported.

The increasing consumer demand for buffalo meat and the increasing number of buffalo being raised for food have prompted buffalo associations to request the adoption of regulations for buffalo that would address specific problems involved in their slaughtering and marketing. The transportation of live buffalo to an official establishment for inspection and slaughter is one of the biggest problems facing buffalo producers. The inherent unpredictable behavior of buffalo during their loading onto a transport vehicle, transporting and unloading at an official establishment has resulted in damage to transport vehicles, fences, pens, and animals. The damage to ante-mortem pens at an official establishment and the increased risk of personal injury have prevented buffalo from being accepted at many slaughter establishments. There are a few establishments which have ante-mortem pens and facilities especially designed and built for buffalo. However, because of the expense, many

slaughter establishments are not willing to provide reinforced pens to accommodate unruly buffalo.

Another problem facing the buffalo industry is having a brand applied to the buffalo carcasses, meat and meat food products that would be readily accepted by the consumer. Most consumers have become accustomed to the USDA brand on the meat they purchase. The Federal brand authorized for use under the Federal Meat Inspection Act may only be applied to carcasses, meat, and meat products of cattle, sheep, swine, goats, and equines that have been inspected in a Federal establishment. State inspected buffalo have a State brand applied to the buffalo meat. Even though State inspected buffalo meat may be sold interstate, many consumers, as well as food businesses, will not buy buffalo meat without the Federal mark of inspection.

Recently, FSIS has been petitioned by the National Buffalo Association and the American Buffalo Association on behalf of the buffalo (American bison) industry for changes in the ante-mortem inspection and slaughter procedures for buffalo under the voluntary inspection program. The petitioners requested that ante-mortem inspection of buffalo be conducted on the owner's premises or outside of a transport vehicle at an official establishment as well as in ante-mortem pens at an official establishment.

Utilization of State and Federal inspectors and the use of contract inspectors were requested for the ante-mortem inspection of buffalo. The Associations also requested a special Federal buffalo brand that could be applied to buffalo meat inspected in an official buffalo inspection establishment.

These requests were the result of the previously mentioned problems inherent to the buffalo industry. To address the voluntary inspection of buffalo specifically, a new rule is being proposed. The proposed rule would add a new part to the provisions pertaining to Voluntary Inspection and Certification Service contained in Subchapter B, Chapter III, Title 9, of the Food Safety and Inspection Service regulations.

The proposed rule would allow three alternative locations for ante-mortem inspection of buffalo. The first alternative would allow ante-mortem inspection to be performed in the field in a designated areas of the buffalo producer's premises. The field inspection procedure would entail the ante-mortem inspection, stunning and bleeding of the animal. The animal must be handled humanely in accordance with provisions of 9 CFR 313.2. The

animal must be bled immediately after stunning. It would then be transported to an official buffalo establishment for post-mortem inspection.

The carcass would be required to be ear-tagged with a "U.S. Suspect" tag to identify it. This will provide the post-mortem veterinarian the means to control the post-mortem inspection and disposition of all field ante-mortem inspected buffalo. Tagging the buffalo carcass in the field with a suspect tag, along with post-mortem inspection and disposition by the veterinarian at an official buffalo establishment, is consistent with the current method of handling carcasses that require delayed evisceration. Field ante-mortem inspection would reduce the risks of injury to persons handling buffalo and would eliminate the property damage to transport vehicles, fences and pens.

The second alternative would allow ante-mortem inspection to be performed outside of a transport vehicle at an official buffalo establishment. Such ante-mortem inspection would allow a buffalo producer with a few buffalo to have ante-mortem inspection performed by an inspector outside the transport vehicle on buffalo that are inside the vehicle. The inspector would be positioned outside the vehicle and provide such service if it can be appropriately and safely performed. The vehicle ante-mortem inspection alternative would enable establishments that do not have reinforced pens to receive a few buffalo for slaughter. The ante-mortem inspected and passed buffalo would be stunned but not bled in the transport vehicle. The carcasses would be immediately taken to the slaughter floor for bleeding and post-mortem inspection.

Ante-mortem inspection performed in the field or outside of a transport vehicle must ensure the safety of inspection personnel and must allow for adequate inspection.

The third alternative allows ante-mortem inspection to be performed in ante-mortem pens at an official buffalo establishment.

The three alternatives are designed to resolve the unique problems involved with the ante-mortem inspection of buffalo. These ante-mortem inspection alternatives would allow more buffalo meat and meat food products to enter the market.

The proposed rule would allow the utilization of Federal and cooperating State inspectors to perform all aspects of the inspection service under the provisions of the Talmadge-Aiken Act of September 28, 1962 (7 U.S.C. 450). The utilization of Federal and State inspectors would enable a more efficient

and economical use of manpower than if Federal inspectors were used exclusively.

The proposed rule would allow the use of a newly designed triangular brand to identify inspected and passed buffalo meat and buffalo meat food products. The Department might possibly decide to use the new triangular brand in the future to identify other species of animals that would be inspected under the voluntary inspection program. The triangular brand may be applied at official buffalo establishments by Federal or State inspectors. The triangular brand would readily identify buffalo meat and meat food products which have been inspected and passed under the voluntary inspection program. The special triangular brand was designed for application to buffalo meat inspected in official buffalo establishments in lieu of the red meat USDA mark of inspection that can only be used in federally inspected establishments under the Federal Meat Inspection Act.

Meat and meat food products of buffalo produced under the voluntary inspection service and certified by the Department and carry the mark of Federal inspection. To qualify for this service, the establishment, its facilities and equipment, and its procedures would have to meet certain requirements incorporated from the mandatory meat inspection regulations, and the establishment would have to be an official buffalo establishment. Therefore, FSIS is proposing to incorporate the relevant substantive requirements of the Federal meat inspection regulations into the voluntary buffalo regulations, instead of restating those requirements.

Because the diseases in buffalo parallel diseases found in cattle, the post-mortem inspection procedures for buffalo will remain the same as are currently used for cattle. It is recommended that field-slaughtered buffalo be brought to the plant for post-mortem examination and disposition in the shortest possible time. The establishment of specific time and temperature requirements for buffalo slaughtered in the field is difficult because their carcasses would be transported different distances under varying climatic conditions. It has been determined, however, that to minimize changes in the carcass which can affect post-mortem examination, disposition and wholesomeness, buffalo slaughtered in the field must be eviscerated and inspected on the day of slaughter. Therefore, field-slaughtered buffalo must be presented for post-mortem

inspection on the same day of field slaughter. Regardless of the time elapsed, if, in the judgment of the examining veterinarian, changes have occurred in the carcass which make it unwholesome, the carcass must be condemned.

The provisions for mandatory meat inspection are covered under regulations codified in 9 CFR Parts 301 through 335. This document proposes regulations that deal with the administration of voluntary buffalo inspection activities and provides for alternate locations for ante-mortem inspection; incorporates the relevant mandatory meat inspection regulations by reference; and codifies them in Title 9, Chapter III, Subchapter B, of the Food Safety and Inspection Service regulations, as a new Part 352. Accordingly, Subchapter B of the voluntary inspection regulations would be amended as set forth below.

Proposed Rule

Indexing Terms. As required by 1 CFR 18.20 (46 FR 1762, January 22, 1981), the following are the indexing terms for this regulation:

List of Subjects in 9 CFR Part 352

Animal diseases, Food labeling, Meat inspection, Reporting and recordkeeping requirements.

1. Subchapter B of chapter III, of the Federal meat inspection regulations would be amended by adding Part 352 to read as set forth below:

PART 352—BUFFALO: VOLUNTARY INSPECTION

- Sec.
- 352.1 Definitions.
 - 352.2 Type of service available.
 - 352.3 Application by official buffalo establishment for inspection service.
 - 352.4 Application for ante-mortem inspection service in the field.
 - 352.5 Fees and charges.
 - 352.6 Denial or withdrawal of inspection service.
 - 352.7 Marking inspected products.
 - 352.8 Time of inspection in the field and in an official buffalo establishment.
 - 352.9 Report of inspection work.
 - 352.10 Ante-mortem inspection.
 - 352.11 Post-mortem inspection.
 - 352.12 Disposal of diseased or otherwise adulterated carcasses and parts.
 - 352.13 Entry into official establishments; reinspection and preparation of products.
 - 352.14 Records, registration and reports.
 - 352.15 Exports.
 - 352.16 Transportation.
 - 352.17 Cooperation of States in Federal programs.

The authority citation for Part 352 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

§ 352.1 Definitions.

The definition in § 301.2, not otherwise defined in this part, are incorporated into this part. In addition to those definitions, the following definitions will be applicable to the regulation in this part.

(a) *Act* means the applicable provisions of the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087, as amended; 7 U.S.C. 1621 *et seq.*).

(b) *Acceptable* means suitable for the purpose intended and acceptable to the Food Safety and Inspection Service.

(c) *Applicant* means any interested party who requests any inspection service.

(d) *Buffalo* means any American bison or catalo or cattalo.

(e) *Buffalo inspection service* means the personnel who are engaged in the administration, application, and direction of buffalo inspection programs and services pursuant to the regulations in this Part.

(f) *Buffalo producer* means any interested party that engages in the marketing of American bison or catalo or cattalo.

(g) *Catalo or Cattalo* means any hybrid animal with American bison appearance resulting from direct crossbreeding of American bison and cattle.

(h) *Condition* means any condition, including, but not limited to, the state of preservation, cleanliness, or soundness of any product or the processing, handling, or packaging which may affect such product.

(i) *Condition and wholesomeness* means the condition of any product, its healthfulness and fitness for human food.

(j) *Field ante-mortem inspection* means the ante-mortem inspection of buffalo away from the official buffalo establishment's premises.

(k) *Field designated area* means any designated area on the applicant's premises, approved by the Regional Director, where field ante-mortem inspection is to be performed.

(l) *Identify* means to apply official identification to products or containers.

(m) *Inspection* means any inspection by an inspector to determine, in accordance with the regulations in this Part, (1) the condition and wholesomeness of buffalo, or (2) the condition and wholesomeness of edible product of buffalo at any state of the preparation of packaging in the official plant where inspected and certified, or (3) the condition and wholesomeness of any previously inspected and certified product of buffalo if such product has not lost its identity as an inspected and certified product.

(n) *Interested party* means any person financially interested in a transaction involving any inspection.

(o) *Official buffalo establishment* means any slaughtering, cutting, boning, curing, smoking, salting, packing, rendering, or similar establishment at which inspection is maintained under the regulations in this Subchapter.

(p) *Official device* means a stamping appliance, branding device, stencil printed label, or any other mechanically or manually operated tool that is approved by the Administrator for the purpose of applying any official mark or other identification to any product or packaging material.

(q) *Official identification* means any symbol, stamp, label, or seal indicating that the product has been officially inspected and/or indicating the condition of the product approved and authorized by the Administrator to be affixed to any product, or affixed to or printed on the packaging material of any product.

(r) *Program* means the Voluntary Buffalo Inspection Program of the Food Safety and Inspection Service.

(s) *Transport vehicle* means any vehicle used to transport buffalo.

(t) *Veterinarian* means any authorized veterinarian of the Program employed by the Department or any cooperating State who is authorized by the Secretary to do any work or perform any duty in connection with the Program.

§ 352.2 Type of service available.

Upon application, in accordance with § 352.3 and 352.4, the following type of service may be furnished under the regulations in this Part:

(a) *Voluntary Inspection Service.* An inspection and certification service for wholesomeness relating to the slaughter and processing of buffalo and the processing of buffalo products. All provisions of this Part shall apply to the slaughter of buffalo, and the preparation, labeling, and certification of the buffalo meat and buffalo products processed under this buffalo inspection service.

(b) Only buffalo which have had ante-mortem inspection as described under this Part and which are processed in official buffalo establishments in accordance with this Part may be marked, inspected and passed.

(c) Buffalo, buffalo meat and meat food products shall be handled in an official buffalo establishment to ensure separation and identity of the buffalo or buffalo meat and meat food products until they are shipped from the official buffalo establishment to prevent commingling with other species.

§ 352.3 Application by official buffalo establishment for inspection service.

(a) Any person desiring to process buffalo, buffalo carcasses, buffalo meat and meat food products in an establishment under buffalo inspection service must receive approval of such establishment and facilities as an official buffalo establishment prior to the rendition of such service. An application for inspection service to be rendered in an official buffalo establishment shall be approved in accordance with the provisions contained in §§ 304.1 and 304.2, of Subchapter A of this Chapter.

(b) Initial survey. When an application has been filed for buffalo inspection service, the Regional Director or designee, shall examine the establishment, premises, and facilities.

§ 352.4 Application for ante-mortem inspection service in the field.

Any buffalo producer desiring field ante-mortem buffalo inspection service must receive approval of the field ante-mortem designated area from the Regional Director or designee prior to the rendition of such service. An application seeking approval of the designated area for ante-mortem inspection shall be obtained from the Regional Director, and completed and submitted to the Regional Director.

(a) An initial application for field ante-mortem buffalo inspection service shall be made by an official buffalo establishment to the Regional Director. Subsequent requests shall be made by the official buffalo establishment on behalf of a buffalo producer to the Regional Director in one of the following manners: (1) Telephone, (2) telegraph, (3) mail, or (4) in person as determined by the Regional Director.

(b) Upon receipt of the completed application, the Regional Director or designee shall examine the field ante-mortem designated area and facilities for approval of the designated area.

(c) All fees involved for the approval of the designated area, including but not limited to any travel, per diem costs, and time required to perform such approval services, shall be paid directly by the applicant to the Regional Director.

§ 352.5 Fees and Charges.

(a) Fees and charges for service under the regulations in this part shall be paid by the applicant for the service in accordance with this section.

(b) The fees and charges provided for in this section shall be paid by check, draft, or money order payable to the "Treasurer of the United States" and shall be remitted promptly to the

Regional Director upon furnishing to the applicant a statement as to the amount due.

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of \$18.60 per hour for base time, \$21.72 per hour for overtime including Saturdays, Sundays, and holidays, and \$35.92 per hour for laboratory service to cover the costs of the service. The applicant shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

(d) Charges may also be made to cover other expenses incurred by the Service in connection with the furnishing of the service.

(e) Fees and charges for any inspection pursuant to a cooperative agreement with any State shall be paid in accordance with the terms of such cooperative agreement.

§ 352.6 Denial or withdrawal of inspection service.

(a) For miscellaneous reasons. An application or a request for service may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, any person, without a hearing by the appropriate Regional Director (1) for administrative reasons such as the nonavailability of personnel to perform the service; (2) for the failure of payment for service; (3) in case the application or request relates to buffalo or buffalo products which are not eligible for service under this Part; (4) for failure to maintain the designated area or the plant in a state of repair approved by the Service; (5) for the use of operating procedures which are not in accordance with the regulations of this Part; (6) for alterations of buildings, facilities, or equipment which cannot be approved under the regulations in this Part. Notice of such rejection, denial, or withdrawal, and the reasons therefor, shall promptly be given to the person involved. The applicant or recipient shall be notified of such decision to reject an application or request for service or to deny or withdraw the benefits of the service, and the reasons therefor, in writing in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)), or orally. Such decision shall be effective upon such oral or written notification, whichever is earlier to the applicant or recipient. If such notification is oral, the person making such decision shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances

permit, and such written confirmation shall be served upon the applicant or recipient in the manner prescribed in § 1.147(b) of the rules of practice (7 CFR 1.147(b)).

(b) For disciplinary reasons—Basis for denial or withdrawal. (1) An application or request for service may be denied, or the benefits of the service may be withdrawn from, any person or entity who, or whose employee or agent in the scope of his employment or agency, (i) has willfully made any misrepresentation or has committed any other fraudulent or deceptive practice in connection with any application or request for service under this Part; (ii) has given or attempted to give, as a loan or for any other purpose, any money, favor or other thing of value, to any agent of the Department authorized to perform any function under this Part; (iii) has interfered with or obstructed, or attempted to interfere with or to obstruct, any agent of the Department in the performance of his duties under this Part by intimidation, threats, assaults, abuse, or any other improper means; (iv) has knowingly represented that any buffalo carcass, or buffalo product has been officially inspected and passed by an authorized inspector under this Part, when it had not, in fact, been so inspected; (v) has been convicted of any felony or of more than one misdemeanor under any law based upon the acquiring, handling, or distributing of adulterated, mislabeled, or deceptively packaged food, or fraud in connection with transactions in food.

(2) *Provided*, an application or a request for service made in the name of a person, firm or corporation otherwise eligible for service under the regulations may be denied, or the benefits of the service may be withdrawn, from such a person, firm or corporation in case the service is or would be performed at a location operated (i) by a person, firm or corporation, from whom the benefits of the service are currently being denied or have been withdrawn under this Part, or (ii) by a person, firm or corporation having an officer, director, partner, manager or substantial investor from whom the benefits of service under this Part are currently being denied or have been withdrawn under this Part, and who has any authority with respect to the location where service is or would be performed, or (iii) in case the service is or would be performed with respect to any buffalo or buffalo product in which any person, firm or corporation, from whom the benefits of service are currently being denied or have been withdrawn under this Part, has a contract or other financial interest.

(c) Procedure. (1) An application or request for service may be denied or benefits of the service may be withdrawn by the Secretary, as provided by this paragraph, after notice and opportunity for hearing before a designated official of the Department. The Administrator may suspend service under this paragraph without hearing, pending final determination of the matter, when he determines that the public health, interest or safety so requires. The applicant or recipient shall be notified of the Administrator's decision to suspend service, and the reasons therefor, in writing or orally. The Administrator's decision to suspend service under this Part shall be effective upon such an oral or written notification, whichever is earlier, to the applicant or recipient. If such notification is oral, the Administrator shall confirm such decision, and the reasons therefor, in writing, as promptly as circumstances permit, and such written confirmation shall be served upon the applicant or recipient in the manner prescribed in § 1.147(b) of Departmental rules of practice (7 CFR 1.147(b)).

(2) The written notification specified in paragraph c of this section, which shall constitute the complaint in the proceeding, shall briefly set forth the reason for the denial or withdrawal of service, including allegations of fact which constitute a basis for the action. After the complaint is served upon the respondent, as provided in § 1.147(b) of Departmental rules of practice (7 CFR 1.147(b)), the proceeding shall thereafter be conducted in accordance with rules of practice which shall be adopted for the proceeding.

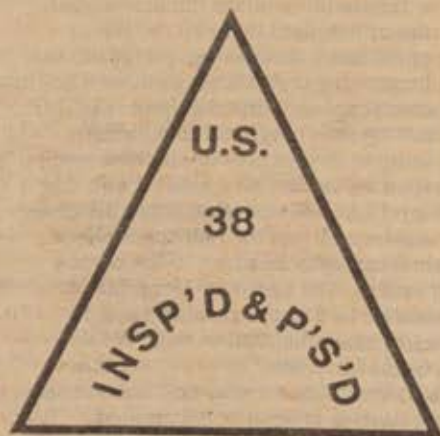
§ 352.7 Marking inspected products.

Wording and form of inspection mark. Except as otherwise authorized by the Administrator, the inspection mark applied to inspected and passed buffalo carcasses, meat or meat food products under this Part shall include wording as follows: "Inspected and Passed by U.S. Department of Agriculture." This wording shall be contained within a triangle in the form and arrangement shown in this section. The plant number of the official plant shall be included in the triangle unless it appears elsewhere on the packaging material. The Administrator may approve the use of abbreviations of such inspection mark, and such approved abbreviations shall have the same force and effect as the inspection mark. The inspection mark or

approved abbreviation shall be applied under the supervision of the inspector to the inspected and passed edible product, packaging material of such product, immediate container, and shipping container. When the inspection mark or the approved abbreviation is used on packaging material, immediate container or shipping container, it shall be printed on such material or container or on a label to be affixed to the packaging material or container. The name and address of the packer or distributor of such product shall be printed on the packaging material or label. The inspection marks may be stenciled on the container and, when the inspection mark is so stenciled, the name and address of the packer or distributor may be applied by the use of a stencil or a rubber stamp. The name and address of the packer or distributor, if prominently shown elsewhere on the packaging material or container, may be omitted from insert labels which bear an official identification if the applicable plant number is shown.

(a) The inspection mark to be applied to inspection and passed carcasses and parts of carcasses of buffalo, and products as therefrom approved by the Administrator, shall be in the form and arrangement as indicated in the examples below.¹ The plant number of the official plant shall be set forth if it does not appear on the packaging material or container.

(1) For application to buffalo carcasses, primal parts and cuts therefrom, buffalo livers, buffalo tongues, and buffalo hearts.



¹ The number "38" is given as an example only. The establishment number of the official buffalo establishment where the product is prepared shall be used in lieu thereof.

(2) For application to buffalo calf carcasses.



(3) For application to buffalo tails.



(4) For application to burlap, muslin, cheesecloth, heavy paper, or other acceptable material that encloses carcasses or parts of carcasses.



(b) The official inspection mark to be shown on all labels.¹

(1) For inspected and passed products of buffalo shall be in the following form, except that it need not be of the size illustrated, provided that it is a sufficient size and of such color as to be

conspicuously displayed and readily legible and the same proportions of letter size and boldness are maintained as illustrated:



(2) This official mark shall be applied by mechanical means and shall not be applied by a hand stamp.

(3) The official inspection legend described in subparagraph (1) of this paragraph shall also be used on shipping containers, bond labels, artificial casings, and other articles with the approval of the Administrator.

(c) Any brand, stamp, label or other device approved by the Administrator and bearing any official mark prescribed in paragraph (a) or (b) of this section shall be an official device for purposes of the Act.

§ 352.8 Time of inspection in the field and in an official buffalo establishment.

The official buffalo establishment, on behalf of the applicant, shall notify the Regional Director or designee, in advance, of the hours when such inspection is desired. Inspection personnel shall have access at all times to every part of any field in a designated area of a buffalo producer's premises and/or official buffalo establishment to which they are assigned.

§ 352.9 Report of inspection work.

Reports of the work of inspection carried on within the field in a designated area of a buffalo producer's premises and/or official buffalo establishment shall be forwarded to the Administrator by the ante-mortem

inspector. The applicant for such inspection shall furnish to the Administrator such information as may be required on forms provided by the Administrator.

§ 352.10 Ante-mortem inspection.

An ante-mortem inspection of buffalo shall, where and to the extent considered necessary by the Administrator and under such instruction as he may issue from time to time, be made on the day of slaughter of buffalo in one of the following listed ways. Humane handling of buffalo during ante-mortem inspection shall be in accordance with the provisions contained in 9 CFR 313.2. Immediately after the animal is stunned, it shall be shackled, hoisted, stuck and bled.

(a) To be performed on buffalo in the field in a designated area of a buffalo producer's premises.

(1) The field ante-mortem designated area must be approved by the Regional Director or designee prior to rendition of the service.

(2) Any person who desires to receive field ante-mortem inspection must provide:

(i) Notification from an official buffalo establishment to the Regional Director or designee.

(ii) A field ante-mortem designated area.

(iii) A stunning area which is in a condition that minimizes the possibility of soiling the animal when stunned and bled as determined by the inspector.

(iv) A transport vehicle that is as sanitary as practicable as determined by the inspector.

(3) The ante-mortem inspector shall determine the acceptableness and safety of performing field ante-mortem inspection. If, in the opinion of the ante-mortem inspector, an unsafe circumstance exists at the time of field ante-mortem inspection, the service shall be denied.

(4) The ante-mortem inspector shall supervise all phases of field ante-mortem inspection.

(5) Buffalo that, in the ante-mortem inspector's opinion, will not pass ante-mortem inspection must be withheld from slaughter.

(6) Stunning to render the animal unconscious shall be in accordance with 9 CFR 313.15 or 313.18.

(7) All stunned and bled buffalo shall be tagged with a "U.S. Suspect" tag in an ear by the ante-mortem inspector prior to loading on the transport vehicle.

(8) The transport of intact buffalo carcasses to an official buffalo establishment for post-mortem inspection shall be as expedient as possible, and must be within the same day as field slaughter.

(9) Ante-mortem cards (Form MP 402-2) shall be filled out by the ante-mortem inspector. One copy is to be retained by the ante-mortem inspector. The other copy shall accompany the transport vehicle to the official buffalo establishment and shall be delivered to the post-mortem veterinarian.

(b) To be performed on buffalo that are inside of the transport vehicle at an official buffalo establishment.

(1) The ante-mortem inspector shall remain outside the transport vehicle while performing ante-mortem establishment.

(2) The person requesting transport vehicle inspection must provide a transport vehicle that is as sanitary as practicable and that would safely and thoroughly permit the inspection of buffalo from outside of the transport vehicle as determined by the inspector.

(3) The ante-mortem inspector shall determine the adequacy and safety of performing ante-mortem inspection. If, in the ante-mortem inspector's opinion, the transport vehicle is not adequate or safe to perform ante-mortem inspection, the service shall be denied.

(c) To be performed in pens at official buffalo establishments. The inspection shall be conducted in accordance with the provisions contained in 9 CFR Part 309.

§ 352.11 Post-mortem inspection.

(a) The post-mortem examination must occur in the shortest length of time practicable and on the day that field ante-mortem inspection is performed to minimize the changes in the carcass which can affect the post-mortem examination, disposition and

wholesomeness of the carcass and its parts.

(b) The post-mortem veterinarian shall inspect and make the disposition of all incoming "U.S. Suspect" tagged buffalo.

(c) Post-mortem inspection of buffalo shall be conducted in accordance with the provisions contained in 9 CFR Part 310.

§ 352.12 Disposal of diseased or otherwise adulterated carcasses and parts.

Disposal of diseased or otherwise adulterated carcasses and parts shall be conducted in accordance with the provisions contained in 9 CFR Part 311.

§ 352.13 Entry into official establishments; reinspection and preparation of products.

Entry into official establishments; reinspection and preparation of products shall be conducted in accordance with the provisions contained in 9 CFR 318.1, 318.2, and 318.3.

§ 352.14 Records, registration, and reports.

Records, registration, and reports shall be conducted or maintained in accordance with the provisions contained in 9 CFR 320.1 through 320.7.

§ 352.15 Exports.

Exports shall be conducted in accordance with the provisions contained in 9 CFR 322.1 through 322.5.

§ 352.16 Transportation

Transportation shall be conducted in accordance with the provisions contained in Parts 325.1 through 325.21.

§ 352.17 Cooperation of States in Federal Programs

Cooperation of States in Federal Programs under the "Talmadge-Aiken Act" of September 28, 1962 (7 U.S.C. 450), the Administrator is authorized to utilize employees and facilities of States in carrying out Federal functions.

Done at Washington, DC, on March 4, 1985.
Donald L. Houston,
Administrator, Food Safety and Inspection Service.

[FR Doc. 85-6178 Filed 3-15-85; 8:45 am]

BILLING CODE 3410-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

Fair Housing; Federal Home Loan Log Sheet Requirement

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") proposes to amend its fair housing regulations, which apply to insured state nonmember banks ("banks"). The FDIC now requires metropolitan banks with more than \$10 million in assets to keep log sheets of home loan applications. The proposed rule would end the log sheet requirement for log-sheet banks that have \$50 million or less in assets and have received fewer than 25 home loan applications in the prior calendar year. As a safety measure, the proposed rule would authorize the FDIC's Board of Directors ("Board") to require any bank to keep log sheets if the Board has reason to believe the bank may be engaged in discriminatory home lending practices (including illegal prescreening). The FDIC considers that the proposed rule would reduce the paperwork burden on the banking industry without impairing enforcement of fair housing lending laws.

DATE: Comments must be submitted on or before May 17, 1985.

ADDRESS: Send comments to Hoyle Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20008.

FOR FURTHER INFORMATION CONTACT: Rex J. Morthland, Director, Office of Consumer Programs, Division of Bank Supervision (202/389-4473), Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC proposes to reduce the paperwork burden on the banking industry by amending section 338.4 of its regulations, 12 CFR 338.4. That section requires FDIC-supervised banks to request and retain certain data¹ from anyone who applies for a home loan, 12 CFR 338.4(a). Metropolitan² banks with more than \$10 million in assets ("log-sheet banks") must request and retain further information, 12 CFR 338.4(a)(2), and keep log sheets of all home loan

applications they receive.³ 12 CFR 338.4(a)(2)(iv).

The FDIC proposes to eliminate the log sheet requirement for log-sheet banks that have \$50 million or less in assets and have received fewer than 25 home loan applications in the preceding calendar year.⁴ The new record-keeping requirements for log sheets would be as follows:

1. All banks with \$10 million in assets or less, and all non-metropolitan banks, would not have to keep log sheets.
2. Any log-sheet bank that had more than \$10 million but \$50 million or less in assets would be required to keep log sheets if the bank had received 25 or more home loan applications in the prior calendar year. If it had received fewer than 25 applications in the prior year, it would not have to keep log sheets.
3. Any log-sheet bank with more than \$50 million in assets would be required to keep log sheets regardless of the number of applications received.

The FDIC also proposes to require any FDIC-supervised bank—whatever its size, wherever located, and however many applications it may have received—to maintain log sheets if the Board has reason to believe the bank may be engaged in discriminatory home lending practices (including illegal prescreening).

In June and September of 1984, the FDIC surveyed its experienced consumer compliance examiners. In June the FDIC sought the examiners' opinions on the accuracy and usefulness of inquiry entries in conducting a fair housing lending examination. Forty-eight experienced compliance examiners responded to the survey. The responses strongly influenced the FDIC's decision to omit inquiry entries on the log sheets. See 49 FR 35758 (1984). In September the FDIC focused on the usefulness of application entries on log sheets. Sixty one of the FDIC's most experienced compliance examiners expressed their opinions. The FDIC also obtained information and opinions from other FDIC field examiners and FDIC compliance review examiners in the FDIC's regional offices.

The FDIC also used statistical data derived from reports compiled by banks

¹ The information consists of the name, address, race/national origin, sex, marital status, and age of the applicant and the address of the property being purchased, constructed, repaired, or maintained.

² The term "metropolitan" refers to a primary metropolitan statistical area ("PMSA"), metropolitan statistical area ("MSA"), or consolidated metropolitan statistical area ("CMSA") that is not comprised of designated primary metropolitan statistical areas. The terms "PMSA", "MSA" and "CMSA" replace the phrase "standard metropolitan statistical area" ("SMSA") throughout the current version of Part 338 in line with the new terminology used by the United States Office of Management and Budget.

³ A sample log sheet is included in Appendix A of 12 CFR 338.4. It includes the information listed in footnote 1 plus the type of home loan requested and the bank's action on the loan.

⁴ On February 14, 1984, the FDIC published a Notice of Proposed Rulemaking. The FDIC suggested, *inter alia*, relaxing the threshold requirement for log sheet record-keeping. See 49 FR 5623 (1984). The FDIC received few comments on that issue, however. The FDIC deferred action pending further evaluation.

pursuant to the Home Mortgage Disclosure Act ("HMDA statements") and from banks' call reports. HMDA statements of home loans made in 1982 were summarized by asset size of bank, number of loans made per bank, and total number of such loans made. Call report data for December 31, 1983, on total assets, total real estate loans outstanding, and total one-to-four family residential loans outstanding were summarized by size of bank for all banks wherever located and separately for those with at least one office in a metropolitan area.⁵ These summaries provide the best available factual basis for estimating the effects of the FDIC's proposal on the number of log-sheet banks and the number of applications recorded.

The FDIC concentrated on two issues:

1. Whether log sheet records on applications are useful in conducting fair housing compliance examinations; and
2. Whether the number of log-sheet banks can be reduced significantly without harming the quality of the fair housing compliance examination, and if so, how.

Nearly all the examiners believe the loan-application log sheets are useful. In June, 80% of the responses were affirmative (41 of 51). In September, 97% of the examiners (59 of 61) believed the log sheets were helpful at some level of mortgage activity.

The examiners reported that log sheets improve the quality and the efficiency of fair housing lending examinations. They provide an overview of a bank's home loan applications. The examiner can determine the proper scope of an examination, identify problem areas, select a sample of applications for detailed study, and locate home loan applications (particularly ones that have been approved). Most examiners in both surveys said the log sheets save time. Estimates of the time saved ranged from a few hours to a day or two, depending on how many applications a bank had received.

When examiners do not have the benefit of log sheets, they must locate and then skim through most of the bank's home loan applications in order to select an appropriate sample. The process is laborious when a bank has more than 25 to 50 applications a year. Locating rejected applications is comparatively easy: Banks usually file them together, and discard them sometime after 25 months. But locating approved applications is harder. Banks

often keep their approved home loans in alphabetical rather than chronological order. Many banks keep records of all mortgages—commercial and/or business related as well as residential—in the same file. Some banks mingle records of recent loans (*i.e.*, those to be reviewed in the current examination) with records of loans made over the last 30 years. In that case, even if a bank makes only 25 to 50 home loans a year, the examiner may have to search through 300 to 600 files or more to obtain a good sample.

Examiners also agreed that log sheets improve the quality and efficiency of other aspects of compliance examinations. They provide the only complete list of applications—rejected as well as approved—for any particular type of loan. Log sheets help examiners check whether a bank is complying with various consumer laws and regulatory requirements—*e.g.*, filing accurate HMDA statements; providing adverse-action notices on rejected loan applications issued pursuant to the Equal Credit Opportunity Act and Regulation B; meeting the credit needs of its community as required by the Community Reinvestment Act; providing notices to borrowers and requiring flood insurance in areas designated as being flood prone; and making the disclosures required by the Truth-in-Lending Act and the Real Estate Settlement Procedures Act.

Log-sheets can be helpful to banks with a substantial volume of home loan applications. Examiners reported that one-fifth of the banks having consumer compliance examinations in June use log sheet data for management purposes. The information is used as a management tool for internal review and control, *e.g.*, in marketing, in underwriting home loans, and in monitoring compliance with consumer protection laws and bank loan policies.

Nevertheless, examiners identified limits on the usefulness of log sheets. More than half of them (32 of 61) said the log sheets are not especially useful for banks receiving less than 25 to 50 applications per year. Below that level, the examiners said, they can review each application individually and sampling is not necessary.

Accordingly, the FDIC considers that the number of banks maintaining log sheets can be reduced significantly without harming the quality of the fair housing compliance examination. In particular, the FDIC considers that it would be appropriate to end the log sheet requirement for log-sheet banks with assets of \$50 million or less which received less than 25 home loan applications in the prior calendar year.

The FDIC's plan lifts the burden of the log-sheet requirement from 1033 banks representing one-third of all banks that filed HMDA statements in 1982 ("HMDA banks"). Yet the plan would not harm the quality of fair housing lending examinations. These 1,033 banks made 11,410 home loans, representing just 6.4% of the home loans made by all HMDA banks.

On the other hand, 565 banks with \$50 million or less in assets, representing 18.6% of the HMDA banks, would continue to maintain log sheets. These banks reported 30,011 home loans, representing 16.9% of the home loans made by HMDA banks. These statistics are presented in tabular form at the end of the introduction to the proposed regulation.

It should be noted that the percentages are more accurate for policy purposes than are the absolute numbers. Four states have reporting requirements that are substantially the same as the HMDA requirements. Banks in these states must keep log sheets, but most are exempt from filing federal HMDA statements, and accordingly are not counted in HMDA bank totals. Percentages based on these absolute numbers should be relatively reliable, however, as the HMDA banks constitute a large sample (85%) of all log sheet banks.

It should also be noted that, in estimating how many banks would be exempted under the new criteria, the FDIC has used the number of loans made rather than the number of applications received. The discrepancy is likely to be minor, however. In 30 of 46 banks (65%) covered in the June survey, less than 10% of the applications received were rejected; in 9 others (20%), the rejection rate was between 10 and 19%. Moreover, there are counterbalancing influences. For example, HMDA statements include unsecured loans that the creditor bank classes as home improvement loans, while the log sheets only record applications for secured home improvement loans. The offsetting effects can be significant: home improvement loans constituted 55% of the number of home loans included in the HMDA statements in 1980 and 1981.

The FDIC does not propose to require non-metropolitan banks to keep log sheets. In 1980, 83% of all minorities and 81% of the Black population resided in standard metropolitan statistical areas. Moreover, metropolitan banks with more than \$10 million in total assets make far more real estate loans than nonmetropolitan banks of that size. The 3539 log-sheet banks comprise only 46%

⁵ The term "metropolitan area" refers to any MSA, MSA, or CMSA.

of all banks supervised by the FDIC; yet in 1983 these banks held 84% of the outstanding real estate loans of all types, and 84% of the one-to-four family residential real estate loans, made by all FDIC-supervised banks.

The FDIC seeks public comment on all aspects of the proposal. In particular, however, the FDIC seeks public comment on whether asset size is the proper criterion for determining the exemption threshold, and if so, whether the threshold is set at the proper level. The FDIC also seeks comment on the merits of basing the log sheet requirement on some other criterion (or combination of criteria), such as the number of a bank's yearly home loan applications or the size of its home loan mortgage portfolio.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the board of Directors of the FDIC hereby certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendments would ease the existing collection of information requirements. The effect of the amendments is expected to be beneficial, not adverse, and small entities are expected to receive all benefits of the amendments.

Paperwork Reduction Act

The collection of information requirements prescribed herein have been submitted to the Office of Management and Budget for review. See 44 U.S.C. 350(h). Written comments may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for FDIC, Washington, D.C. 20503.

TABLE.—Effect of Recommended Amendments of Section 338.4 on Number of Banks With Total Assets Between \$10 Million and \$50 Million and on Number of Home Loans Reported in HMDA Reports for 1982

Banks with total assets between \$10 and \$50 million	Home loans made per bank	
	1 to 24	25 and over
Number of banks filing HMDA report	1,033	565
Pct of banks between \$10 million and \$50 million (1,677)	61.6	33.7
Pct of all banks \$10 million and over (3,033)	34.1	18.8
Number of home loans made by those banks	11,410	30,011
Average number per bank	11.0	53.1
Pct of those made by banks between \$10 million and \$50 million (41,421)	27.5	72.5

TABLE.—Effect of Recommended Amendments of Section 338.4 on Number of Banks With Total Assets Between \$10 Million and \$50 Million and on Number of Home Loans Reported in HMDA Reports for 1982—Continued

Banks with total assets between \$10 and \$50 million	Home loans made per bank	
	1 to 24	25 and over
Pct of those made by all banks \$10 million and over (177,768)	6.4	16.9

List of Subjects in 12 CFR Part 338

Advertising, Banks, Banking, Fair housing, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, State nonmember banks.

The Board of Directors of the Federal Deposit Insurance Corporation proposes to amend Part 338 of title 12 of the Code of Federal Regulations as follows:

PART 338—FAIR HOUSING

1. Authority: Sec. 2, Pub. L. 86-671, 74 Stat. 547 (12 U.S.C. 1817); sec. 8, Pub. L. 797, 64 Stat. 879, as amended by sec. 202, 204, Pub. L. 89-695, 80 Stat. 1046, 1054, and sec. 110, Pub. L. 93-495, 88 Stat. 1506 (12 U.S.C. 1818); sec. 9, Pub. L. 797, 64 Stat. 881, as amended by sec. 205, Pub. L. 89-695, 80 Stat. 1055 (12 U.S.C. 1819); sec. 203, Pub. L. 89-695, 80 Stat. 1053 (12 U.S.C. 1820(b)); sec. 805, Pub. L. 90-284, 82 Stat. 83, 84, as amended by sec. 808, Pub. L. 93-383, 88 Stat. 729 (42 U.S.C. 3605, 3606); sec. 501, Pub. L. 93-495, 88 Stat. 1521, as amended by sec. 2, Pub. L. 94-239, 90 Stat. 251 (15 U.S.C. 1691, *et seq.*); 40 FR 49306, 12 CFR Part 202; 37 FR 3429, 24 CFR Part 110.

§ 338.4(a)(2)(iv) [Amended]

2. Section 338.4(a)(2)(iv) is amended by replacing the period at the end of the first sentence thereof with a colon, and by inserting the following clause immediately thereafter: "Provided, That any bank covered by the said provision which had total assets of \$50 million or less as of December 31 of the preceding calendar year and also received fewer than 25 home loan applications during the calendar year is not required to keep a log-sheet of this kind."

§ 338.4 [Amended]

3. Section 338.4 is amended by redesignating paragraph (f) as paragraph (g).

4. Section 338.4 is amended by adding a new paragraph (f) reading as follows:

§ 338.4 Recordkeeping requirements.

(f) Notwithstanding any other provision of this section, the Board of Directors may require any bank to keep a log sheet on its home loan applications

by bank office. The log sheet shall contain the information reflected on the sample form in Appendix A. The bank shall be able to trace each entry on the log sheet to the relevant application file, using the name of the applicant or unique case number assigned by the bank.

By Order of the Board of Directors.

Dated: March 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-6214 Filed 3-15-85; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, and 32

Regulations Permitting the Grant, Offer and Sale of Options on Physical Commodities (Dealer and Trade Options)

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is requesting public comment to assist the Commission in determining whether to reformulate its current proposal to implement subsection 4c(d)(2) of the Commodity Exchange Act, which would permit persons who were not doing business in May 1978 to grant off-exchange "dealer options" to the public. Essentially, the Commission invites the public to compare the Commission's current scheme of regulation concerning exchange traded options and leverage transactions with the Commission's current proposed rules governing dealer options. The Commission's purpose is to determine both whether there is a need to proceed with its proposal and whether that proposal should be modified in order to assure a uniform level of customer and market protection with respect to those off-exchange instruments regulated by the Commission. The Commission also invites commenters to address other matters which they believe may be relevant to the appropriate regulation of dealer options. Additionally, the Commission is requesting public comment on the need to establish objective criteria for defining the qualifying class of persons that may enter non-agricultural trade option

transactions under subsection 4c(c) of the Act.

DATE: Comments must be received on or before May 17, 1985.

ADDRESS: Comments should be sent to: The Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Robert H. Rosenfeld, Attorney, Division of Trading and Markets, at the above address. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Subsection 4c(c) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 6c(c) (1982), essentially prohibits all commodity option transactions other than transactions effected pursuant to Commission rules that have been subjected to congressional oversight. Pursuant to this authority, the Commission has implemented a pilot program concerning domestic exchange-traded options on futures contracts (46 FR 54500 (Nov. 3, 1981); 49 FR 2752 (Jan. 23, 1984)); and exchange-traded options on physical commodities (74 FR 56996 (Dec. 22, 1982); 48 FR 12519 (Mar. 25, 1983)). The ban on option transactions set forth in subsection 4c(c) of the Act is subject, however, to exemptions for two narrow classes of off-exchange option transactions: (1) the "trade option" exemption set forth in subsection 4c(c) of the Act for options offered or sold to a qualifying class of "commercial users" of the commodity underlying the option¹ and (2) the "dealer option" exemption set forth in subsection 4c(d) of the Act, 7 U.S.C. 6c(d) (1982), for options on physical commodities (other than certain agricultural commodities)² that

are offered generally to the public but only by qualifying grantors.

The trade option exemption of subsection 4c(c) of the Act provides:

That this prohibition shall not apply to any transaction expressly permitted under rules or regulations prescribed by the Commission * * * to be offered to be entered into, or confirmed, in which the purchaser is a producer, processor, commercial user of, or a merchant handling, the commodity involved in the transaction, or the products or byproducts thereof.

The dealer option exemption, subsection 4c(d)(1) of the Act, 7 U.S.C. 6c(d)(1) (1982), provides:

(1) any person domiciled in the United States who on May 1, 1978, was in the business of buying, selling, producing, or otherwise using that commodity, may continue to grant or issue options on that commodity in accordance with Commission regulations in effect on August 17, 1978, until thirty days after the effective date of regulations issued by the Commission under clause (2) of this subsection * * *.

Subsection 4c(d)(2) of the Act, 7 U.S.C. 6c(d)(2) (1982), directs the Commission to issue regulations that would permit other grantors and futures commission merchants to grant dealer options subject to minimum requirements specified in that subsection, as well as "any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission."³ The Commission also is authorized to permit persons not domiciled in the United States to grant options under subsection 4c(d) of the Act under such additional rules and orders as the Commission may adopt to provide protection to purchasers that is substantially the equivalent of those applicable to grantors domiciled in the United States.⁴ Finally, subsection 4c(e) of the Act, 7 U.S.C. 6c(e) (1982), authorizes the Commission to adopt rules, after public notice and opportunity for hearing, prohibiting the granting of dealer options if the Commission determines

that such options are contrary to the public interest.

Chronology of Commission Rulemaking

Dealer Options

Despite implementation and enforcement of commodity option regulations in 1975 and 1976 by the Commission, fraudulent activities associated with the offer and sale of off-exchange commodity options continued and resulted in the Commission's suspension of all commodity option trading as of June 1, 1978, except for transactions subject to the "trade option" exemption set forth in Commission rule 32.4(a).⁵ Prior to the effective date of the Commission's ban, on May 11, 1978, Mocatta Metals Corp. and Mocatta Quality Corp. ("Mocatta") filed a petition for interim rulemaking pursuant to Commission rule 13.2.⁶ Mocatta noted that committees of both the United States Senate and House of Representatives had reported bills concerning the reauthorization of the Commission which, *inter alia*, contained amendments to the Act which would (1) codify the Commission's ban on commodity option transactions (subject to a trade option exemption) and (2) exempt therefrom certain dealer option transactions. As there was every reason to believe that any reauthorization legislation enacted into law would contain some form of dealer option exception from the option ban, Mocatta requested that the Commission immediately adopt a rule permitting dealer option sales and thus avoid any disruption of business. Following a public hearing and consideration of written comments, the Commission adopted rule 32.12 to exempt certain dealer option grantors from the general option ban of Commission rule 32.11.⁷

The Commission's option suspension, as well as the exemptions for "trade option" and "dealer option" transactions, subsequently were codified by Congress in the Futures Trading Act of 1978.⁸ Thus, the current regulatory scheme set forth in Part 32 of the Commission's regulations essentially antedates the Futures Trading Act of 1978.

On November 15, 1978, the Commission reissued and adopted certain amendments to its existing

¹ Commission rule 32.4(a), 17 C.F.R. 32.4(a) (1984) implements this statutory exemption.

² The Futures Trading Act of 1982 repealed the general ban on options in agricultural commodities (i.e., those specifically set forth in section 2(a) of the Act prior to the date of enactment of the Commodity Futures Trading Commission Act of 1974 ("agricultural commodities") as previously contained in section 4c(a)(B) of the Act (Pub. L. No. 97-444, Sec. 206, 96 Stat. 2301 (1983)) and, in subsection 4c(c) of the Act, authorized the Commission to approve and regulate the trading of options on agricultural commodities under the same conditions as apply to the trading of options on other commodities. Since the authorizing language of subsection 4c(c) is subject to the trade option exemption proviso of that subsection, the Commission notes that but for the prohibition of Commission rule 32.2(a), agricultural options could be offered and sold pursuant to the authority of subsection 4c(c) of the Act and Commission rule 32.4(a), which implements the trade option exemption. *Options on agricultural commodities may not, however, be offered or sold pursuant to the dealer option provisions of subsection 4c(d) of the Act, since the subsection was amended in 1982 to*

exclude agricultural commodities. (Pub. L. No. 97-444, Sec. 206(4), 96 Stat. 2301 (1983)).

³ Subsection 4c(d)(2)(C) of the Act, 7 U.S.C. 4c(d)(2)(C) (1982).

⁴ *Id.*

This authority relates to both subsections 4c(d)(1) and (2). Rule 32.12(c) further authorizes the Commission to waive other requirements of the rule. Pursuant to such authority the Commission, by order waived the domicile requirement of subsection 4c(d)(1) and certain other requirements of rule 32.12(a) for Valeurs White Weld and Continental Ore Europe (both non-domestic entities) on March 19, 1979, and November 30, 1982, respectively.

⁵ Commission rule 32.11 suspended all commodity option transactions, except for trade option transactions under Commission rule 32.4(a). 43 FR 16153, 16161 (April 17, 1978).

⁶ 43 FR 21022 (May 16, 1978).

⁷ 43 FR 23704 (June 1, 1978).

⁸ Futures Trading Act of 1978, Pub. L. No. 95-405, 92 Stat. 865 (Sept. 30, 1978).

commodity option rules contained in Part 32 of the Commission's regulations in order to implement subsection 4c(d)(2) of the Act (and thereby permit firms that were not doing business in 1978 to grant dealer options).⁹ Those rules and rule amendments were to have become effective on December 21, 1978. Upon further consideration of public comments and a petition for reconsideration of such rules, the Commission determined that further public participation in the rulemaking process was needed and determined to revoke the 1978 rules and rule amendments¹⁰ and to reissue them as proposed rules.¹¹ The revocation of the rules regarding dealer options, which were to have gone into effect on December 21, 1978, resulted in the continued effectiveness of the then existing rules contained in Part 32 of the Commission's regulations which applied only to firms "doing business" on May 1, 1978.¹²

After receiving public comment on the proposed amendments set forth in 43 FR 59396 (Dec. 20, 1978), no further action was taken until April 1981 when the Commission determined to seek further public comment. This action was taken because (1) substantial changes had been made in a number of the prior proposals; (2) the Commission proposed language to implement proposals which previously were presented only as narrative requests for comment; and (3) additional amendments were being proposed for the first time.¹³

Other than a correction notice published in 46 FR 25106 (May 5, 1981), the proposed rules published in 46 FR 23469 (April 27, 1981) represent the most recent public position of the Commission with respect to regulations that would permit firms not doing business in 1978 to grant dealer options. The Commission notes that an essential part of the proposal was the creation of a new registration category for dealer option grantors. See proposed rule 3.15.¹⁴ The registration requirement was intended to ensure that dealer option grantors were subject to the same standards of fitness required of other grantors were subject to the same standards of fitness required of other commodity professionals and to provide

a framework for assessing a prospective grantor's compliance with certain requirements of subsection 4c(d) (2) (A) of the Act.¹⁵

The Commission also proposed to amend Commission rule 32.6(a) to require futures commission merchants ("FCMs") to segregate 100% of that portion of the purchase price paid to the grantor; to supplement the \$5 million net worth requirement of section 4c(d) (2) (A) (ii) with a minimum net capital requirement (see proposed rule 32.12(a)(1)); to retain those provisions of rule 32.12 that require dealer option grantors contractually to assume joint and several liability for certain acts or omissions of FCMs selling their options (see proposed rule 32.12(a)(2) and (b)(4)); to require FCMs that sell dealer options to obtain evidence that the grantor is qualified to write such options (see proposed rule 32.12(a)(9)(ii)); to establish more meaningful disclosure in the summary disclosure statement required by Commission rule 32.5(a); and to consider petitions for waiver of the domicile requirement of subsection 4c(d)(2) on a case-by-case basis.

Trade Options

As previously noted, current Commission rule 32.4, 17 CFR 32.4 (1984), which implements the trade option exemption of subsection 4c(c) of the Act, was adopted by the Commission on November 22, 1976,¹⁶ and thus antedates the codification of the trade option exemption by the Futures Trading Act of 1978. The statutory trade option exemption, however, is not as broad as that currently continued in Commission rule 32.4. Under Commission rule 32.4(a), option transactions are exempt from the suspension where the offeror has a "reasonable basis to believe" that the offeree is a commercial enterprise and that the offeree enters the transaction solely for purposes relating to its business as such. In contrast, subsection 4c(c) of the Act exempts only those transactions in which the "purchaser is" a commercial enterprise. Accordingly, in order to conform Commission rule 32.4(a) to the express criteria of subsection 4c(c) of the Act, the Commission also proposed in April 1981 to amend Commission rule 32.4(a) to require that the offeree must be a commercial enterprise.¹⁷ [The

Commission's proposal would not affect the requirement that the offeror have a reasonable basis to believe that the purchaser enters the transaction for purposes solely related to its business.] The proposal has not yet been adopted by the Commission.

It should be noted that this advance notice of proposed rulemaking does not apply to trade options on agricultural commodities.

Need for Further Comment

Since publication of the proposed dealer option rules in 1981, the Commission has promulgated regulations governing leverage and exchange-traded option transactions.¹⁸ These regulations require extensive disclosure to customers and afford such customers certain protections which the current and proposed dealer options regulations do not provide. As a result of these activities, the Commission determined that it would be appropriate to compare the regulations governing leverage and exchange-traded options with the proposed regulations governing dealer options before proceeding with the promulgation of final rules. This comparison is now complete.

In this connection, Commission staff also undertook a review of the sales practices of those FCMs which offer dealer options to the public. This review disclosed that generally FCMs which charged the highest mark-ups represented the majority of volume and open interest in the dealer options market. This fact does not, of course, necessarily imply any unlawful activity. It does suggest, however, that the public purchasers of dealer options may not be fully informed as to transaction costs.

While the Commission recognizes that dealer options may require particularized treatment, it nonetheless is requesting comment upon the extent to which Commission regulated transactions that are offered to the general public should be subject to the same level of customer and market protection requirements and the extent to which regulatory differences may provide one instrument a market advantage because of such treatment. The Commission is requesting such comment in order to assist it in determining whether it is necessary and appropriate to promulgate final dealer option rules or to initiate new proposals.

The Commission therefore invites public comment on those aspects of current exchange-traded option and leverage transaction rules that should or should not be reflected in any final

⁹ 43 FR 54220 (Nov. 21, 1978).

¹⁰ 43 FR 59353 (Dec. 20, 1978).

¹¹ 43 FR 59396 (Dec. 20, 1978).

¹² Part 32 rules adopted in 41 FR 51808 (Nov. 24, 1976), as amended by 43 FR 16153 (April 17, 1978); 43 FR 23704 (June 1, 1978); 43 FR 47492 (Oct. 16, 1978); 43 FR 52467 (Nov. 13, 1978) and 43 FR 54220, 54227 (Nov. 21, 1978) (repealing Commission rule 32.12(d)).

¹³ 46 Fed. Reg. 23469, 23470 (April 27, 1981).

¹⁴ *Id.* at 23485.

¹⁵ *Id.* at 23474.

¹⁶ 41 FR 51808 (Nov. 24, 1976).

¹⁷ 46 FR 23469, 23476 (April 27, 1981). See also proposals at 43 FR 54220, 54226 (Nov. 21, 1978) and 43 FR 59353, 59396 (Dec. 20, 1978).

¹⁸ See 17 CFR Parts 31 and 33.

dealer option regulations and whether further regulation of the dealer option area is warranted. Such comment will be assisted materially by a thorough comparison of the existing scheme of regulation now in effect with respect to exchange-traded options and leverage transactions and the Commission's outstanding dealer option proposal (46 FR 23469 (April 27, 1981)). In this regard, a review of the Commission's leverage rules may be particularly relevant since those rules reflect the Commission's most recent approach to the regulation of off-exchange instruments.

Finally, the Commission recognizes that the development of various "hybrid" instruments, as well as the increased interest by different classes of commercial and institutional entities in the off-exchange market, may raise certain issues that were not addressed in its 1981 proposal. Accordingly, the Commission invites general public comment on the extent to which such issues may be addressed through modifications to its dealer option and trade option rules or whether any new legislative authority is required.

Proposed Course of Further Rulemaking

In order to permit the full reconsideration of the Commission's regulatory approach, the Commission has determined that it will seek public comment (as more fully discussed below) and, upon consideration of such comment, determine what further action should be taken with respect to its current proposals concerning dealer and trade options.

Questions

Dealer Options

(1) *Regulatory Comparison.* The Commission invites commenters to review the Commission's current rules governing exchange-traded options and leverage transactions set forth in Parts 33 and 31, respectively, of the Commission's regulations and to suggest whether there are aspects of such rules which should be reflected in the Commission's dealer option rules. (In order to assist commenters, the Commission is making available to the public the comparison of the general scheme of regulation set forth in the Commission's exchange-traded option, leverage, dealer option and proposed dealer option rules discussed above. Copies of this comparison may be obtained from the Secretariat at the address set forth above. Copies of the Commission's 1981 proposed regulations also may be obtained from the Secretariat.) Suggested areas of comment include:

(a) Cover.

Commission rule 31.8, 17 CFR 31.8 (1984), requires that leverage transaction merchants maintain cover of at least 90 percent of the amount of physical commodities subject to open leverage contracts, and that at least 25 percent of the amount of such physical commodities be covered by certain specified types of cover. Neither the current nor proposed dealer option rules, however, expressly establish a similar cover requirement. Instead, proposed rule 32.12(a)(1) (46 FR 23469, 23480 (April 27, 1981)) would require a grantor to increase its required \$4 million adjusted net capital by 10 percent of the market value of the physical commodities which are the subject of each uncovered commodity option granted by the dealer option grantor. Comment is invited on the need, if any, to set an express cover requirement in physical commodities. Moreover, the Commission invites commenters to suggest alternatives to the proposed cover requirement in § 32.12(a)(1). (See alternatives set forth in the Commission's proposal published in 46 FR at 23473, note 18). In this regard, commenters should address whether the "in the business" requirement of section 4c(d) of the Act (which essentially requires that a grantor be a legitimate dealer in the underlying physical commodities) lessens the need for an express physical cover requirement?

(b) Repurchase of Contracts.

Commission rule 31.10, 17 CFR 31.10 (1984), generally requires a leverage transaction merchant to repurchase outstanding leverage contracts from its customers when it is offering such contracts. See also Commission proposal concerning repurchase of leverage contracts at 50 FR 102, 105 (Jan. 2, 1985). Neither the current nor proposed dealer option rules contain such a repurchase requirement. Commenters are invited to discuss the advisability of incorporating such a repurchase requirement into the final dealer option rules.

(c) Disclosure Statements.

As previously noted, a staff review of dealer option sales practices disclosed that generally FCMs which charged the highest mark-ups represented the majority of volume and open interest in the dealer options market. This fact does not, of course, necessarily imply any unlawful activity. It does suggest, however, that the public purchasers of dealer options may not be fully informed as to transaction costs. Accordingly, comment is invited with respect to the information currently required to be disclosed in the sale of dealer options,

to assess whether modifications to the disclosure rules should be made. For example, does the current form of disclosure to dealer option customers adequately disclose the costs associated with the purchase of dealer options, in particular the possibility of wide ranges of FCM markups of such contracts? Commenters specifically should address the need for disclosure of "break even" prices. Compare proposed dealer option rule 32.5(a)(5)(v) (46 FR 23469, 23478 (April 27, 1981)); proposed amendments to leverage rule 31.11 (50 FR 102, 106 (Jan. 2, 1985)); and current leverage rule 31.11, 17 CFR 31.11 (1984).

(d) Dissemination of Information to the Public.

The Commission currently receives certain information from dealer option grantors and FCMs offering dealer options as set forth in current rules 32.12(f) and (g), 17 CFR 32.12(g) and (g) (1984). Comment is invited on the need for, and permissible scope of, disclosure by the Commission of certain portions of these reports (such as volume of business, costs, mark-ups and premiums) consistent with section 8 of the Act.

(e) Customer Confirmation.

The Commission's current dealer option proposal sets forth in proposed rule 32.5 the format for customer confirmation statements. This rule's requirements differ in many respects from the confirmation statements required by Commission rule 31.11(k) (leverage), 1.33(b) (exchange traded options) and current 32.5(d) (dealer options). Comment is invited on whether the proposed dealer option confirmation statement should be conformed to the requirements, to the extent applicable, of the Commission's other confirmation statement rules and whether certain elements of the confirmation should be modified. Comment specifically is requested on the desirability of requiring dealer option grantors to offer first time purchasers the right to rescind their initial option purchase (compare Commission rule 31.1 (leverage rules) which grants such rights of rescission to first time leverage contract purchasers).

(f) Other Topics.

Comment is requested on any other areas of regulatory comparability.

(2) *Definition of "In the Business."* Subsection 4c(d) of the Act requires that a dealer option grantor be "in the business of buying, selling producing, or otherwise using the underlying commodity." This requirement appears to reflect:

... both a Congressional and Commission judgment that grantors must be bona-fide commercial

enterprises utilizing the commodity—as opposed to persons who, for example, merely acquire or own a few kilos of gold and engage in isolated transactions in the physical commodity as a justification for granting options.

43 FR 54220, 54222 (November 21, 1978).

Thus, the “in the business” requirement of subsection 4c(d) constitutes a condition of entry into the dealer option business which is essential to the regulatory scheme. Although the Commission’s proposed dealer option rules require an applicant for dealer option grantor registration to provide certain business information which the Commission may use to determine whether the applicant meets the “in the business” requirement (proposed rule 3.15, 46 FR 23485–23486 (April 27, 1981)) and sets forth its general understanding of what kind of conduct satisfies the “in the business” requirement (proposed rule 3.15(e)), the Commission’s proposal does not otherwise provide objective criteria to measure such conduct. While previously the Commission did not receive substantial comment on this issue, it believes that further consideration of the proper definition of the “in the business” requirement may be appropriate.

Accordingly, the Commission invites further comment on appropriate criteria to define the “in the business” requirement of subsection 4c(d) of the Act. In this regard, the Division notes that its 1981 proposal would exclude from the “in the business” class persons who are in the retail business of buying and selling a commodity. Proposed rule 3.15(e)(1), 46 FR at 23486. This definition, along with the current prohibition in Commission rule 1.19 on FCMs assuming financial responsibility for off-exchange commodity options, would not permit FCMs to qualify as dealer option grantors. The Commission specifically invites comment on the desirability of amending Commission rules 1.19 and 32.12 in order to permit FCMs to grant dealer options.¹⁹

(3) *Specific Elements of the 1981 Dealer Option Proposal.* Although the Commission is requesting comment on specific aspects of its 1981 dealer option proposal, the Commission notes that it has not yet determined the content of final dealer option rules and intends to reassess every element of its 1981 proposal. Accordingly, in addition to the issues of regulatory comparability, the Commission invites commenters to address the specific merits of any

element of the Commission’s 1981 dealer option proposal.

(4) *Possible Phased Expansion of Dealer Option Rules.* One method to expand the dealer option program would be to proceed under a phased approach. Under such a program, rules would be applicable at first only for those firms already trading such options under subsection 4c(d) of the Act. After gaining some experience with these rules, the Commission would evaluate them and propose changes as necessary. At that time, the Commission would phase-in new entrants which would be permitted to begin selling these options under revised rules.

In recent expansions of its other programs, the Commission has employed successfully phased approaches. For example, trading in exchange-traded options was begun in the context of a three-year, rigidly controlled pilot program. The pilot nature of the program, along with the gradual expansion of the number of options and types of options permitted, such as options on physicals and on agricultural commodities, provided a framework which enabled these new products to be introduced smoothly, and with ample opportunity for start-up corrections and adjustments.

A phased approach also may be appropriate for dealer options. A phased program will enable the Commission to evaluate the public interest of trading in these instruments so that it can determine whether final regulations permitting or prohibiting such transactions are in the public interest.²⁰ Finally, a phased approach may best permit the Commission to maintain effective oversight over this off-exchange program in a manner consistent with its limited resources. Accordingly, the Commission requests comment on the desirability of implementing regulations for the trading of dealer options on a pilot, or interim basis, followed by a phase-in of new entrants.

Trade Options

(5) *Definition of the Qualifying Offeree Class.* Subsection 4c(c) of the Act authorizes the non-public offer and sale of trade options if:

... the purchaser is a producer, processor, commercial user of, or a merchant handling, the commodity involved in the transaction, or the products or by products before.

This “commercial user” class was intended to reflect a sophisticated class of commercial purchaser, engaged in a commercial use of the underlying physical commodity, which does not require extensive protection by the Commission (other than an antifraud prohibition).²¹ The Commission recognizes, however, that the absence of objective criteria in Commission rule 32.4(a) may raise questions concerning the applicability of that rule to a particular transaction.

For example, the owner of a small business which occasionally sells small amounts of silver-based products could assert that it qualifies to purchase off-exchange “trade options” on the basis that it is a “merchant handling” a commodity byproduct. The Commission does not believe, however, that persons engaged in the occasional sale of commodities or their byproducts, who may be unsophisticated in the use of options, should be able to take advantage of the exemption.

Accordingly, the Commission invites comment on the need to provide either objective criteria or other guidelines to define more precisely the appropriate scope of the qualifying offeree class under the trade option exemption. Commenters should include specific examples of such criteria or guidelines for Commission consideration.

(6) *Requiring the Grantor to be a Commercial Enterprise.* The express terms of subsection 4c(c) of the Act require that offerees and purchasers of trade options but do not address the status of option grantors. While the language of the 1978 Senate bill (S. 2391) which proposed a trade option exemption to the Act expressly would have required that both parties to a trade option transaction fall into the exempt commercial class,²² the language of the House bill (H.R. 10285) and the final bill adopted by Congress in 1978 did not contain such a requirement.²³ Although the Conference report does not disclose the rationale for rejection of the Senate’s restrictive language, the Senate report does reveal that in 1978 the Commission opposed the Senate bill’s language as “unduly restrictive since it requires both parties to a trade option transaction to be commercial interests.”²⁴

¹⁹ The Commission does not intend to consider permitting introducing brokers to grant dealer options.

²⁰ Subsection 4c(e) of the Act provides the Commission with the authority to prohibit such transactions if they are found to be contrary to the public interest.

²¹ See e.g., 41 FR 7774, 7776 (Feb. 20, 1976); 41 FR 4456, 44563 (Oct. 8, 1976); 46 FR 23469, 23476 (April 27, 1981).

²² S. Rep. No. 95-850, 95th Cong., 2d Sess. 23, 76 (1978).

²³ H. Rep. No. 95-1181, 95th Cong. 2d Sess. (1978); Pub. L. No. 95-405, 92 Stat. 867 (1978).

²⁴ S. Rep. No. 95-850 at 42-43 (letter dated May 1, 1978) from former Commissioner Chairman William

As previously noted, the 1978 Conference report does not disclose its rationale for rejecting the Senate's proposal to require that both sides of the trade option transaction be commercial interests. The absence of such an explanation, as well as the express grant of authority in subsection 4(c) of the Act to permit trade option transactions "under rules or regulations prescribed by the Commission, before or after the date of enactment of the Futures Trading Act of 1978," suggest that Congress did not intend to restrict the Commission's discretion to adopt rules authorizing off-exchange trade options (other than to require at a minimum that the purchaser be a commercial user of the underlying commodity). Thus, the Commission believes that it retains authority to adopt any additional criteria, such as requiring that the grantor of trade options itself be a commercial enterprise.

The Commission notes that the absence of a requirement that a grantor of trade options itself be a commercial interest raises the possibility that unsophisticated persons could attempt to write such options, without the protection of rules similar to those applicable to dealer option transactions (under which the public enter only as option purchasers). The Commission is concerned that the possibility of abuse remains under the current language of rule 32.4. Accordingly, commenters are invited to address the need to impose a requirement that grantors of trade options be commercial interests which use the commodity underlying the option.

(7) *Regulatory Reform.* The Commission recognizes that the current scheme of regulating off-exchange options (which essentially reflects a Congressional and Commission response to fraud in the offer and sale of off-exchange options to the public that occurred in the 1970's) may not fully address the strictly commercial needs of different classes of commercial and institutional entities that may be precluded from entering the off-exchange option market under the current statutory authority and Commission regulations. The Commission invites comment from any such affected party with respect to the economic or public interest to be advanced by their participation in the off-exchange market free of direct Commission oversight, and the

appropriate administrative or legislative response to such situation.

List of Subjects

Commodity futures.

Issued in Washington, D.C., on March 12, 1985

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-6106 Filed 3-15-85; 8:45 am]

BILLING CODE 8351-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed program amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSM pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment submitted by the State on February 7, 1985, would amend the Indiana statutory requirements concerning coal mining sites operating under interim program permits, the Small Operator Assistance Program (SOAP), suspension or revocation of permits, bond forfeiture, effluent limitations, program fees, interest rates on escrowed penalty payments, and permit condition violations.

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m. on April 17, 1985, will not necessarily be considered.

If requested, a public hearing will be held on April 12, 1985, beginning at 10:00 a.m. at the location shown below under "ADDRESSES."

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

If a public hearing is held, its location will be at OSM Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana: Telephone: (317) 269-2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269-2600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive free of charge, one single copy of the proposed amendment by contacting the Indianapolis Field Office listed below.

Office of Surface Mining Reclamation and Enforcement, 1100 L Street N.W., Washington, D.C.

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments not received by April 17, 1985 or received at locations other than the OSM Indianapolis, Indiana Field Office, will not necessarily be considered.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION

T. Bagley to Senator Herman E. Talmadge, Chairman of the Senate Committee on Agriculture, Nutrition and Forestry.

CONTACT" by the close of business April 8, 1985. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register (47 FR 32071-32108).

On February 7, 1985, the Indiana Department of Natural Resources submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The proposed amendment would amend the Indiana Code at IC 13-4-6-1.5 and IC 13-4-6-1.6 to provide that all coal mining activities that operate under a permit issued under IC 13-4-6 (Indiana interim program statute) or Acts 1978, Pub. L. 159, Acts 1979, Pub. L. 314, Acts of 1980, Pub. L. 101, or Acts 1981, Pub. L. 331 (all applying to Indiana interim permits), would be subject to certain requirements. These requirements are

those contained in: IC 13-4-1-11, Indiana statutory requirements for inspections, monitoring and enforcement; IC 13-4-1-12, State statutory requirements for fines and penalties; IC 13-4-1-13, State statutory requirements for judicial review; the Federal statutory requirements for interim program operations found in sections 502, 510(d) and 522(e) of SMCRA; and the Federal regulatory requirements for interim program operations found in 30 CFR Part 710 through 716.

The following changes are also proposed:

1. IC 13-4-1-3-1 would be amended to delete dates which define operations which must hold a valid mining permit, so that all operators in the State must hold such permit.

2. IC 13-4-1-3-3.5 would be added as a new section to specify when operators who have received assistance under the Small Operator Assistance Program would be required to reimburse the department.

3. IC 13-4-1-5-8 would be added as a new section to allow the commission to suspend or revoke a permit if the permit is not revised as required by the commission.

4. IC 13-4-1-6-9 would be added as a new section to establish statutory provisions for bond forfeiture.

5. IC 13-4-1-8-1 would be amended to change requirements pertaining to additions of suspended solids to streamflow.

6. IC 13-4-1-10-1 would be amended to provide that the commission shall fix a fee to cover the cost of "implementing the program established under this section."

7. IC 13-4-1-12-1 would be amended at subsection (d) to set the annual interest rate for escrowed penalty payments at eight percent.

8. IC 13-4-1-12-2 would be amended with respect to violations of subsection (a).

9. Various non-substantive and editorial changes are proposed throughout these sections.

The State has indicated that the bill may be further amended before passage. If further amendments are proposed, OSM would reopen the public comment period to allow for consideration of the revisions.

Pursuant to 30 CFR 732.15 and 732.17, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and consistent with the Federal regulations, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

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 and exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

3. *Paperwork Reduction Act:* This proposed 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 914

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

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

Dated: March 11, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85-6199 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 931

Permanent State Regulatory Program of New Mexico

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

ACTION: Proposed rule.

SUMMARY: OSM is seeking comment on New Mexico's request to further extend the deadline for New Mexico to promulgate and submit rules governing the training, examination and certification of blasters. On March 5, 1984, New Mexico requested an

extension of time for the development of a blaster certification program. On May 14, 1984, OSM announced its decision to extend New Mexico's deadline to March 4, 1985 (49 FR 20287). On February 6, 1985, New Mexico requested an additional one year extension to submit a blaster training program and examination. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulation provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments not received by April 17, 1985 the address below will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102; Telephone: (505) 768-1486.

SUPPLEMENTARY INFORMATION: On March 4, 1983 OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9686). Section 850.12, of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of New Mexico's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 5, 1984, New Mexico advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an extension to develop and adopt a blaster certification program. On May 14, 1984, OSM granted New Mexico extension to March 4, 1985 (49 FR 20287).

On February 6, 1985, the Director of the Energy and Minerals Department, advised OSM that the state would require another extension of time to submit its blaster training and

examination program. He stated that the New Mexico Blasting Regulations need to be rewritten and approved by the Coal Surface Mining Commission. In addition, the Director stated that the State must develop a Blaster's Examination for certification of blaster and develop a budget for the blaster training, examination and certification program. If approved, a one year extension from March 4, 1985 to March 4, 1986 would be granted.

OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

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 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This proposed 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 931

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

Authority: Sec. 503, Pub. L. 95-87, 91 Stat. 470 (30 U.S.C. 1253) unless otherwise noted.

Dated: March 11, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85-6198 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

Proposed Amendment to the Virginia Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a program amendment submitted by Virginia as an amendment to the State's permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes to the Virginia statute concerning right of entry and right to inspect coal mining and reclamation operations.

This notice sets forth the times and locations that the Virginia program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for requesting a public hearing.

DATES: Written comments from the public not received by 4:30 p.m., April 17, 1985 will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Virginia regulatory program. A public hearing on the proposed amendment has been scheduled for April 12, 1985 at the address listed under "ADDRESSES." If no one requests a public hearing, none will be held. If only one person requests a public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record. Requests for a public hearing should be directed to Mr. Robert A. Penn at the address or telephone number listed below by 4:00 p.m., April 2, 1985.

ADDRESSES: Written comments and requests for a hearing should be directed to Mr. Robert A. Penn, Acting Director, Big Stone Gap Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219. Telephone: (703) 523-4303.

If requested, the public hearing will be held in the Conference Room at the Lebanon Area Office, Office of Surface Mining, Flannagan and Carroll Streets, Lebanon, Virginia.

Copies of the Virginia program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM offices and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Big Stone Gap field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street NW, Washington, DC.

Office of Surface Mining Reclamation and Enforcement, Highway 23, South, Big Stone Gap, Virginia 24219

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219

FOR FURTHER INFORMATION CONTACT: Robert A. Penn, Acting 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:

I. Background

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*.

II. Submission of Amendment

By letter dated February 20, 1985, Virginia submitted revisions to Section 45.1-244 and added a Section 45.1-369.1 to the Code of Virginia. The revisions relate to the right of entry and right to inspect surface coal mining and reclamation operations. The amendment is being submitted by Virginia to comply

with revisions to the Federal regulations at 30 CFR 842.14 [47 FR 35635, August 16, 1982, as amended at 48 FR 44781, September 30, 1983].

OSM is seeking comment on whether the Virginia proposed amendment satisfies the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17 and whether the proposed amendment is in accordance with SMCRA and no less effective than the Federal regulations.

III. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

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

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

Dated: March 11, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85-6202 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-S-FRL-2797-8]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Reproposed approval.

SUMMARY: USEPA is reproposing to approve a revision to the Michigan State Implementation Plan (SIP) for Total Suspended Particulates (TSP) as it applies to the General Motors Corporation (GMC) Central Foundry Division's Saginaw Malleable Iron Plant in Saginaw County. The plant is located in a secondary TSP nonattainment area.

On July 18, 1984 [49 FR 29108], USEPA cited major deficiencies and proposed to disapprove Consent Order No. 08-1983 for the Saginaw Malleable Iron Plant. During the 30-day public comment period, USEPA received significant submittals which addressed and resolved these deficiencies. This rulemaking proposes approval on the condition that the State, during the comment period of this notice, provides USEPA with opacity test results for the oil quench units which demonstrate that the opacity limit contained in the order is consistent with the sources mass limit.

DATE: USEPA must receive comments on or before April 17, 1985.

ADDRESSES: Written comments should be sent to: 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: Toni Lesser, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

Please submit an original and three copies if possible. You may inspect copies of the submittal and USEPA's evaluation during normal business hours at:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex,

General Office Building, 7150 Harris Drive, Lansing, Michigan 48821.

SUPPLEMENTARY INFORMATION: On July 27, 1983, the State of Michigan submitted Consent Order No. 08-1983 for the GMC Central Foundry Division's Saginaw Malleable Iron Plant, as a revision to the Michigan SIP for TSP. The Central Foundry Division operates the plant in Saginaw County, which is located in a secondary TSP nonattainment area.

Consent Order No. 08-1983 amends control strategy provisions of a previous State Consent Order and alteration thereto (APC No. 06-1980), submitted to USEPA on November 18, 1982, and approved on August 15, 1983 (48 FR 36818). Specifically, Consent Order No. 08-1983 relaxes the opacity requirements of the previous federally approved Consent Order No. 06-1980 as they apply to the six oil quench facilities at the plant.

The previously approved Consent Order and its alteration (APC No. 06-1980) reflected an interim and final particulate emission limit more stringent than Michigan's Rule 336.1331; extended the final date of compliance with Michigan's Rule 336.1301 for opacity on the oil quench facilities from December 31, 1982, to December 15, 1983, which is as expeditiously as practicable and before the July 31, 1985, attainment date for the secondary TSP National Ambient Air Quality Standards (NAAQS) in Michigan. Consent Order APC No. 06-1980 contains the following elements: (For a more detailed review, see USEPA's Technical Support Document (TSD) dated March 7, 1983)

- Establishes a mass particulate limit of 0.10 pounds per 1,000 pounds exhaust gases for direct oil quench (DOQ) units 1, 2, and 3 with a final compliance date of January 1, 1982.
- Establishes an interim mass particulate limit of 0.16 pounds per 1,000 pounds exhaust gases for harden quench draw (HQD) units 1, 2, and 3, applicable from January 1, 1982, to December 15, 1983, and a final particulate limit of 0.10 lbs. per 1000 lb. to be achieved by December 15, 1983.
- Requires the company to submit to the State agency by May 1, 1982, a control plan and compliance schedule for limiting visible emissions from all oil quench units to comply with Michigan Rule 336.1301.
- Extends the final date of compliance with Michigan's Rule 336.1301 for opacity on all oil quench facilities from December 31, 1982, to December 15, 1983.

The current Consent Order No. 08-1983 submitted to USEPA on July 27, 1983, provides certain changes to the

previously approved Consent Order No. 06-1980. Although the new order does not alter the mass emission limits for the six quench units, it provides new opacity limits that the State believes reflects the technology that the plant is currently using to meet the mass limits.

On July 18, 1984 (49 FR 29108), USEPA proposed to disapprove Consent Order No. 08-1983 for the Saginaw Malleable Iron Plant, citing as major deficiencies: (1) The lack of an adequate demonstration that attainment and maintenance of the National Ambient Quality Standards (NAAQS) for particulates in Saginaw County will not be jeopardized by the relaxation of emission limitations, and (2) the lack of concurrent mass/opacity tests as part of a justification for approval of alternative opacity limits. At the time, EPA believed that the new technology that the plant was using at the quench units would result in actual emissions increases that could jeopardize timely attainment and maintenance of the TSP NAAQS. During the 30-day public comment period, USEPA received comments from the State and General Motors which addressed the deficiencies USEPA listed in the notice.

USEPA has reviewed the public comments and data sent in to address the deficiencies outlined in the July 18, 1984, rulemaking. USEPA considers the following issues to be resolved as indicated (see USEPA's TSD of October 2, 1984, for a more detailed discussion of these issues):

1. Results of stack tests on the oil quench units after control by fume incineration shows the units are in compliance with the mass limit of 0.10 pounds of particulate per 1000 pounds of exhaust gas. Since the new Consent Order does not relax the mass emission limits that USEPA previously approved into the SIP and since the plant has demonstrated that fume incineration meets those limits, the Agency no longer believes that a new air quality demonstration is necessary to support the new Consent Order.

2. Based on information submitted during the public comment period, USEPA now agrees that the fire incidents in the oil quench units were confined to the electrostatic precipitator and use of the draw furnaces for fume control adequately addresses USEPA's concerns about the potential impact of fire incidents on air quality.

3. USEPA now considers the State's evaluation of Reasonably Available Control Technology (RACT) for the source to be appropriate. Information provided by the commentors has convinced USEPA that the "fume incineration" system can meet the mass

limits that USEPA previously approved as reflecting RACT. Therefore, the Agency no longer needs an additional demonstration that fume incineration represents RACT level control for this source.

As indicated above, the new Consent Order would relax the opacity limits for the quench units. USEPA is today reproposing approval of Consent Order No. 08-1983 for the Saginaw Malleable Iron Plant, with the understanding that the State of Michigan will provide USEPA with field data of recent opacity readings performed on the direct oil quench and the HQD units to determine the approvability of the proposed alternative opacity limit. Opacity data submitted were not sufficient for USEPA to make a determination whether the proposed alternative opacity limits are appropriate. It is necessary, therefore, that new opacity measurements shall be conducted on the direct oil quench units and the HQD units to support the proposed alternative opacity limits. For the opacity test to be acceptable, it should be conducted in accordance with USEPA's Method 9, and the operating parameters of the quench units shall be specific to duplicate the conditions during the previous mass emission test which showed compliance with the mass particulate limit.

The data must be provided during USEPA's public comment period on their proposal. If the State fails to submit the necessary data, USEPA will go forward with a final disapproval notice.

Under Executive Order 12292, today's action is not "Major". It has been submitted to the Office of Management and Budget for review.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

This notice is issued under authority to sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: December 28, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-6346 Filed 3-15-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[TN-015; A-4-FRL-2799-2]

Approval and Promulgation of Implementation Plans; Tennessee; State and Memphis Lead Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On August 7, 1984 (49 FR 31416), EPA announced its disapproval of the regulatory portions of the Tennessee State Implementation Plan (SIP) for lead. This plan is applicable to areas of the state not governed by local agencies. On August 8, 1984, (49 FR 31686), EPA approved the lead SIP which Tennessee had submitted for Memphis/Shelby County (an area with a local agency), but disapproved the plan's new source review portion. These actions were in keeping with an agreement reached with the Natural Resources Defense Council, which had previously filed suit against EPA regarding lead SIPs. EPA today proposes to remove the disapprovals of August 7 and 8, 1984, and to approve both the Memphis/Shelby County plan and regulatory portions of the plan for Tennessee which will correct the previous deficiencies. The public is invited to submit written comments on the proposal.

DATE: To be considered, your comments must reach us by April 17, 1985.

ADDRESSES: Address comments to Mr. Raymond S. Gregory, EPA Region IV Air Management Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of the materials discussed in this notice may be examined at EPA's Region IV office and at the following locations:

Division of Air Pollution Control,
Tennessee Department of Public
Health, 150 9th Avenue, North,
Nashville, Tennessee 37203.
Memphis-Shelby County Health
Department, 814 Jefferson Avenue,
Memphis, Tennessee 38105.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond S. Gregory at the EPA Region IV address above, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: On October 5, 1978 (43 FR 46246), EPA promulgated National Ambient Air Quality Standards (NAAQS) for lead. Tennessee and Memphis/Shelby County responded to the requirements of section 110(a)(1) of the Clean Air Act (the Act) by preparing and submitting a SIP that EPA has determined will provide for the attainment and maintenance of the

primary and secondary lead NAAQS (1.5 $\mu\text{g}/\text{m}^3$, averaged over a calendar quarter). The details of these submittals and EPA's evaluation are contained in the Technical Support Document and the Administrative Record of this proposed rulemaking which are available for public review at the above EPA Region IV address.

Statewide Plan Outside Local Program Areas

The regulatory portions of the Tennessee plan were not in effect at the State at the time of submittal because the Attorney General of Tennessee had not yet approved them (an act that must take place before regulations can take effect in Tennessee). Accordingly, to meet the terms of an agreement with the Natural Resources Defense Council, EPA disapproved the regulatory portions of the Tennessee lead SIP on August 7, 1984, (49 FR 31416) on the ground that they were not enforceable as a matter of State law, and announced at that time that the Agency would propose Federal regulations needed to implement the control strategy which EPA had approved. EPA was informed by letter dated November 14, 1984, that the Attorney General of Tennessee had approved the regulatory measures necessary to implement the control strategy for the Tennessee Implementation Plan for lead. These measures became State effective on December 5, 1984, and were formally submitted for approval on December 5, 1984.

Accordingly, EPA today proposes to remove the existing disapproval of August 7, 1984 (49 FR 31416) and to approve the provisions of the Tennessee Administrative Code Chapter 1200-3-22: Lead Emission Standards, which specify definitions, specific emission standards for existing, new and modified sources, source sampling requirements, and lead ambient monitoring requirements that EPA deems adequate to assure attainment and maintenance of the ambient standard for lead throughout the area of the State agency's jurisdiction (excluding those counties for which EPA has already approved lead plans, i.e., Davidson, Hamilton, Knox, and Shelby Counties). EPA today also proposes to approve final operating permits submitted by the State, that create specific emission limits applicable to existing stationary sources of lead (these became effective on December 5, 1984) for the following emission points:

(1) *Tennessee Chemical Company, Highway 68, Copperhill, TN.*

(i) Iron Roasting Plant, Calcine Transfer Operations with Dust Evacuation System, and Scrubber Control (Tennessee Emission Source Reference No. 70-0004-02).

(ii) Iron Roaster #1 with Fluid Bed Coolers and Impingement Scrubber (Tennessee Emission Source Reference No. 70-0004-03).

(iii) Iron Roaster #2 with Fluid Bed Coolers and Impingement Scrubber (Tennessee Emission Source Reference No. 70-0004-04).

(iv) Iron Roaster #3 with Fluid Bed Coolers and Impingement Scrubber (Tennessee Emission Source Reference No. 70-0004-05).

(v) Copper Smelter Process; Copper Concentrate Roaster, 2 Electric Furnaces, and 2 Converters with Scrubber Control (Tennessee Emission Source Reference No. 70-0004-06).

(vi) Iron Roaster #4 with Fluid Bed Coolers and Impingement Scrubber (Tennessee Emission Source Reference No. 70-0004-08).

(vii) Liquid SO_2 Plant Unit "A" Process Weight Rate: 29,074 lbs/hr Process Emission Source 008 (Tennessee Emission Source Reference No. 70-0004-60).

(viii) Liquid SO_2 Plant Unit "B" Process Weight Rate: 43,611 lbs/hr Process Emission Source 009 (Tennessee Emission Source Reference No. 70-0004-61).

(ix) No. 5 Metallurgical Acid Plant Sulfuric Acid, Oleum, Liquid SO_2 Production 248.5 TPH PWR Process Emission Source 007 (Tennessee Emission Source Reference No. 70-0004-17).

(x) Metallurgical Sulfuric Acid Plant #6 Double Contact Process with Mist Eliminators 740,800 lbs/hr PWR (Tennessee Emission Source Reference No. 70-0004-21).

(2) *Ross Metal, Inc. 100 North Railroad Street, Rossville, TN.*

(i) Secondary Lead Smelting Operations (Tennessee Emission Source Reference No. 24-0005401).

(ii) Nontraditional Area Sources (Tennessee Emission Source Reference No. 24-0005401.)

(3) *General Smelting and Refining Company, U.S. Highway 31-A College Grove, TN.*

(i) Secondary Lead Smelting Furnaces, 1 Reveratory Furnace, 2 Blast Furnaces with Fabric Filter Collectors (Tennessee Emission Source Reference No. 94-0002-03).

(ii) 3 Lead Refining Kettle-Type Furnaces with Scrubber Control (baghouse backup) and Associate Casting Operations In-Process Fuel Gas (Tennessee Emission Source Reference No. 94-0002-01).

(iii) Nontraditional Area Source (Tennessee Emission Source Reference No. 94-0002-04).

Shelby County

In approving the lead SIP for Shelby County on August 8, 1984, (49 FR 31686) EPA noted that the local agency's regulations were deficient in that they did not define a major source of lead as one emitting five tons per year or more of the pollutant, and announced that EPA would promulgate federal regulations to remedy this deficiency. In addition, the Supplementary Information portion of the notice of August 8, 1984, (49 FR 44686), EPA noted that:

the Memphis/Shelby County regulations do not require preconstruction review of new sources of lead emitting five or more tons of lead per year or modifications of lead point source that emit 0.6 or more tons of lead per year.

The regulatory portion of the August 8, 1984, notice failed to address the deficiency associated with the modification of lead point sources. The action being proposed today addresses both deficient areas in the Memphis/Shelby County plan by proposing to remove the previous disapproval of August 8, 1984, and to approve a commitment by Memphis/Shelby County to review new sources of lead and modifications to lead sources according to EPA guidance. This commitment by Memphis/Shelby County was made in a letter dated December 20, 1984. Memphis/Shelby County has committed, pursuant to State new source review authority, to subject new sources of lead with potential emissions of five tons per year or more to new source review requirements. Additionally, a commitment has been made to subject any lead source which make a modification resulting in a potential net increase of 0.6 tons per year of lead to new source review requirements. These commitments by Memphis/Shelby County conform to EPA guidance dated July 1983, entitled "Updated Information on Approval and Promulgation of Lead Implementation Plans."

Action

EPA today proposes to remove the existing disapproval (49 FR 31686) and to approve the Memphis/Shelby County lead plan. Today EPA is also proposing to remove the existing disapproval (49 FR 31416) and to approve the lead

regulations for the State of Tennessee (Chapter 1200-3-22, Lead Emission Standards) as well as source specific permits for the three lead sources under their jurisdiction. The public is invited to participate in this rulemaking by submitting written comments on the proposal.

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. (Section 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: January 31, 1985.

Charles R. Jeter,

Regional Administrator.

[FR. Doc. 85-6355 Filed 3-15-85; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Part 81

[Docket No. 107PA-19SA-3-FRL-2799-3]

Designation of Areas for Air Quality Planning Purposes; Proposed Approval of Redesignation of Attainment Status for the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice announces EPA's proposed approval in changing the air quality designation for Area #8 within Allegheny County, Pennsylvania from "Does Not Meet Primary Standards" to "Does Not Meet Secondary Standards" for Total Suspended Particulates (TSP).

This change is based on eight consecutive calendar quarters of air quality data showing primary attainment.

DATES: Comments must be submitted on or before April 17, 1985.

ADDRESSES: Written comments should be addressed to Mr. Glenn Hanson, at the EPA, Region III address shown below. Copies of the request for redesignation may be examined during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building—6th & Walnut Streets, Philadelphia, PA 19106, Attn: Patricia Gaughan (3AM11)

Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources, Fulton

Bank Building, Third and Locust Streets, Harrisburg, PA 17120, Attn: Gary L. Triplett

Allegheny County Health Department, Bureau of Air Pollution Control, 301 Thirty-Ninth Street, Pittsburgh, PA 15201, Attn: Roger C. Westman

FOR FURTHER INFORMATION CONTACT: Michael C. Giuranna at the EPA Region III address shown above or telephone (215) 597-9189.

SUPPLEMENTARY INFORMATION: The Pennsylvania Department of Environmental Resources has submitted to the U.S. Environmental Protection Agency (EPA) a request for redesignation of Area #8 within Allegheny County to "Better Than National Standards" for TSP under section 107 of the Clean Air Act and 40 CFR Part 81. Area #8 is part of the Southwest Pennsylvania Intrastate Air Quality Control Region (AQCR). It is a three mile wide strip along the Monongahela River Valley within a perpendicular distance two miles east of the center line of the river and one mile west of the center line of the river, between the Mansfield Bridge at Dravosburg and the Westmoreland County Line.

The air quality data for the first quarter of 1982 through the fourth quarter of 1983 from Allegheny County's two monitoring sites in Area #8, named Clairton 2 and Liberty, show no violations of the primary National Ambient Air Quality Standards (NAAQS) for TSP. However, two exceedances of the secondary 24-hr. TSP NAAQS were recorded. This constitutes a violation of the secondary 24-hour NAAQS for TSP. After consultation with the Allegheny County Bureau of Air Pollution Control it was determined that Area #8 should be redesignated from "Does Not Meet Primary Standards" to "Does Not Meet Secondary Standards."

A significant contributor to past violations of the primary TSP NAAQS is the coke production facility in Clairton, Pennsylvania. During 1982 and 1983, coke production was less than previous years when primary TSP violations has occurred. However, during 1982 and 1983, two important TSP control measures were implemented in this area. First, since January, 1982, Sections 521 through 528 of Article XX of the Allegheny County Code, "Air Pollution Control", have been in effect. These regulations regulate TSP fugitive emissions in TSP nonattainment areas such as Area #8. Secondly, coke pushing control systems (Halcon cars) have been installed at the coke oven batteries to capture and clean TSP

pushing emission; the overall availability of control for these systems in 1983 was 72.3%. EPA's evaluation of these programs is that reduced TSP ambient levels are attributable, in part, to the implementation of these control programs. It is also recognized that lower production rates at the coke producing facility at Clairton have also contributed, in some degree, to reduced TSP levels. However, the approved and implemented SIP demonstrates attainment of the primary TSP standard even with the coke batteries in operation. The implemented controls are sufficient in themselves to bring attainment of the standard and, combined with the monitoring data, make this an approvable redesignation.

Because of the concern that increased coke production may cause recurrences of violations of the primary TSP NAAQS's, the Allegheny County Bureau of Air Pollution Control, in a letter dated September 17, 1984, committed to request that EPA redesignate Area #8 to primary TSP nonattainment in the event that primary TSP NAAQS's are exceeded in the future. Should future violations of the primary TSP NAAQS's occur, upon the request of the Bureau of Air Pollution Control, EPA will propose to redesignate Area #8 to "Does Not Meet Primary Standards" for TSP.

EPA is proposing approval of this redesignation request based upon the requirements for Section 107 redesignations. EPA has determined that these requirements have been satisfied. Furthermore, EPA has examined the air quality data collected, during the 8 quarters, from the sites used to demonstrate primary attainment and found that the data was collected in accordance with all EPA monitoring and data collection requirements.

Therefore, EPA is proposing to change the Section 107 attainment status designation for Area #8 within Allegheny County to "Does Not Meet Secondary Standards" for TSP.

The public is invited to submit, to the EPA Region III address stated above, comments on whether the proposed redesignation should be approved. The Administrator's decision to approve or disapprove the proposed redesignation will be based on the comments received and on a determination of whether the amendments meet the requirements of Section 107 of the Clean Air Act.

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

Under 5 U.S.C. section 605(b)(1) the Administrator has certified that the redesignations do not have a significant economic impact on a substantial

number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Intergovernmental relations.

Authority: Section 107 of the Clean Air Act (42 U.S.C. 7407).

Dated: January 9, 1985.

Stanley Laskowski,

Acting Regional Administrator.

[FR Doc. 85-6354 Filed 3-15-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

Grants for Hospital Construction and Modernization; Federal Right of Recovery and Waiver of Recovery

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: As a result of recent amendments to sections 609 and 1622 of the Public Health Service Act, the Public Health Service proposes to amend its regulations to provide for (1) written notification to the Secretary when a grant-assisted hospital is sold or no longer used as a health facility eligible for a grant under Title VI or XVI of the Act, (2) waiver of the Government's right of recovery under certain circumstances, and (3) interest on recovery amounts.

DATE: Comments on the proposed rules must be received on or before April 17, 1985.

ADDRESS: Address comments in writing to: Richard R. Ashbaugh, Assistant Surgeon General, Acting Associate Director for Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, 5600 Fishers Lane, Room 11-03, Rockville, Maryland 20857, ATTN: Lynn Rothberg.

Comments will be available for public inspection in Room 11A-10 at the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (301-443-3466).

FOR FURTHER INFORMATION CONTACT: Lynn Rothberg, (301) 443-3466.

SUPPLEMENTARY INFORMATION: Section 2381 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) amended sections 609 and 1622 of the Public Health Service Act (42 U.S.C. 291i, 300s-1a). These sections provide for recovery of funds

by the United States when a health care facility that was constructed with the aid of a grant under Title VI (the Hill-Burton Act) or XVI of the Public Health Service Act is, within 20 years after the completion of the grant-assisted construction, transferred to an entity that would not have been qualified to receive a grant. The sections also provide for recovery of funds where, within the same 20-year period, an assisted facility "ceases to be" a health facility with respect to which a grant could have been made. In either case, the sections establish the amount to be recovered as the Federal proportionate share of the value of the facility at the time it is transferred or ceases to be an eligible entity. The right of recovery can be exercised against either the transferor or the transferee of a facility or, in the case of a facility that has ceased to be an eligible entity, e.g., where a health care facility is closed, against its owners.

The amendments to sections 609 and 1622—while continuing the basic recovery provisions—make certain significant changes which may be summarized as follows:

(1) The transferor of an assisted facility must provide written notice to the Secretary of a sale or transfer within 10 days of the sale or transfer.

(2) The owner of an assisted facility the use of which is changed must provide written notice to the Secretary within 10 days of the change of use.

(3) For facilities that take longer than 180 days from the date of the change of status to agree to a recovery amount, interest will accrue on the eventual recovery amount beginning 180 days after receipt of the required notice by the Secretary, and ending when the recovery amount is collected.

(4) For facilities that fail to notify the Secretary of a change in status (sale, transfer, or change of use) within 10 days of the change, interest will begin to accrue on the date of the change of status.

(5) In the case of facilities which changed status before the date of enactment of Pub. L. 98-369 (July 18, 1984), interest would begin to accrue 30 days after enactment (August 17, 1984), but in no case earlier than 180 days from the date of the change of status regardless of when the facility notified the Secretary of the change.

(6) A proprietary entity that acquires an assisted facility may be granted a waiver of the recovery by the Secretary if the entity establishes an irrevocable trust in accordance with the statute that pays for medical care delivered to persons unable to pay in accordance

with the facility's uncompensated service obligation under 42 CFR Part 124 subpart F. The trust must be established in an amount equal to the greater of (a) twice the amount of the remaining uncompensated care obligation of the facility or (b) the amount that would have been due under recovery.

The regulations set forth below would implement sections 609 and 1622, as so amended, by adding a new subpart H to Part 124 of Title 42, CFR.

Section 124.701 provides that the provisions of subpart H apply not only to facilities assisted under Titles VI and XVI of the Public Health Service Act but also were facilities have been funded by the Secretary under certain other Federal statutes which incorporate the requirements of Title VI.

Section 124.702 sets out the definitions that are used throughout the subpart, while other terms used in only one section are defined in that particular section.

The Federal right of recovery described above is set out in section 124.703.

Section 124.704 would implement the amendment requiring that the Secretary be notified of a sale or transfer of a hospital or a "cease to be" situation. This section explains the most common "cease to be" circumstances: (1) When a hospital is closed or no longer operated as a health care facility and (2) where the owner of the hospital permits an entity which is not a public or not-profit entity to assume control over and operate the hospital. The Department has clarified that the test for assumption of operation lies in whether a for-profit entity assumes policy control over the facility. The Department does not question the use of management contracts provided that the public or non-profit entity retains overall policy control in such key areas as admissions, charges and selection of services to be offered. In fact, the Department believes that a skilled management firm can develop a high level of administrative efficiency for a health care facility, thus supporting the provision of quality health care and community services as well as cost containment efforts. Requirements for the content of a legally effective notice are provided in paragraph (b) of § 124.704 which, among other things, requires the submission of sales contracts, lease agreements or other documents pertinent to the event giving rise to the notice, together with the information necessary to enable the Secretary to calculate an initial recovery amount.

Following a recitation of the statutory formula for calculating the recovery, § 124.705 sets forth the methods that

would be utilized to determine the value of the facility at the time it changes status. The Department proposes to use the "transaction value" in each instance of an arms-length sale or transfer of a facility—i.e., the sale price in the event of a sale and, in the case of a lease, the value of the lease plus the residual value of the facility when the lease terminates. The transaction value would be adjusted to reflect the transfer of assets or assumption of liabilities associated with the transaction.

In the absence of an arms-length sale or lease or if the information necessary to establish a transaction value is not provided in a timely manner, the Department would use a depreciated reproduction value of the facility using construction cost indexes or current costs per square foot for construction.

The interest calculation established by the amendment is set out in § 124.706. This section would also provide for waiver of interest charges which result from delays caused solely by the Department.

The provisions of § 124.707 would implement the amendment which authorizes the Secretary to waive the recovery rights of the United States in the case of a transfer of a facility to a proprietary entity where the Secretary determines that the transferee (1) has established an irrevocable trust in an amount equal to the greater of twice the amount of the facility's remaining obligation under its uncompensated services assurance or the amount the United States otherwise would be entitled to recover and (2) will meet its community service assurance. It is noted that the regulations governing the community service obligation, subpart G of Part 124, place no durational limit on that obligation.

The procedures for obtaining the waiver, as proposed in § 124.707(b), would provide that within 30 days after receiving the information necessary to enable it to make an initial calculation of the recovery amount, the Department would send a letter to the new owner of a facility which would contain the recovery amount as well as twice the remaining uncompensated care obligation of the facility. The owner would have 60 days to notify the Department of either its acceptance of the waiver based upon the amounts calculated by the Department, its alternative determination of the calculated amounts or that it does not seek the waiver. Where the owner disagrees with the Department's determination, the Department will consider the alternative presented and reach its final conclusion on either a recovery amount or the uncompensated

care obligation 30 days after receiving that response. The owner of the facility will then be given 30 days to accept or reject the waiver.

Section 124.707(b) would provide that during the procedure established for securing the waiver, failure by the transferee to respond in a timely manner will be considered by the Department an election either not to seek or not to accept the waiver.

Paragraph (e) of § 124.707 also provides for the establishment of the irrevocable trust by the transferee within 60 days of its acceptance of the waiver. The proposal provides for Departmental approval of the trust documents and some minimum restrictions and requirements for the trust. While the trust must be established by the transferee, there is no restriction on who may capitalize the trust, reflecting the frequent practice of a seller obligating itself to pay the recovery as part of the transaction.

As provided by the amendment, the corpus and income of the trust must be used only to pay for uncompensated services. The Department considers reasonable costs associated with establishing and administering the trust and expenses associated with the independent audit of uncompensated care accounts under § 124.707(b) as properly associated with the provision of uncompensated services at the facility and therefore chargeable to the trust. Under the regulation, uncompensated care delivered in accordance with subpart F between the change in status date, i.e. the "then date", and the establishment of the trust would properly be collected from the trust.

The Department will be monitoring the delivery of uncompensated care payable from the trust under the provision of subpart F. Thus, § 124.709 would provide a procedure for withdrawal of the waiver upon failure of the recipient to properly carry out its obligations. The section would provide for withdrawal after notification of noncompliance and failure by the recipient to take corrective action within a reasonable time. In any instance where a waiver was withdrawn, the Department would seek recovery of the Federal share plus interest for the period of noncompliance that resulted in the rescission of the waiver.

The Secretary's waiver, for good cause, of the recovery rights arising under § 124.703(b) was continued in sections 609 and 1622 of the PHS Act. This waiver continues to be distinct and separate from the waiver added by the recent amendments. The good cause

waiver is described under § 124.708 of this proposal.

Executive Order 12291

E.O. 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other economic effects. The Secretary concludes that these regulations are not major rules within the meaning of the Executive Order, because they will not have an effect on the economy of \$100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each proposed rule with a "significant economic impact on a substantial number of small entities" and initial analysis must be prepared describing the proposed rule's impact on small entities. During FY 1984, the Bureau of Health Maintenance Organizations and Resources Development recovered approximately \$5.2 million from 13 facilities. Assuming that a 10 percent interest charge provision had been in effect during the year, the additional costs to the hospitals would have been \$500,000 in the aggregate and approximately \$38,500 for an average hospital. This sum is less than the threshold of 1 percent of average hospital revenues of 8 million dollars and thus would not represent a "significant" impact.

The regulation also includes a new option which permits facilities to establish an irrevocable trust. Since the establishment of the trust is at the hospital's discretion, use of this mechanism will be used when it is in the hospital's best interest. Given the amounts involved, such savings will not be substantial in relation to hospital revenues. In any case, these impacts are required by the terms of the statute and do not result from this regulation.

Therefore, the Secretary hereby certifies that an initial regulatory flexibility analysis is not required.

Paperwork Reduction Act

Sections 124.704 and 124.707 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on the information

collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, D.C. 20503; Attention: Fay S. Iudicello.

List of Subjects in 42 CFR Part 124

Grant programs-health. Health facilities. Low income persons.

Accordingly, the Department of Health and Human Services proposes to add a new Subpart H to 42 CFR Part 124 as set forth below.

Dated: December 18, 1984.

James F. Dickson III,

Assistant Secretary for Health.

Approved: February 8, 1985.

Margaret M. Heckler,

Secretary.

PART 124—MEDICAL FACILITY CONSTRUCTION AND MODERNIZATION

Subpart H—Recovery of Grant Funds

Sec.

- 124.701 Applicability.
- 124.702 Definitions.
- 124.703 Federal right of recovery.
- 124.704 Notification of sale, transfer, or change of use.
- 124.705 Amount of recovery.
- 124.706 Calculation of interest.
- 124.707 Waiver of recovery where facility is sold or transferred to proprietary entity.
- 124.708 Waiver of recovery—good cause for other use of facility.
- 124.709 Withdrawal of waiver.

Authority: The provisions of this subpart H are issued under section 609 and 1622 of the Public Health Service Act as amended 98 Stat. 112 (42 U.S.C. 291i and 300s-1a).

§ 124.701 Applicability.

The provisions of this subpart apply to facilities with respect to which grant funds were paid for construction or modernization—

(a) Under Title VI or XVI of the Public Health Service Act; or

(b) Pursuant to the authority of the Secretary under any of the following statutes:

(1) The Public Works Acceleration Act of 1962; Pub. L. 87-658 (42 U.S.C. 2641 et seq.)

(2) The District of Columbia Medical Facilities Construction Act of 1968, 82 Stat. 631 (Pub. L. 90-457)

(3) The Appalachian Regional Development Act of 1965, as amended (40 U.S.C. App.).

§ 124.702 Definitions.

As used in this subpart—

"Act" means the Public Health Service Act.

"Department" means the Department of Health and Human Services.

"Expected useful life" means the period of time during which the structure may reasonably be expected to perform the function for which it was designed or intended.

"Facility" means a facility with respect to which grant funds were paid under any of the authorizations listed in § 124.701.

"Nonprofit", as applied to any facility, means a facility that is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State agency" means (1) in the case of a facility with respect to which a grant was made under Title VI of the Public Health Service Act or any of the statutes listed in § 124.701(b), the State agency designated pursuant to section 604 of the Public Health Service Act or its successor agency, and (2) in the case of a facility with respect to which a grant was made under Title XVI of the Public Health Service Act, the State health planning and development agency designated pursuant to Title XV of the Public Health Service Act.

"Then value" means the value of the facility on the date the facility is sold, transferred or ceases to be used for a permissible use as described in § 124.704

§ 124.703 Federal right of recovery.

(a) If any facility is at any time within 20 years after the completion of the grant-assisted construction or modernization sold or transferred to any entity which is either not qualified for a grant under the statute pursuant to which the grant was awarded or not approved as a transferee by the State agency, the United States shall be entitled to recover from any transferor or transferee of the facility an amount determined in accordance with this subpart.

(b) If any facility at any time within 20 years after the completion of the grant-assisted construction or modernization ceases to be a public or other non-profit facility that would have been eligible for a grant under the statute pursuant to which the grant was awarded, the United States shall be entitled to recover from the owners of the facility an amount determined in accordance with this subpart.

§ 124.704 Notification of sale, transfer, or change of use.

(a) The transferor of a facility that is sold or transferred as described in § 124.703(a), or the owner of a facility which ceases to be a public or other nonprofit facility as described in § 124.703(b), shall provide the Secretary written notice of such sale, transfer, or other change not later than 10 days after the date on which the sale, transfer, or change occurs.

(1) "Transfer." For purposes of this subpart, a transfer occurs when a facility is leased to another entity.

(2) "Cease to be." For purposes of this subpart,

(i) A facility "ceases to be" a facility for which a grant could have been made under the statute pursuant to which the grant was awarded when it is no longer operated as such a facility; and

(ii) A facility "ceases to be a nonprofit facility" when an entity that is not a public or other non-profit corporation or association assumes management responsibilities with respect to the facility which, in the Secretary's judgment, are so pervasive as to constitute operation of the facility. In making that judgment, the Secretary will consider such factors as the degree of control granted to the managing organization over patient admission, policy over determination of what services will be provided, and policy over charges for services provided in the facility.

(b) *Content of Notice* The notice required by paragraph (a) of this section shall be sent to the Secretary by certified mail, and shall contain or be accompanied by

(1) The date of the sale, transfer, or other event that gives rise to the notice;

(2) Copies of any sales contracts, lease agreements, management contracts or other documents pertinent to the event giving rise to the notice;

(3) A statement identifying the amount and date of each grant, the statute under which each grant was awarded, and the date on which the grant-assisted construction was completed; and

(4) Estimates of current assets, current liabilities, book value of equipment, the expected value of land on the new owner's books, and the remaining depreciation for all fixed assets involved in the transaction calculated on a straight line basis using commonly adopted expected useful lifetimes.

(c) *Failure to provide notice.* Failure to provide the information required by paragraph (b) will be considered failure to provide the notice required by this section. In any case in which such information has not been provided, the Secretary will, promptly upon receiving

an incomplete notice or otherwise discovering that a sale, transfer or other event giving rise to a recovery may have occurred, send a letter to the owner of the facility requesting the information needed to calculate a recovery amount.

§ 124.705 Amount of recovery.

(a) Except as provided in § 124.706, the amount that the United States shall be entitled to recover under this subpart is that amount bearing the same ratio to the then value of so much of the facility as constituted an approved project (or projects) as the amount of Federal participation bore to the cost of the construction or modernization under such project (or projects).

(b) The then value of the facility will be:

(1) The transaction value in the case of an arms-length sale or transfer, or

(2) A depreciated reproduction value in the absence of an arms-length sale or transfer or if the buyer fails to provide, within 60 days after the date of the Secretary's letter described in § 124.704(c), the information which, in the judgment of the Secretary, is necessary to establish, adjust, and apportion a transaction value.

As used in this section, "transaction value" means in the case of a sale, the sale price, and in the case of a lease, the value of the lease plus the residual value of the facility at the termination of the lease (i.e., the reproduction value or, if appropriate, an alternative use value).

(c) The transaction value will be adjusted to account for the purchase or lease of other assets and the assumption of liabilities associated with the transaction. To determine the amount of Federal recovery, the adjusted value will be apportioned to the grant-aided assets by the ratio of the remaining useful lifetime values of those assets to the sum of the remaining useful lifetime values of all assets not previously accounted for in adjusting the transaction value.

(d) A depreciated reproduction value will be established by calculating a reproduction value using construction cost indexes or current costs per square foot for construction, depending on which is more relevant to the type of construction associated with the grant. This reproduction value will then be adjusted by the ratio of the remaining useful life to the total useful life for the assets involved.

(e) In calculating the recovery amount, the Secretary will include as Federal participation any grant assistance received by the facility under an authority listed in § 124.701 and any assistance supplementary to that assistance received for the construction

or modernization of the facility under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3121, et seq.) or the Local Public Works Capital Development Act of 1976 (Pub. L. 94-369).

§ 124.706 Calculation of interest.

(a) In addition to the amount of recovery calculated under § 124.705, the United States shall be entitled to recover interest on such amount in accordance with this section at the rate determined by the Secretary based on the average of the bond equivalent of the weekly ninety-day U.S. Treasury bill auction rate for the quarter previous to the quarter in which interest begins to accrue under this section.

(1) *Change of status before July 18, 1984.* For facilities that were sold or transferred or which ceased to be public or other nonprofit facilities before July 18, 1984, interest will be charged beginning August 17, 1984, or 180 days after the date of such sale, transfer or other change, whichever is later, and ending on the date the amount the United States is entitled to recover is collected.

(2) *Change of status after July 17, 1984.* For facilities that are sold or transferred or which cease to be public or other nonprofit facilities after July 17, 1984,

(i) And provide written notification to the Department within ten days of the sale, transfer, or change of use, interest will be charged beginning 180 days after receipt of the notice and ending on the date the amount which the United States is entitled to recover is collected; or

(ii) Do not provide written notification to the Department within ten days of the sale, transfer, or change of use, interest will be charged beginning on the date of the sale, transfer, or change of use, and ending on the date the amount which the United States is entitled to recover is collected. For those facilities, and only those facilities, which change status on or after the date of publication of these regulations, that notification must conform to § 124.704.

(b) The Secretary may waive interest charges that result from delays caused solely by the Department.

§ 124.707 Waiver of recovery where facility is sold or transferred to a proprietary entity.

(a) *Conditions of the waiver.* The Secretary may waive the recovery rights of the United States arising under § 124.703(a) if the entity to which the facility was sold or transferred:

(1) Has filed a written request for the waiver within the time limits prescribed by this section;

(2) Has established an irrevocable trust in accordance with this section, in an amount equal to the greater of the amount that would otherwise have been recovered pursuant to § 124.705 (including accrued interest as calculated under § 124.706) or twice the cost of the remaining uncompensated services obligation of the facility, that will be used by the entity only to provide services to those unable to pay in accordance with the requirements of Subpart F of this Part; and

(3) Has agreed to comply with the community service regulations set out in Subpart G of this Part.

(b) Procedures for obtaining waiver.

(1) Within 30 days after the date of receipt of the information described in § 124.704(b), the Secretary will send a letter to the new owner of the facility advising of the United States' right of recovery and the opportunity to obtain a waiver. For the purpose of advising the new owner of the amount to be placed in the irrevocable trust should the owner wish to obtain a waiver, the letter will also state the dollar amount of the remaining uncompensated care obligation and the amount that would be due under § 124.705, computed as follows:

(i) *Computation of uncompensated care obligation.* For each project in the facility, the Secretary will multiply the annual compliance level for the year in which the change of status occurs times the number of years between the effective date of Subpart F of this Part for the facility and the date on which the obligation is scheduled to expire, less amounts of uncompensated services provided since May 18, 1979, and determined by the Secretary to be creditable toward the obligation (as adjusted by the National Consumer Price Index for Medical Care). This number will then be multiplied by 2. If the buyer chooses to accept this calculation, no further assessments will be made of uncompensated care provided prior to the change of status date. If the buyer does not accept the calculation, the buyer or seller may hire, and may charge against the irrevocable trust established under this section, an independent auditor to certify the compliance level and any excess or deficit, using standard Departmental procedures as described in Subpart F of this Part and the *Providers Guide to the Hill-Burton Uncompensated Services Regulation*, and submit the results in accordance with paragraph (b)(2)(ii) of this section. The audit may be conducted for any years not included in

a previous site assessment conducted by the Department. If the Secretary agrees that a change is appropriate, the Secretary will use this information to adjust its calculation as set out in paragraph (b)(3) of this section. In the case of a facility with respect to which a grant was made under Title XVI of the Act, the remaining period of obligation will be the remainder of the expected useful life of the facility.

(ii) *Computation of recovery amount.* The Secretary will determine the recovery amount as provided in § 124.705.

(2) Within 60 days following the date of the Secretary's letter provided pursuant to subparagraph (1), the owner of the facility shall notify the Secretary in writing that it either:

(i) Accepts the waiver as offered by the Secretary;

(ii) Provides a detailed statement of an alternative determination of the recovery amount or an independent audit of the remaining uncompensated services obligation as described in paragraph (b)(1)(i) of this section; or

(iii) Does not seek a waiver under § 124.707.

Failure to provide a timely response to the Secretary under this subparagraph will be considered an election not to seek the waiver.

(3) Within 30 days following the receipt of the owner's views concerning the calculation, and after considering those views, the Secretary will send a final letter providing the Secretary's determination of twice the remaining uncompensated care obligation and the recovery amount under § 124.705. The amount to be placed in the irrevocable trust will be the higher of those two figures. (See paragraph (a)(2) of this section.)

(4) Within 30 days of the date of the final letter, the owner of the facility shall notify the Secretary in writing whether or not it accepts the waiver. Failure to provide timely notice to the Secretary under this subparagraph will be considered an election not to accept the waiver.

(c) Establishment of the trust.

(1) Within 60 days of the date of its acceptance of a waiver under paragraph (b)(2) or (b)(4) of this section, the owner shall begin delivering services to those unable to pay in accordance with subpart F of this Part under an irrevocable trust established in the amount calculated pursuant to paragraph (b). *Provided, that*

(i) The owner shall provide a copy of the trust documents to the Secretary and no trust shall be considered established

until the trust documents have been approved by the Secretary; and

(ii) The owner may credit against the trust any uncompensated services provided in accordance with subpart F of this Part between the date of the change of status of the facility and the establishment of the trust.

(2) The trust shall be administered by a Trustee who is neither an employee of the transferee nor an employee of a subsidiary or of the parent institution of the transferee.

(3) The trust shall provide that the trust corpus and income may be invested only in U.S. Government or U.S. Government insured securities.

(d) *Use of the trust.* The corpus and income of the irrevocable trust shall be used to pay for the costs of uncompensated services, which may include reasonable costs of establishing and administering the trust and the cost of the independent audit described in paragraph (b)(1)(i) of this section, until the trust is exhausted.

§ 124.708 Waiver of recovery—good cause for other use of facility.

The Secretary may for good cause waive the recovery rights of the United States arising under § 124.703(b). In determining whether there is good cause under this section for releasing the applicant or other owner of the facility from its obligation, the Secretary will take into consideration the extent to which:

(a) The facility will be devoted by the applicant or other owner to use for another public or nonprofit purpose which will promote the purpose of the Act;

(b) There are reasonable assurances that for the remainder of the 20-year period other public or nonprofit facilities not previously utilized for the purpose of which the facility was constructed will be so utilized and are substantially equivalent in nature and purpose.

§ 124.709 Withdrawal of waiver.

(a) Any waiver granted under this subpart is conditioned upon the recipient of the waiver carrying out the obligations imposed by § 124.707 or § 124.708 as applicable.

(b) The Secretary will monitor compliance with the community service and uncompensated care obligations of any entity that receives a waiver.

(c) Should a recipient of a waiver fail to comply with the applicable conditions, the Secretary will withdraw the waiver and seek recovery based on the value of the facility on the date the right of recovery first arose under § 124.703.

(d) No waiver will be withdrawn until the recipient has been notified in writing by the Secretary of the noncompliance and has filed to take corrective action within 90 days after the date of such notice.

(e) Should the waiver be withdrawn, the amount of the Government's recovery will be the amount set out in the Secretary's determination letter as described in § 124.707(b)(1) or (b)(3), as applicable plus interest from the date of the notification sent in accordance with paragraph (d) of this section.

[FR Doc. 85-6415 Filed 3-15-85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 83-070]

Revision of Tonnage Measurement Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal is intended to clarify, consolidate, and reorganize simplified tonnage measurement regulations. The proposal neither changes the present substantive law nor affects any vessel presently documented under the laws of the United States. The revised subpart at 69.01 provides a synopsis of each measurement system, describes when and what vessels are required to be measured, defines the method to appeal adverse measurement decisions, and identifies measurement sources. The new subpart at 69.05 will combine the two simplified measurement regulations. The proposal provides for minor coefficient changes that have minimal impact to vessel tonnages but may preclude some very small pleasure vessels from qualifying for documentation (Documentation provides evidence of nationality and qualification for employment in a specified trade). This proposal enables the public to better understand tonnage measurement requirements and saves time and money while preserving the character of the present systems.

DATE: Comments must be received on or before May 17, 1985.

ADDRESSES: Comments may be submitted to Commandant (G-CMC/21), U.S. Coast Guard, Washington, D.C. 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/21), (CGD 83-070), Room 2110, U.S. Coast Guard

Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Dennis A. Lamont, Office of Merchant Marine Safety, Tonnage Survey Branch, G-MVI-5, Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426-2192, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person submitting them, identify this notice (CGD 83-070) and the specific section of the proposal to which the comment applies, and give the reasons for the comments. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if it is determined that it will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are Mr. Dennis A. Lamont, Project Manager, Office of Merchant Marine Safety, and LCDR Ronald Zabel, Project Attorney, Office of the Chief Counsel.

Background

Before a vessel is documented as a vessel of the United States, it must be measured. Tonnage measurement is the process whereby a vessel's dimensions are used to calculate its gross and net tonnage. Thousands of pleasure and commercial vessels are measured each year.

A vessel's tonnage is a reflection of its internal volume rather than of its weight or cargo capacity. Tonnage is used to determine the applicability of numerous domestic and international laws and regulations. It is also used as the basis for computing limits of liability, tonnage duties, port and pilotage fees, similar charges, and for statistical purposes. Tonnage measurement as required by 46 App. U.S.C. 77 and 83-83k (standard and dual-tonnage systems) is an intricate method that generates detailed physical measurements and calculations. It is an expensive, time-consuming process that often causes delays to the public.

Recognizing this, Congress in 1966, enacted Pub. L. 89-476 (Optional Simplified Admeasurement Method for Pleasure Vessels) to permit the optional use of a mathematical formula based on

a vessel's length, breadth, and depth to yield gross and net tonnages. These tonnages reasonably approximate the tonnages derived from the formal measurement method and have significantly reduced cost and time to both the public and the government.

In 1980, Pub. L. 96-594 the Tonnage Measurement Simplification Act extended optional simplified measurement to all commercial vessels under 79 feet (24 meters) in length and to non-self-propelled vessels of any length, provided the vessels in either category do not engage on international voyages.

Each law engendered separate regulations that are located at 46 CFR 69.17 and 69.19.

Discussion of the Proposed Rule

This proposed rule will consolidate the two current informational subparts at 69.01 and 69.05 into one subpart at 69.01. The intention is to provide a more effective guide to vessel owners in the measurement process by identifying the various systems and sources and by placing the regulations in a logical sequence.

This rule will also consolidate the nearly-identical subparts at 69.17 and 69.19 into one subpart at 69.05, necessitating the adjustment of some formula coefficients that differ from one subpart to the other. This includes changing the coefficient used for measuring ship-shaped commercial vessels at 69.19-13 from 0.70 to 0.67, which is now used for measuring ship-shaped pleasure vessels at 69.17-5. Although the 0.70 coefficient was intended to reflect the tonnages of larger deck structures on commercial vessels, experience suggests that the 0.67 coefficient, used since 1967, has consistently provided tonnages accurate within the parameters of the law's intent.

The coefficient 0.83 used for measuring barge-shaped self-propelled commercial vessels at 69.19-13 will also be adjusted to coincide with the 0.84 coefficient used for measuring barges since the 1% differential has little or no tonnage impact.

Finally, the depth coefficient 0.75 used at 69.19-7(d)(1) for measuring commercial sailing vessels (with deep keels covered by the vessel's skin) will be applied to pleasure vessels of this type. The present pleasure vessel formula frequently provides exaggerated depths that result in inflated tonnages.

The formula coefficient changes described above may preclude an extremely small number of very small undocumented vessels—vessels that normally would not measure five net

tons and larger if physically measured—from qualifying for documentation. However, in questions of dispute an owner may continue to request measurement under the systems at 46 CFR 69.03 or 69.15 to determine a more precise tonnage.

All vessels presently documented as U.S. vessels will remain unaffected by this rule. The combining of the two simplified systems will ease the overall regulatory burden on the public, which is in keeping with this Administration's regulatory policy.

Regulatory Evaluation

The proposed regulations have been evaluated under Executive Order 12291 and Department of Transportation Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations," dated 22 May 1980, and have been determined to be neither a significant nor major rule.

The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The proposal primarily consolidates and clarifies existing requirements, the slight changes in coefficients used under the simplified measurement systems will affect very few vessels and the owners of vessels so affected retain the option of requesting formal measurement.

Regulatory Flexibility Analysis

The proposed regulations have been evaluated under Pub. L. 96-354 (94 Stat. 1168) and are certified as having no significant economic impact on a substantial number of small entities. As discussed above the proposed regulations will require the public to resort to formal measurement in only an extremely small number of cases.

Paperwork Reduction Act

The information collection requirements contained in the amended regulations have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned the control numbers contained in the listing in the proposed amendment to Subpart 69.01 at § 69.01-21.

Environmental Statement

The Coast Guard has determined that this action does not constitute a major federal action that significantly affects the quality of the human environment. It has been determined that this action is categorically excluded from further environmental documentation.

List of Subjects in 46 CFR Part 69

Vessels, measurement standards.

In consideration of the foregoing the Coast Guard proposes to amend Part 69 of Title 46 Code of Federal Regulations as set forth below.

1. In the table of contents for Part 69 the portion for Subparts 69.01 and 69.05 are revised to read as follows and the portion for Subparts 69.17 and 69.19 are removed.

PART 69—MEASUREMENT OF VESSELS

Subpart 69.01—General Provisions

Sec.	
69.01-01	Purpose.
69.01-03	Applicability.
69.01-05	Public vessels.
69.01-07	Definitions.
69.01-09	Measurement systems.
69.01-11	Measurement sources.
69.01-13	Applications.
69.01-15	Remeasurement and adjustment of tonnage.
69.01-17	Appeals.
69.01-19	Reimbursable costs or fees.
69.01-21	OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Subpart 69.05—Optional Simplified Measurement

69.05-1	Purpose.
69.05-3	Definition of terms.
69.05-5	Application for Simplified Measurement.
69.05-7	Calculation of Tonnages.
69.05-9	Remeasurement.
69.05-11	Assignment of like tonnages to like vessels.

2. The authority citation to Part 69 is revised to read as follows:

Authority: 46 App. U.S.C. 71, 83h, 49 CFR 1.46(b).

3. 46 CFR Subpart 69.01 is revised to read as follows:

Subpart 69.01—General Provisions

§ 69.01-1 Purpose.

(a) Tonnage measurement is the process used to determine vessel tonnages. Tonnages are used, among other things, to document a vessel, to apply commercial vessel safety regulations, to meet various international requirements, and as a base for operational charges. Tonnages are determined by physical measurement of a vessel (formal measurement) or, in most cases, by application of a formula based on vessel's overall dimensions (simplified measurement). This subpart indicates the appropriate measurement system or systems applicable to a vessel, identifies measurement sources and explains appeal processes.

§ 69.01-3 Applicability.

(a) All vessels of five net tons and larger that are to be documented as vessels of the United States and vessels of 79 feet in length and longer that engage on international voyages between nations party to the International Convention on Tonnage Measurement of Ships, 1969 (1969 Tonnage Convention) are required to be measured.

(b) Vessels that transit the Panama Canal and Suez Canal may be measured on request.

(c) The Commandant may upon request or at his option measure any vessel to determine its tonnage.

§ 69.01-05 Public vessels.

(a) Public vessels that are to be documented must meet the same measurement requirements as private vessels. Public vessels not intended to be documented may be measured upon request.

(b) Ships of war are not subject to measurement under the provisions of the 1969 Tonnage Convention nor are they assigned Panama Canal tonnages.

§ 69.01-07 Definitions.

(a) "Ton" as calculated under the United States, Panama and Suez Canal rules is equivalent to 100 cubic feet. A "ton" as used in the 1969 Tonnage Convention system varies from vessel to vessel dependent upon a logarithmic function of the vessel's volume.

(b) "Gross tonnage" is intended to reflect a vessel's approximate volume. In U.S., Panama Canal and Suez Canal formal measurement systems it represents the total volume of all enclosed spaces less certain spaces permitted to be exempted from inclusion in gross tonnage. Under the simplified measurement system it is the product of a vessel's length, depth, and breadth as modified by a coefficient. Under the 1969 Tonnage Convention it is based on a modified volume of all enclosed spaces.

(c) "Net tonnage" is intended to be a measure of a vessel's earning capacity. In U.S., Panama Canal and Suez Canal formal measurement systems it is the result of subtracting from gross tonnage the volumes of spaces allotted to crew, propelling power, etc. Under the simplified measurement system it is the result of applying a coefficient to the gross tonnage. Under the 1969 Tonnage Convention it is the result of a formula based on the actual cargo volume and a passenger coefficient.

§ 69.01-09 Measurement systems.

(a) Some vessels may require tonnage assignments under the provisions of more than one measurement system. Listed below are the systems used for determining vessel tonnages.

(1) *Standard System of Measurement* (46 CFR 69.03). This is the basic measurement system that may be applied to all United States vessels.

(2) *Optional Dual-Tonnage Method of Measurement* (46 CFR 69.15). This system allows certain special exemptions and deductions for ships and may be employed as an option to the Standard System of Measurement.

(3) *Optional Simplified Measurement Method* (46 CFR 69.05). This system may be employed as an option to the Standard System of Measurement. It may be applied in measuring:

(i) Commercial vessels less than 79 feet (24 meters) in overall length that will not engage in international voyages;

(ii) Barges of any length that will not engage on international voyages;

(iii) Pleasure vessels (yachts) of any length, whether or not intended to engage in international voyages.

(4) *International Convention on Tonnage Measurement of Ships, 1969*.

This system (1969 Tonnage Convention) applies to vessels, whether or not documented, that measure 79 feet in length or longer and engage on international voyages between nations party to this Convention (NVIC 6-83).

(5) *Panama Canal Rules* (35 CFR Part 135). This system applies to vessels that will transit the Panama Canal.

(6) *Suez Canal Rules* (Rules of Navigation, Part IV). This system applies to vessels that will transit the Suez Canal.

(b) Combining the regulatory provisions of separate and distinct systems is not permitted.

(c) The following chart may be used as a guide to determine tonnage requirements:

Length	Type vessel	Operation	Tonnage certificates			
			Required		Optional	
			United States	1969 tonnage convention	Panama Canal	Suez Canal
Under 79'	Commercial self-propelled	International	X		X	X
		Domestic	X			
	Commercial barges	International	X		X	X
		Domestic	X ¹			
79' and longer	Yachts (all)	International	X ¹		X	X
		Domestic	X ¹			
	Commercial self-propelled	International	X	X	X	X
		Domestic	X			
	Commercial barges	International	X	X	X	X
		Domestic	X ¹			
	Yachts (all)	International	X ¹	X	X	X
		Domestic	X ²			

¹ Certificate required only when owner elects to document vessel.

(d) A vessel of the United States, not measured under the provisions of the 1969 Tonnage Convention, that has exempted passenger spaces and engages on an international voyage will be issued a "Special Appendix to Certificate of Registry of American Passenger Vessels" (Form CG-1265-A).

§ 69.01-11 Measurement sources.

(a) The Coast Guard and the American Bureau of Shipping (ABS) perform measurement of U.S. vessels. For vessels built in the United States, owners shall apply to the nearest marine inspection or marine safety office or to ABS. For foreign-built vessels, owners shall apply directly to the Commandant (G-MVI-5), U.S. Coast Guard, 2100 Second St., SW., Washington, D.C. 20593, or to ABS.

§ 69.01-13 Applications.

(a) Vessel owners or their agents shall include in their application the vessel particulars, the measurement system(s) requested, ownership information, vessel location, agreement to reimburse, etc. as described separately under the various measurement systems.

(b) Applications for measurement under more than one system may be combined.

(c) Measurement will commence when the vessel is sufficiently advanced in construction, usually when decks are laid, the holds clear of encumbrances, the engine and boilers installed, and accommodations partitioned.

§ 69.01-15 Remeasurement and adjustment of tonnage.

(a) Once measured a vessel retains its tonnage until structural or arrangement

changes are made that require a new measurement. The owner shall immediately report these changes to the measurement office nearest the vessel or to ABS. The owner will be advised if remeasurement is necessary.

(b) When there is a perceived error in the application of a regulation or in the calculation of the tonnage, the owner should contact the responsible measurement office. If the claim of error is verified the tonnage will be adjusted. Unaltered spaces or spaces for which no error is claimed need not be remeasured.

(c) After remeasurement or adjustment of tonnage a new tonnage certificate will be issued. If documented, the vessel's Certificate of Documentation shall be presented to the appropriate vessel documentation office for adjustment.

§ 69.01-17 Appeals.

(a) The Commandant is solely responsible for tonnages assigned and for determining the appropriate application and interpretation of domestic and international measurement regulations as they are applied to U.S. vessels.

(b) Appeals of Coast Guard field decisions must be submitted to the Commandant via the appropriate district commander. Appeals of decisions made by authorized measurement organizations must be submitted directly to the Commandant.

(c) In an appeal the owner or his agent must recite the facts in letter form and include appropriate supporting data. While an appeal is in progress, the initial decision remains in effect. The decision of the Commandant is final.

§ 69.01-19 Reimbursable costs or fees.

(a) When the Coast Guard measures a vessel at a location other than a U.S. port of entry or customs station the owner shall agree in writing to reimburse the Coast Guard for the measurement officer's compensation, travel and subsistence expenses.

(b) Information on fees for measurement services performed by an authorized United States corporation or association should be obtained directly from that source.

§ 69.01-21 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and record keeping requirements in this part by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et

seq.). The Coast Guard intends that this part comply with 44 U.S.C. 3507(f) which requires that agencies display the current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part of section where identified or described	Current OMB control No.
69.01-13	2115-0080 and 2115-0086
69.01-15	Do.
69.01-17	Do.
69.05-5	2115-0086
69.09-9	Do.
69.15-3	2115-0080
69.15-39	Do.
69.15-41	Do.

4. 46 CFR Subpart 69.05 is revised to read as follows:

Subpart 69.05—Optional Simplified Measurement

§ 69.05-1 Purpose.

(a) This system may be employed as an option to the formal tonnage measurement systems described in Subpart 69.03 (Standard System of Measurement) and Subpart 69.15 (Optional Dual tonnage Method for Measurement of Vessels). It may be applied only to the following vessels:

- (1) Commercial vessels less than 79 feet (24 meters) in overall length that will not engage in international voyages.
- (2) Barges of any length that will not engage in international voyages, and
- (3) Pleasure vessels (yachts) of any length, whether or not intended to engage in international voyages.

Note.—A commercial vessel must be measured or remeasured under the provisions of Subparts 69.03 or 69.15 if a registry is required.

§ 69.05-3 Definition of terms

(a) *Overall length, breadth and depth.*

(1) For single hull vessels:

(i) "Overall length" means the horizontal distance between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments).

(ii) "Overall breadth" means the horizontal distance (excluding rub rails) from the outside of the skin (outside planking or plating) on one side to the outside of the skin on the other, taken at the widest part of the hull.

(iii) "Overall depth" means the vertical distance taken at or near midships from a line drawn horizontally through the uppermost edges of the skin at the sides of the hull (excluding the cap rail and trunks, cabins, or

deckhouses) to the outboard face of the bottom skin of the hull. This excludes the keel unless it is covered by the skin.

(2) For multi-hulled vessels each hull is separately measured for its overall length, breadth, and depth.

(b) *Register length, breadth, and depth.* (1) For single-hull vessels the register length, breadth, and depth are the vessel's overall length, breadth, and depth.

(2) For multi-hulled vessels the register length is the horizontal distance between the foremost part of the stem of the foremost hull and the aftermost part of the stern of the aftermost hull (excluding bowsprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments). The register breadth is the horizontal distance taken at the widest part of the complete vessel between the outboard skin of the outboard-most hulls (excluding rub rails). The register depth is the overall depth of the deepest hull as determined under paragraph (a) (1) (iii) of the section.

(c) *Vessel designed for sailing.* The term "vessel designed for sailing" means a vessel, whether or not equipped with an auxiliary motor, which has the fine lines of a sailing craft and is in fact propelled by sail or capable of being propelled by sail (other than a mere steadying sail).

§ 69.05-5 Application for Simplified Measurement.

(a) Applications for measurement under this subpart are obtainable from any marine inspection or marine safety office or from the American Bureau of Shipping. They shall be completed by the owner and include the following information:

- (1) Owner's name, address, and phone number;
- (2) Name of vessel;
- (3) Official number, state or Coast Guard number, if any;
- (4) Name of builder;
- (5) Builder's hull number, serial number, or model number;
- (6) Place built;
- (7) Year built;
- (8) Port of documentation;
- (9) Vessel's intended use (pleasure or commercial);
- (10) Dimensions of disproportionate deckhouse (see § 69.05-7 (a)(4));
- (11) Is vessel designed for sailing;
- (12) Is propelling machinery in hull;
- (13) Shape of hull (ship-shaped or barge-shaped);
- (14) Type of vessel (towboat, barge, trawler, yacht, etc.);
- (15) Overall length, breadth and depth (for multi-hulled vessel indicate number of hulls, overall dimensions of each hull,

and the register dimensions of complete vessel); and

(16) Sketches (not necessarily to scale) showing all required dimensions in plan, profile, and cross-section views.

(b) All lengths and depths must be measured in a vertical plane at centerline and breadths must be measured in a line at right angles to that plane. All dimensions shall be expressed in feet and inches or in feet and tenths of a foot.

(c) Applications must be signed by the owner or agent and contain a statement that all information is correct.

(d) The Coast Guard reserves the right to verify dimensions of vessels measured under this subpart.

Note.—Under the provisions of 18 U.S.C. 1001, any person making a false or fraudulent statement in an application may be fined up to \$10,000 or imprisoned for up to five years, or both.

§ 69.05-7 Calculation of Tonnages.

(a) *Gross tonnage.* (1) Except as provided in paragraphs (a) (2) and (3) of this section, the gross tonnage of a vessel designed for sailing shall be .50(LBD/100) and the gross tonnage of a vessel not designed for sailing shall be .67(LBD/100). LBD being the product of its overall length, breadth, and depth.

(2) The gross tonnage of a vessel whose hull approximates in shape a rectangular geometric solid (barge-shape) shall be .84(LBD/100).

(3) The gross tonnage of a multi-hulled vessel shall be the sum of all the hulls as calculated under this section.

(4) When the volume of a vessel's principal deck structure is as large or larger than the volume of its hull (disproportionate), as in the case of certain houseboats, the volume of that structure, expressed in tons of 100 cubic feet, shall be added to the tonnage of the hull as previously calculated to establish the vessel's gross tonnage.

(5) In cases where the keel of a vessel designed for sailing is covered by the skin the depth, for calculating purposes, is limited to 75% of the overall depth.

(b) *Net Tonnage.* (1) For a vessel having propelling machinery in its hull:

- (i) If designed for sailing the net tonnage is 90% of its gross tonnage;
- (ii) If not designed for sailing the net tonnage is 80% of its gross tonnage.

(2) For a vessel having no propelling machinery in its hull, the net tonnage is the same as its gross tonnage.

§ 69.05-9 Remeasurement.

(a) A vessel must be remeasured if it is physically altered so that its dimensions or tonnage is changed.

(b) A vessel measured or remeasured under the provisions of this subpart may, upon application, be remeasured under the provisions of Subpart 69.03 or 69.15.

§ 69.05-11 Assignment of like tonnages to like vessels.

(a) Tonnages of vessels measured under this subpart which are representative of a designated class, model or type may be assigned to identical vessels of the same designated class, model or type.

Subparts 69.17 and 69.19 [Removed]

5. Subparts 69.17 and 69.19 of Title 46 are removed.

Dated: March 13, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-8410 Filed 3-15-85; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

[Docket No. 85-6]

Inquiry Concerning Interpretation of Sections 8(a) and 8(c), Shipping Act of 1984; Excepted Commodities

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission solicits public comment on the interpretation to be given to section 8(a) and section 8(c) of the Shipping Act of 1984 with regard to excepted commodities, i.e., bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste.

DATE: Comments (original and fifteen copies) on or before April 17, 1985.

ADDRESS: Send comments to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Shipping Act of 1984 (the Act or the 1984 Act) (46 U.S.C. app. 1707 *et seq.*) continues the requirement of the Shipping Act, 1916 (1916 Act) (46 U.S.C. app. 801 *et seq.*) that all common carriers operating in the foreign commerce of the United States file

tariffs with the Federal Maritime Commission. More specifically, section 8(a)(1) of the 1984 Act (46 U.S.C. app. 1707(a)(1)), the successor to section 18(b) of the 1916 Act, requires common carriers and conferences of such common carriers to file tariffs showing all rates and charges for oceanborne transportation between U.S. and foreign ports, except with regard to certain specifically excepted commodities. Section 8(a)(1), however, does not address the question of whether a common carrier or conference may voluntarily file a tariff covering a commodity which is excepted from mandatory tariff filing.

The Commission's foreign tariff regulations presently allow a carrier or conference to voluntarily file tariff provisions covering otherwise excepted transportation (46 CFR 580.1(a)). The Commission, however, has recently indicated that the current policy of permitting such voluntary filing is without prejudice to any subsequent Commission determination of the legality of this practice. In issuing its final foreign tariff filing regulations, pursuant to section 8 of the 1984 Act, the Commission expressly stated that the issues of voluntary tariff filing and conference authority to establish rates with regard to excepted commodities would be the subject of a separate proceeding.¹

The 1984 Act for the first time provides specific statutory authority for the use of service contracts by an ocean common carrier or conference of such carriers. Section 8(c) of the Act (46 U.S.C. app. 1707(c)) requires that each service contract entered into pursuant to the Act shall be filed confidentially with the Commission and that a concise statement of the essential terms of the service contract be filed publicly in tariff format and be made available to all similarly situated shippers. Service contracts dealing with excepted commodities (i.e., bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste) are not subject to the confidential filing requirement nor must their essential terms be published. The Act does not address the question of whether an ocean common carrier or conference may voluntarily file a service contract covering an excepted commodity.

The Commission's tariff filing rules, however, expressly allow for the voluntary filing of a service contract which involves an excepted commodity (46 CFR 580.7(b)(2)). This provision

permitting optional filing was responsive to a comment filed in the proceeding to promulgate rules implementing the service contract section of the Act which had suggested that the Commission allow such optional filing. However, in allowing for such an option, the Commission again stated that, as with the general question of voluntary tariff filing on excepted commodities, the issue of voluntary filing of service contracts involving excepted commodities and conference authority to enter into and file such contracts would be the subject of a separate proceeding.²

The purpose of this notice is to initiate an inquiry into the proper interpretation to be given sections 8(a) and 8(c) of the Act with regard to excepted commodities. Ultimately, these issues may require legislative clarification. However, in order to assist the Commission in determining whether these matters may be addressed administratively, the Commission is inviting public comment on certain specific questions discussed below.

II. Discussion

A. Tariff Filing

Section 8(a)(1) of the Act establishes mandatory tariff filing by each common carrier and conference of all rates and transportation charges except with regard to those commodities which are expressly excluded. Section 8(a)(1) states that each common carrier and conference must file tariffs showing "all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established." Section 8(a)(1) also states that tariff filing is not required in the case of bulk cargo,³ forest products,⁴ recycled metal scrap, waste paper, and paper waste.⁵ Section 8(a)(1) is silent

¹ See Docket No. 84-21, *Service Contracts and Time/Volume Rates*, (49 FR 45366-45367, November 15, 1984).

² The Act defines the term "bulk cargo" as "cargo that is loaded and carried in bulk without mark or count." 46 U.S.C. app. 1702(4).

³ The Act defines the term "forest products" as "forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls, and paper in rolls." 46 U.S.C. app. 1702(11).

⁴ The Act does not define the term "recycled metal scrap, waste paper, and paper waste". However, the Conference Report states that this term means "aluminum, copper, iron or steel, lead,

Continued

⁵ See Docket No. 84-24, *Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States* (49 FR 45375, November 15, 1984).

with regard to the question of whether a common carrier or conference may voluntarily file a tariff covering a commodity which is specifically excepted from mandatory filing. Nothing in the language of the 1984 Act expressly permits or prohibits such a voluntary filing.

The legislative history of section 8(a)(1) does not directly address this question. For the most part, it focuses on those areas where changes were made in the former statutory scheme under the 1916 Act. With regard to excepted commodities, the 1984 Act continues the exception for and definition of "bulk cargo", reformulates the former exception for and definition of "softwood lumber" in terms of an exception for "forest products", and includes for the first time "recycled metal scrap, waste paper, and paper waste" as excepted commodities.

There are, however, some indications in the legislative history of the 1984 Act that excepted commodities were intended to be unregulated. The Conference Report, for example, states that the inclusion of recycled as well as virgin cargoes in the list of excepted commodities is for the purpose of preserving the competitive standing of these recycled commodities as non-tariffed items.⁶ The Conference Report further states that should the Commission continue to require the filing of terminal tariffs, excepted commodities are not to be included within this requirement.⁷ This is an

nickel, tin, zinc and mixed metal scrap, alloy or residues, as well as the various types of wastepaper, newsprint, paperboard and other paper products, recovered or diverted from solid waste and transported so that they may be reused as industrial or manufacturing raw materials, either here in the United States or abroad." H.R. Rep. No. 600, 96th Cong., 2d Sess. 36 (1984).

* See H.R. Rep. No. 600, 96th Cong., 2d Sess. 38 (1984). The Conference Report states that:

In subsection (a)(1) the conference agreement adopts the Senate provision, with language modifications. The courts have found that virgin bulk cargoes (such as ores, woodchips and woodpulp) regularly compete with their recycled counterparts (recycled metal scrap and wastepaper) in industrial markets both here in the United States and overseas. Thus, in order to treat these competing industrial raw materials as equally and fairly as possible for transportation purposes, the conferees agree to exempt both virgin and recycled categories from the tariff-filing requirements.

⁷ The Conference Report at 39 states that:

Pursuant to its responsibilities under the Shipping Act of 1916, the Federal Maritime Commission has, by regulation, required the filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other facilities. See 46 CFR Part 533. If the Commission continues this requirement, the conferees intend that forest products, bulk cargo, the recyclable metal scrap, waste paper, and paper waste not be included within the ambit of any such requirement. This exemption is consistent with the treatment of these cargoes in section 8(a)(1) and 8(c) of this Act.

unequivocal directive that the Commission should not subject excepted commodities to tariff filing. Moreover, it is possible to infer from this directive to the Commission that excepted commodities should not be made subject to tariff regulation through voluntary filing by private parties.

Review of the legislative history of section 18(b) of the 1916 Act and its amendments (the predecessor of section 8 of the 1984 Act) provides additional indications as to the Congressional purpose for excepting specific commodities from tariff filing. Mandatory tariff filing was first established in 1961 by Pub. L. No. 87-346, 75 Stat. 764 (1961), an amendment to section 18 of the 1916 Act (1961 Amendment). The 1961 Amendment stated that:

... every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission and keep open to public inspection tariffs showing all the rates and charges of such carrier or conference of carriers. . . .

Section 18(b)(1), however, also stated that: The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count.

The 1961 Amendment also required that any change in rates, charges, etc. which results in an increase in cost to the shipper, as well as any new rate, would not become effective earlier than 30 days after filing.⁸ The Senate Report accompanying the 1961 Amendment merely states that "all ocean common carriers and conferences thereof must file tariffs, [b]ut this section expressly does not apply to cargo loaded and carried in bulk without mark or count." S. Rep. No. 860, 87th Cong., 1st Sess. 19 (1961). The Senate Report, however, does not explain why bulk cargo was excepted from the mandatory tariff filing scheme established by the 1961 Amendment.

In 1963, section 18 of the 1916 Act was further amended to except lumber in addition to bulk cargoes from mandatory tariff filing by the passage of Pub. L. No. 88-103, 77 Stat. 129 (1963) (1963 Amendment). The 1963

* This 30-day delay in the effectiveness of an increase in an existing rate is continued under the 1984 Act. Section 8(d) (46 U.S.C. app. 1707(d)) states:

No new or initial rate or change in an existing rate that results in an increased cost to the shipper may become effective earlier than 30 days after filing with the Commission. The Commission, for good cause, may allow such a new or initial rate or change to become effective in less than 30 days. A change in an existing rate that results in a decreased cost to the shipper may become effective upon publication and filing with the Commission.

The Commission's rules governing applications for special permission to establish rate increases on less than statutory notice appear at 46 CFR 580.15.

Amendment is characterized as: "An Act to *exclude* cargo which is lumber from certain tariff filing requirements under the Shipping Act, 1916, as amended." (Emphasis added). The legislative history indicates that the purpose of the 1963 Amendment is "to exempt lumber from the provisions of the Act requiring the filing with the Federal Maritime Commission . . . of tariffs of all rates and charges applicable to all cargo except 'cargo loaded and carried in bulk without mark or count.'" H. Rep. No. 630, 88th Cong., 1st Sess. 1 (1963). Furthermore the House Report states that ". . . the intent of the bill is to treat rough, or unfinished, lumber which is usually carried either in full-cargo or substantial partial-cargo lots in the same manner as 'cargo loaded and carried in bulk without mark or count' notwithstanding the fact that such lumber cargoes are tallied." H. Rep. No. 630 at 1-2. The legislative history suggests that the purpose of the lumber exception was to remove this commodity from the price stabilizing influence of tariff filing and to make U.S. lumber more competitive with Canadian lumber which was not subject to any comparable tariff filing requirement.⁹ On particular concern was the fact that, once a commodity was covered by a tariff there could be no increase in that rate for at least 30 days. Shippers argued that this made it more difficult to obtain spot rate reductions.¹⁰

* The H. Rep. No. 630 at 2 states that:

Sponsors of the bill, particularly lumber-producing interests in Northwestern United States, pointed out in committee hearings that they are in intense competition with Canadian lumber interests engaged in world trade with the same or similar types of rough and semifinished lumber. They state that the export market for such lumber is susceptible to the same sensitivity to ocean freight rate fluctuations as bulk cargoes of the types of presently exempt from tariff filing requirements under the act. Moreover, the fact that Canada has no tariff filing requirements comparable to section 18(b)(1) of our 1916 act interferes with the ability of common carriers engaged in the U.S. foreign commerce to meet the flexible ratemaking opportunities of the unregulated competitive carriers serving Canada.

¹⁰ This point was made in a letter from the General Counsel of the Department of Commerce to the Chairman of the House Committee on Merchant Marine and Fisheries dated April 3, 1963:

It is our understanding that shippers of lumber believe that enactment of this legislation will permit them to secure rates for the transportation of lumber in foreign trade that are more competitive with those paid by foreign producers. At present the shippers argue that carriers are reluctant to negotiate spot rate reductions with them because such spot rates cannot thereafter be increased upward until the increased rate has been on file for at least 30 days. (Emphasis added).

H. Rep. No. 630, 88th Cong., 1st Sess. 3 (1963).

In 1965, section 18 of the 1916 Act was amended again (this time to distinguish between softwood and hardwood lumber and to restore mandatory tariff filing for hardwood lumber) by the passage of Pub. L. No. 89-303, 79 Stat. 1124 (1965) (1965 Amendment). The legislative history of the 1965 Amendment indicates that the purpose of this distinction was, on the one hand, to serve the interest of the softwood lumber industry in obtaining competitive transportation rates by not subjecting softwood lumber to tariff filing, and, on the other hand, to serve the interest of the hardwood lumber industry in obtaining stable ocean transportation rates by restoring mandatory tariff filing on hardwood lumber.¹¹ This history supports the inference that in the case of softwood lumber, Congress intended that that commodity remain unregulated as opposed to hardwood lumber for which tariff regulation was reimposed.¹² Elsewhere in the legislative history of the 1965 Amendment there is the suggestion that the purpose of the softwood lumber exception was to completely remove tariff restrictions from the pricing of transportation on this commodity.¹³

¹¹ S. Rep. No. 873, 89th Cong., 1st Sess. 1-2 (1965) explained the need for this legislation as follows:

The Shipping Act of 1916 requires every common carrier by water in foreign commerce to file with the Federal Maritime Commission rates for transportation on all cargo except bulk cargo and lumber. The exclusion of lumber from tariff filing requirements was added by Public Law 88-103 enacted in August of 1963 primarily to permit the softwood lumber industry to compete with Canadian lumber exporters. During the past 2 years the hardwood lumber industry has felt that this exemption from tariff filing requirements on all shipments of lumber was detrimental to their interest in stable ocean transportation rates to Europe although the exemption nevertheless benefited the softwood lumber industry in meeting its primary competitor, Canada.

This bill will amend the Shipping Act, 1916, as amended in 1963, to limit the term "lumber" under the exemption to softwood lumber and thereby reinstate the previous requirement for the filing of tariffs on the movement of hardwood lumber. No opposition has been expressed to this legislation.

¹² In a letter from the Vice Chairman of the Federal Maritime Commission to the House Committee on Merchant Marine and Fisheries dated September 15, 1965, the Commission's support for the 1965 Amendment was explained as follows:

Generally, lumber is divided into two categories: softwood, meaning lumber produced from trees of needle-leaved species such as pine, spruce, and fir; and hardwood, meaning lumber from broad-leaved species of trees such as oak, maple, and walnut. The shippers of hardwood lumber have not experienced the conditions on rate adjustments as have shippers of softwood. Legislation has been requested by the hardwood producers to reestablish regulation of the rates of the producers. (Emphasis added).

¹³ S. Rep. No. 873, 89th Cong., 1st Sess. 2 (1965).

¹⁴ The General Counsel of the Department of Commerce in a letter to the House Merchant and Fisheries Committee dated September 15, 1965 explained that the 1965 Amendment would continue

The series of amendments to section 18 of the 1916 Act (the predecessor of section 8 of the 1984 Act), and their accompanying legislative history, lend support to the view that the purpose for excepting commodities from mandatory tariff filing is to remove those commodities from the restraints on speedy price adjustments which result from tariff filing. That legislative history suggests that certain commodities have been excepted from mandatory tariff filing in order to provide shippers of those commodities with the flexibility to negotiate rates for ocean transportation services in a competitive market. Such a market is one where prices may rise or fall without the intervention of any regulation of that pricing mechanism.

Once a tariff is filed on a commodity, the flexibility to negotiate rates is inhibited. For example, under section 8(d) of the 1984 Act, a rate increase on an existing tariff rate could not become effective for 30 days without

to allow softwood lumber to remain unregulated while it restored the stability of tariff filing with regard to hardwood lumber rates. The letter stated that:

The House Report (Rept. No. 830) accompanying H.R. 1157, 86th Congress, which was enacted as Public Law 88-103, states that the need for the amendment excluding lumber from the tariff filing requirements was that under the 1916 act decreases in rates are effective immediately but increases may not become effective until 30 days after filing; that the sponsors of the bill, principally lumber-producing interests in Northwestern United States testified that they are in intense competition with Canadian lumber interests engaged in world trade with the same or similar types of rough and semifinished lumber; that the export market for such lumber is susceptible to the same sensitivity to ocean freight rate fluctuations as bulk cargoes which are exempted from the tariff filing requirements under the act; that Canada has no tariff filing requirements; and that the tariff filing requirements of the 1916 act interfere with the ability of common carriers engaged in the U.S. foreign commerce to meet the flexible rotemaking opportunities of the unregulated competitive carriers serving Canada. (Emphasis added).

H.R. 10196 would amend section 18(b)(1) of the 1916 Act as to limit the exemption of lumber from the tariff filing requirements to softwood lumber.

We recommend favorable consideration of the bill.

Ninety-five percent of the lumber exported from the Pacific Northwest is softwood lumber. The exemption, therefore, was sponsored chiefly by members of the industry who are engaged in the exportation of softwood lumber.

We understand that hardwood lumber exporters from the gulf and east coast of the United States have complained to the Federal Maritime Commission that the rates they are able to negotiate for the transportation of lumber to European ports are too high. They evidently believe they would be better off to have stable rates and to know the transportation charges their competitors pay than to have the flexibility to negotiate rates which the exemption of lumber from the tariff filing requirements was intended to provide. (Emphasis added).

S. Rep. No. 873, 89th Cong., 1st Sess. 3-4 (1965).

special permission.¹⁴ The legislative history of the 1916 Act indicates that excepted commodities should not be subject to such statutorily imposed delays in upward price adjustments. Moreover, once a tariff has been filed, a common carrier or conference is specifically prohibited from charging a rate other than that shown in its tariff (46 U.S.C. app. 1709(b)(1)). The voluntary filing of a tariff therefore has a significant impact on the pricing of ocean transportation services.

To the extent that the legislative history suggests that it was the intention of Congress to remove excepted commodities from the restrictions and limitations imposed by the tariff filing machinery, voluntary tariff filing on an excepted commodity may be seen as contrary to the purpose of the Act. Moreover, in light of the specific Congressional directive to the Commission not to regulate excepted commodities in the area of terminal tariffs, it would seem to create an anomaly to interpret the Act so that a voluntarily filed terminal tariff by a carrier or conference could include such commodities. This would apply whether it was a tariff filed by a single common carrier or a tariff filed by a conference.¹⁵ The voluntary filing of a tariff on such a commodity by a single carrier would still frustrate the purpose of the Act inasmuch as such filing would remove the commodity from an

¹⁴ Section 8(d) was modeled after section 18(b)(2) of the 1916 Act. Section 18(b)(2) provided that no change could be made in an existing tariff "... except by the publication, and filing, as aforesaid, of a new tariff or tariffs which shall become effective not earlier than thirty days after the date of publication and filing thereof with the Commission, and each such tariff of tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, charges, classification, rules or regulations as changed are to become effective. . . ." While section 18(b)(2) was clearer that a change in a filed tariff, including one voluntarily filed on an excepted commodity, could be accomplished only by filing and publishing the tariff change and observing applicable requirements, it appears that any change in language between section 18(b)(2) and section 8(d) was stylistic and only intended to simplify the provision. There is nothing in the Act or its legislative history which reveals any intention to make a substantive change.

¹⁵ In issuing its final foreign tariff filing rules the Commission stated that there does not appear to be any legal barrier to allowing the filing of rates and charges on excepted commodities on an optional basis by an individual carrier. 49 FR 45375. Reexamination of this position may be appropriate in light of closer study of the legislative history of section 18 of the 1916 Act. As indicated above, that history suggests that the purpose of a commodity exception is to remove that commodity entirely from the price stabilizing effect of a tariff. Accordingly, the question of whether a single common carrier, as well as a conference of carriers, may voluntarily file a tariff is being addressed in this inquiry.

unregulated market where price increases or decreases would more readily occur.

B. Collective Ratemaking

Section 4(a)(1) of the Act (46 U.S.C. app. 1703(a)(1)) authorizes agreements by or among ocean common carriers to:

... discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service. . . .

Furthermore, under section 4(b)(1) of the Act (46 U.S.C. app. 1703(b)(1)), marine terminal operator agreements are authorized to:

... discuss, fix, or regulate rates or other conditions of service. . . .

In neither case does the Act exclude excepted commodities from the grant of general ratemaking authority.

Nevertheless, Congress' exception of certain commodities from mandatory tariff filing does raise questions as to whether concerted rate action on those commodities was intended, with or without antitrust immunity.¹⁶ As is the case with tariff filing, collective ratemaking on excepted commodities reduces the degree of flexibility of shippers and carriers to negotiate rates because: (1) A shipper must encounter the collective market power of the conference; (2) negotiation of rates is subject to the machinery of conference action; and (3) independent action from a conference rate on an excepted commodity is not mandatory under the 1984 Act. If, again as with tariff filing, Congress' intention was to "deregulate" excepted commodities, then permitting concerted rate fixing on those commodities under authority of the 1984 Act would appear anomalous. Other anomalies arise whenever collective ratemaking on excepted commodities is considered in light of the 1984 Act and its legislative history.

In the case of terminal services, there is the specific Congressional directive in the legislative history of the 1984 Act, to the Commission, not to impose any terminal tariff filing requirements with regard to excepted commodities. Allowing private parties to voluntarily set rates may be inconsistent with this directive.

In the case of conferences of ocean common carriers, ratemaking on excepted commodities creates an

incongruity under the 1984 Act with regard to independent action. The Act states that conferences must provide for independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act. 46 U.S.C. app. 1704(b)(8). However, independent action is not mandated with regard to commodities for which no tariff is required to be filed. If a conference tariff were voluntarily filed on an excepted commodity, it would not be subject to the requirement of independent action. Thus there would be less pricing flexibility on excepted commodities than there would be on tariffed commodities. This would appear to be an illogical result. One means of alleviating this problem, would be to require that any conference which establishes rates on excepted commodities expressly provide that its members may take independent action from those rates. Such a requirement would be consistent with the overall legislative intent of the 1984 Act with respect to independent action.

C. Service Contracts

Section 8(c) of the Act provides express statutory authority for ocean common carriers and conferences to utilize service contracts. Section 8(c) states in relevant part:

An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, each contract entered into under this subsection shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated.

The Act is silent on the question of whether service contracts on excepted commodities may voluntarily be filed. As indicated above, the Commission's tariff rules presently permit such optional filing.

For a number of reasons the concerns which arise in connection with the voluntary filing of tariffs may not be relevant to the voluntary filing of service contracts on excepted commodities. Service contracts by their nature are negotiated between shipper and carrier or conference in an open competitive market. The stability which the contract establishes for its term is mutually agreed to by both parties. In addition, service contracts are expressly recognized by statute for the first time under the 1984 Act. The earlier

legislative history under the 1916 Act with respect to tariff filing may not apply to service contracts.

III. Conclusion

The issues discussed above are significant and complex. We recognize that they may not be susceptible to administrative resolution. However, in order to provide the Commission with the most complete information available and enable it to make an informed judgement in this matter, interested persons are invited to respond to the following specific questions and to comment on the proper treatment of excepted commodities under sections 8(a) and 8(c) of the Shipping Act of 1984.

1. Is it lawful for an ocean common carrier or a conference of such carriers voluntarily to file a tariff with the Federal Maritime Commission covering a commodity which is excepted from mandatory tariff filing under section 8(a) of the Shipping Act of 1984?

2. Is it lawful for a conference, whether or not it has express enabling authority in its agreement, to agree on a rate covering a commodity which is excepted from mandatory tariff filing under section 8(a) of the Shipping Act of 1984?

3. May the Federal Maritime Commission require that a conference, which has agreed to a rate and filed a tariff covering an excepted commodity, allow for a right of independent action as provided for under section 5(b)(8) of the Shipping Act of 1984?

4. Is it lawful for an ocean common carrier or a conference to voluntarily file a service contract which covers an excepted commodity?

By the Commission,
Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 85-6417 Filed 3-15-85; 8:45 am]

BILLING CODE 6730-01-M

46 CFR Part 572

[Docket No. 85-7]

Independent Action; Notice and Meeting Provisions in Conference Agreements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission hereby proposes to amend its regulations governing the filing of agreements submitted to the Commission pursuant to section 5 of the Shipping Act of 1984. This proposed amendment of Part 572 would add new requirements affecting conference

¹⁶ It is not the intention of the Commission here to discuss the antitrust implications of this question or to attempt to interpret the application of federal antitrust laws. Nevertheless, while this inquiry is limited to issues arising under the Shipping Act of 1984, we recognize that the resolution of those issues may have some impact on the scope of antitrust immunity conferred by the Act.

agreement independent action provisions with regard to notice period, single notice, and mandatory meetings. The proposed rule would require conference agreements to establish a maximum allowable notice period, to provide for a single notice to the conference, and to state that a proponent of independent action is not required to attend a meeting for the purpose of explaining the taking of independent action.

DATES: Comments (original and fifteen copies) on or before April 17, 1985.

ADDRESS: Send comments to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW, Washington, D.C. 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Shipping Act of 1984 (46 U.S.C. app. 1701-1720) (the Act or the 1984 Act) requires that each conference agreement must provide for independent action by a conference member on any tariffed rate or service item. Section 5(b)(8) of the Act (46 U.S.C. app. 1704(b)(8)) states that each conference agreement must: provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of this Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item.

Section 5(b)(8) is a crucial element in the overall plan of the 1984 Act. It is clear from the legislative history of the Act that independent action is intended to operate as a counterbalance to the increased economic power which is conferred upon conferences. In order for that counterbalance to be effective and to fulfill its role within the statutory scheme, it is essential that the right of independent action remain unfettered and that it not be limited in any way other than that expressly permitted by the Act. Section 5(b)(8) only allows a conference to require a period of notice, not in excess of 10 days, as a condition for taking independent action. Section 5(b)(8) does not specify any other condition, requirement, or limitation which may be imposed by a conference

upon a member taking independent action (IA).

On May 29, 1984, the Commission issued an Interim Rule governing agreements which, among other things, implemented section 5(b)(8) of the Act by requiring that each conference agreement in existence as of June 18, 1984 adopt certain mandatory provisions, one of which was a mandatory independent action provision (46 CFR 572.801(e), 49 FR 22315). Section 572.801(e) stated that IA may be taken "upon not more than 10 calendar days' notice to the conference," thereby establishing a ceiling or maximum notice period for IA.

On June 14, 1984, in response to emergency comments, section 572.801(e) was modified to permit a conference to fix a specific notice period up to a maximum of 10 days (49 FR 24697). The Commission also modified section 572.801(e) to remove an ambiguity regarding the time period within which the conference shall file the rate or service item in its tariff for use by the member and to make clear that another member may adopt an independent rate or service item at any time following its announcement, effective on or after the effective date announced by the party taking independent action.

On November 15, 1984, the Commission issued its Final Rule governing agreements which deleted the prescribed mandatory conference independent action provision and announced a policy that parties to conference agreements are free to develop their own mandatory provisions in accordance with the requirements of section 5(b) of the Act (46 CFR 572.103(f), 49 FR 45352).

The Commission has now gained additional experience with conference agreement independent action provisions which have been drafted by the parties to the agreement. This has included both new conference agreements filed on or after the June 18, 1984 effective date of the Act, and existing agreements in which the members have substituted their own provisions for the adopted mandatory provisions. While many of the conference-drafted IA articles have fully complied with both the letter and the spirit of section 5(b)(8) of the Act, there have been a number of filings of conference IA articles which have contained provisions which place impermissible conditions or limitations on the exercise of the right of independent action. These provisions have imposed procedural barriers to the exercise of IA which make the exercise of IA more difficult or burdensome or have attached other conditions which

may have a chilling effect on the exercise of IA.

Thus far the Commission has dealt with such provisions on an *ad hoc* basis and has sought their modification informally through the negotiation process. However, the Commission now believes that it is appropriate and timely to further refine the Commission's policy and requirements regarding independent action and to address a number of these restrictions on an industry-wide basis through this proposed rulemaking (Proposed Rule). The Proposed Rule addresses three areas of concern: (1) Conference agreement provisions which require an IA proponent to provide for a minimum notice period and leave open the possibility that an IA proponent may voluntarily provide notice which exceeds the minimum, including the possibility of notice in excess of ten days; (2) conference agreement provisions which require an IA proponent to provide notice not only to the conference but to all other conference members as well; and (3) conference agreement provisions which require an IA proponent to attend a conference meeting or provide additional information prior to the effective date of the IA for the purpose of explaining the proposed independent action and/or reaching a compromise.

The Proposed Rule would establish requirements governing independent action articles but does not contain model language for conference adoption. Thus the Proposed Rule would continue the policy of allowing parties to conference agreements to draft their own IA provisions within, however, the more specific guidelines which would be established by the Proposed Rule.

II. Item-by-Item Discussion of Proposed Section 572.502(a)(4)

A. Section 572.502(a)(4)(i)—Right of Independent Action

Section 572.502(a)(4)(i) merely incorporates into the Proposed Rule the requirement under section 5(b)(8) of the Act that each conference agreement must provide for the right of independent action. The language of this section is substantially the same as that of the current rule which appears at 46 CFR 572.502(a)(4).

B. Section 572.502(a)(4)(ii)—Notice Period

Section 572.502(a)(4)(ii) of the Proposed Rule would require each conference agreement to establish a maximum period of notice of independent action not to exceed 10 calendar days. The Proposed Rule does

not preclude a range of notice. A conference agreement would be permitted to require a minimum period of notice provided that it also established a maximum notice of no more than ten calendar days' notice. Of course, a fixed notice period will continue to be acceptable provided that the fixed period is not more than 10 days. The Proposed Rule therefore would preclude IA articles which only establish a minimum notice period. The Proposed Rule would also preclude a conference member from voluntarily providing more than 10 calendar days' notice to the conference.

The Commission has received for filing and processing a number of modifications of conference agreements which are stated in terms of a required minimum notice period but leave open the possibility that a proponent of independent action may voluntarily give the conference notice which is longer than the required minimum, including the possibility of notice in excess of ten days. Thus far, the Commission has not taken any action against such provisions and a number of conferences contain such language in currently effective agreements. Because it is believed that section 5(b)(8) imposes a maximum notice requirement on both the conference and the individual member, the Commission is now addressing this matter by rule.

Section 5(b)(8) of the Act requires that a conference agreement provide that a member may take independent action "upon not more than 10 calendar days' notice to the conference." This language imposes a limitation on the conference, namely that it may not require a conference member to provide more than 10 calendar days' notice of independent action. The language also places a limitation on the members of the conference by virtue of their required agreement to provide a maximum of 10 days' notice to the conference.

Section 5(b)(8) also requires that the conference include the new independent rate or service item in its tariff for use by the member "effective no later than 10 calendar days after receipt of the notice." This language would appear to impose a limitation on the conference to file the new tariff rate to be effective no more than 10 calendar days after notice by the member. It would also appear that an IA proponent may not voluntarily elect to provide more than 10 days' notice because once notice has been given, the tariff must become effective after no more than 10 calendar days elapse.

Section 5(b)(8) therefore places limitations on both the conference and

its individual members regarding the notice period and the date of effectiveness of the independent rate. Conference provisions which fail to establish maximum or fixed limits for notice and effectiveness and leave open the possibility of an individual member voluntarily providing a longer notice period appear inconsistent with section 5(b)(8).

This interpretation of section 5(b)(8) is supported by the legislative history of the 1984 Act. The House and Senate conferees interpreted the notice provision as follows:

The independent action section 5(b)(8) of the bill requires that each conference agreement provide for independent action on rates or service items required to be filed in a tariff under section 8(a) of the bill. The conferees agree that the notice period to be given to the conference before a member may take independent action cannot be more than ten calendar days.

H.R. Rep. No. 98-600, 98th Cong., 2d Sess. 29 (1984).

At an earlier point in the legislative history, the Judiciary Report addressed the question of notice as follows:

The Committee amendment provides for a right of independent action for any carrier in a conference serving a U.S. trade, but permits the conference to require up to 10 days notice from carriers before exercising that right.

H.R. Rep. No. 98-53, Part 2, 98th Cong., 1st Sess. 27 (1983). H.R. Rep. No. 98-53 further states the bill " * * * requires all conferences to permit independent action upon a maximum of ten days' notice to the conference." For these reasons, the Proposed Rule would require that provisions in conference agreements governing independent action which require notice must establish a maximum length of notice up to 10 calendar days which must be observed by both the conference and the IA proponent.

C. Section 572.502(a)(4)(iii)—Single Notice

Section 572.502(a)(4)(iii) of the Proposed Rule would require each conference agreement to designate a conference official or representative to whom notice of independent action is to be provided. The Proposed Rule would further provide that a conference may not require an IA proponent to notify the other members of the conference of its independent action.

The Commission has received a number of amendments to conference agreements which required a proponent of independent action to notify not only the conference but also all other conference members of the independent rate proposal. Section 5(b)(8), however,

states only that the conference shall receive notice. The Commission, therefore, has treated such a multiple notice provision as inconsistent, on its face, with the language of the Act and has sought appropriate changes in such clauses through the negotiation process. The statute would not appear to allow a conference to place the burden of notifying other members upon the IA proponent or to make it a condition for taking IA. Therefore, the Proposed Rule prohibits any requirement of multiple notice.

D. Section 542.502(a)(4)(iv)—Compulsory Meetings

Section 572.502(a)(4)(iv) of the Proposed Rule would prohibit a conference agreement from requiring an IA proponent to attend a conference meeting, to provide additional information, or to comply with any other procedure for the purpose of explaining, justifying or compromising the proposed independent action. Under the Proposed Rule, the only information which a conference may require of an IA proponent is that which is necessary to accomplish the filing of the independent tariff item. Information concerning the identity of the shipper or consignee may not be made mandatory by the conference. Nor may the conference agreement require any statement of explanation or justification for the proposed independent action.

The Commission has received a number of agreements containing such clauses. The Commission has taken a position that such requirements are not contemplated under section 5(b)(8) and has implemented this policy by negotiating modifications which state that attendance at explanatory meetings may not be mandatory nor is compromise required.

Section 5(b)(8) attaches only one condition to the exercise of independent action by a conference member, namely providing notice up to a maximum of 10 days to the conference. In some cases it is not clear whether the mandatory meeting procedure would have the effect of extending the notice period beyond 10 days. In addition the inclusion of such a provision could subject an IA proponent to an agreement violation should the proponent fail to attend the meeting. Finally, the mandatory meeting may have a chilling effect upon the taking of IA.

E. Section 572.502(a)(4)(v)—Follow-up Independent Action

Section 572.502(a)(4)(v) merely incorporates into the Proposed Rule the requirement of section 5(b)(8) of the Act

regarding the obligation of the conference with respect to follow-up independent action.

F. Section 572.502(a)(4)(vi)—Compliance

Section 572.502(a)(4)(vi) establishes deadlines for compliance with the Proposed Rule by both new agreements filed on or after its effective date and by all other conference agreements.

G. Section 572.202(a)(4)(vii)—Rejection

Section 572.502(a)(4)(vii) provides that any new conference agreement or the modification to an existing conference agreement which does not meet the requirements of § 572.502(a)(4) shall be rejected.

III. Conclusion

For the reasons stated above, the Commission proposes to promulgate a rule that notice periods in conference agreements regarding independent action must establish either a fixed or a maximum amount of notice to be provided to the conference. The Proposed Rule further prohibits any requirement of multiple independent action notice. Finally, the rule prohibits mandatory attendance by an independent action proponent at any meeting called to explain or compromise a proposed independent action.

Based on its experience to date, the requirements of the Proposed Rule address those provisions in conference independent action articles which have caused concern. Independent action is an important element of the 1984 Act and its meaningful exercise must be preserved. If other impermissible restrictions on IA occur, they will be dealt with either on a case-by-case basis or by rule as appropriate. The Commission has considered but rejected at this time the alternative of a mandated model independent action provision. It should be further noted in this regard that the Commission will soon consider inaugurating certain reporting requirements with respect to the exercise of IA which will enable the Commission to monitor and survey its role and effectiveness.

The Federal Maritime Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3)

significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Federal Maritime Commission certifies that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). A copy of the request for OMB review and supporting documentation may be obtained from the Commission's Secretary. Comments on any such information should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20573, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in Part 572

Administrative practice and procedure; Rates and fares; Reporting and recordkeeping requirements.

PART 572—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553 and sections 5, 6, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1704, 1705, 1716), Part 572 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for Part 572 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701-1707.

2. Paragraph (a)(4) of § 572.502 is revised to read:

§ 572.502 Organization of conference and interconference agreements.

(a) * * *

(4) Article 13—Independent Action.

(i) Each conference agreement shall specify the independent action procedures of the conference which shall provide that any conference member may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the Act upon not more than 10 calendar days' notice to the conference and shall

otherwise be in conformance with section 5(b)(8) of the Act.

(ii) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 10 calendar days' notice to the conference.

(iii) Each conference agreement shall indicate to which conference official or single designated representative notice of independent action is to be provided. A conference agreement shall not require notice of independent action to be given by the proposing member to the other parties to the agreement.

(iv) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the filing of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying or compromising the proposed independent action.

(v) A conference agreement shall specify that any new rate or service item proposed by a member under independent action shall be included by the conference in its tariff for use by that member effective no later than 10 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(vi) All new conference agreements filed on or after the effective date of this section shall comply with the requirements of this section. All other conference agreements shall be modified to comply with the requirements of this section no later than 90 days from the effective date of this section.

(vii) Any new conference agreement or the modification to an existing conference agreement which does not comply with the requirements of this section shall be rejected pursuant to § 572.601 of this part.

By the Commission.
Bruce A. Dombrowski,
Assistant Secretary.

[FR Doc. 85-6416 Filed 3-15-85; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 79-144; FCC 85-91]

Biological Effects of Radiofrequency Radiation and the Potential Effects of a Reduction in the Allowable Level of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rule making.

SUMMARY: Proposes to amend § 1.1305(d) of the Commission's Rules implementing the National Environmental Policy Act of 1969 (NEPA). Under NEPA the Commission is required to consider whether its actions have a significant effect on the quality of the human environment. However, NEPA allows for categorical exclusion of certain classes of actions that would not ordinarily have such an effect. The proposed amendment would exclude from consideration under § 1.1305(d) facilities and services that would not ordinarily cause a significant effect with respect to radiofrequency electromagnetic radiation. This amendment is being proposed to minimize the creation of burden on Commission licensees and applicants who might otherwise be required to undergo unnecessary environmental analyses of their facilities and operations.

It is also proposed that shipboard satellite-earth terminals be included in the category of facilities to which § 1.1305(d) applies. This proposal is made in response to comments filed previously in this proceeding indicating a potential health and safety hazard from these facilities. If applications for such facilities are subject to § 1.1305(d) such applications would be treated as "major actions" by the Commission if they would result in human exposure in excess of specified guidelines for radiofrequency radiation.

DATES: Comments must be submitted on or before June 19, 1985. Reply comments must be submitted on or before July 19, 1985.

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

FOR FURTHER INFORMATION CONTACT:

Dr. Robert Cleveland, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7040

Mr. Stephen Klitzman, Office of General Counsel, Federal Communications

Commission, Washington, D.C. 20554, (202) 632-6405

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Environmental impact statements.

Further Notice of Proposed Rule Making

In the matter of responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices and potential effects of a reduction in the allowable level of radiofrequency radiation on FCC authorized communications services and equipment. (Gen. Docket No. 79-144, FCC 85-91).

Adopted: February 26, 1985.

Released: March 14, 1985.

By the Commission:

1. On January 28, 1982, the Federal Communications Commission (FCC) adopted a *Notice of Proposed Rule Making* (NPRM) in the above proceeding.¹ Our NPRM followed a *Notice of Inquiry* (NOI)² initiated by the Commission, in 1979, to provide us with information relevant to potential hazards from radiofrequency (RF) radiation and the FCC's responsibilities to consider such hazards when we license or authorize facilities and equipment.

2. The Commission has today adopted a *Report and Order*³ in this proceeding that amends our rules⁴ implementing the National Environmental Policy Act of 1969 (NEPA).⁵ The amendment provides for environmental analysis of Commission actions that would result in non-compliance with applicable health and safety standards for RF radiation. Our concern is that any significant impact on the human environment with respect to RF radiation should be taken into account as a part of Commission procedures for approving transmitting facilities and operations.

3. The rule amendment adds another category to our list of "major actions" that are subject to our environmental processing procedures. Under this amendment a Commission action granting a construction permit, a license to transmit, or renewal thereof, or a modification in an existing facility, would be a major action if the facility in question would result in noncompliance

with applicable health and safety standards for RF radiation.

4. Our rule amendment provides for Commission reliance on a nongovernment safety standard for RF radiation exposure as a processing guideline.⁶ We believe that the current absence of enforceable federal standards for RF radiation exposure does not excuse us from our legal obligations under NEPA, and the ANSI standard, upon which we will rely, will be used as a triggering mechanism for applications requiring environmental processing.

5. The *Report and Order* stipulates that the ANSI standard will only apply to actions taken by the Commission with respect to the following facilities authorized by the FCC Rules and Regulations: (1) Broadcast facilities authorized under Part 73; (2) broadcast facilities authorized under Part 74 (Subparts A and G only); (3) satellite-earth stations authorized under Part 25; and (4) experimental facilities authorized under Part 5. Based on information received to date in this proceeding we believe there is sufficient evidence that transmitting facilities in these categories could possibly create situations in which applicable safety standards for exposure to RF radiation might be exceeded. Therefore, such sources and facilities will be subject to our rule amendment and possible NEPA processing.

6. We are proposing in this *Further Notice* also to include shipboard-satellite earth stations, authorized under Part 83, Subpart AA, of the FCC Rules and Regulations, in the category of facilities to which this rule amendment would apply. The Radio Officers Union (ROU) of the National Marine Engineers' Beneficial Association, AFL-CIO, submitted comments pertinent to ship-satellite earth stations in their filing before the Commission in response to our NPRM.⁷ According to the ROU, the primary hazard created by this equipment is a result of antennas that are frequently mounted only a few feet above deck level. We believe that the allowed ERP's of these transmitters are high enough so that an analysis of their operation may be warranted, even though the transmitted beams are highly

¹ *Notice of Proposed Rule Making*, General Docket No. 79-144, 47 FR 8214 (1982), 89 F.C.C. 2d 214 (1982). See also 47 FR 10871 (1982) and 47 FR 27384 (1982) (*Correction and Order Extending Time for Filing Comments and Reply Comments*).

² *Notice of Inquiry*, General Docket No. 79-144, 44 FR 37008 (1979), 72 F.C.C. 2d 482 (1979).

³ *Report and Order*, Gen. Docket 79-144, FR (1985).

⁴ 47 CFR 1.1301 et seq.

⁵ 42 U.S.C. 4321 et seq. (1976).

⁶ The non-government standard that we are relying on is "American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz" (ANSI C95.1-1982) of the American National Standards Institute (ANSI), copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., New York, N.Y. 10017. See note 3, *supra*, for further details.

⁷ See *Report and Order*, note 3, *supra*, at para. 44.

directional. There may be reason to be concerned over the possibility of excessive exposure of persons on deck and also of persons standing alongside docked vessels when these transmitters are in operation. However, although the ROU has indicated that a potential hazard already exists with respect to these transmitters, we feel that the establishment of a more complete record on the potential hazards of shipboard transmitters is needed. For example, COMSAT General Corporation filed comments earlier in this proceeding⁸ stating that human exposure from maritime satellite ship terminals should be well below the ANSI standard, an apparent contradiction of ROU's contention. We invite comment on this issue and on our proposal to apply the rule amendment to ship-satellite terminals.

7. With regard to transmitting facilities to which our rule amendment will initially apply, there appears to be sufficient evidence that human exposure in excess of safety standards might occur, thereby having a significant effect on the human environment. However, other types of RF sources authorized by the Commission may not create opportunities for overexposure, and we are, therefore, proposing to categorically exclude these transmitters and facilities from consideration under this rule amendment.⁹ The excluded transmitters would encompass all FCC-regulated RF sources not discussed above. The major excluded transmitters would be land-mobile equipment (both private and common carrier), microwave point-to-point transmitters, amateur radio facilities, aviation and marine stations (other than shipboard-satellite terminals), and low-powered broadcast equipment not listed above. In comments filed previously in this proceeding the Commission was urged to exclude many of these transmitters from the provisions of our rule amendment because of their relatively low power levels, the intermittent nature of their use, or their general inaccessibility. Data submitted generally supported such an exclusion.¹⁰

8. Land-mobile base stations generally operate at relatively low power levels and are not normally accessible to the public. In addition, they transmit

intermittently, rather than continuously, as in the case of a broadcast transmitter. We believe that these factors combine to make it unlikely that human exposure in excess of safety standards would result from the emission of RF energy from these transmitters.

9. Mobile transmitters in the land-mobile services generally operate with power levels even lower than base stations, and, although accessibility may be more of a problem, the intermittent operation of these transmitters serves to mitigate total exposure. It is important to note that portable transmitters with input powers of seven watts or less and operating at frequencies of 300 kHz to 1 GHz are excluded from the ANSI standard due to the opinion of ANSI that such transmitters generally do not cause exposures in excess of the recommended levels.

10. In the case of private and common carrier microwave point-to-point communications equipment, low power (20 watts or less), general inaccessibility, and the high directionality of the transmitted beam make excessive human exposure highly unlikely. Therefore, it seems reasonable to exclude these sources from the provisions of our rule amendment. Other common carrier services would also be excluded because of their relatively low power levels, their general inaccessibility, the intermittent nature of their use, or combinations of the above.

11. For similar reasons, we proposed to exclude the amateur radio service from the provisions of this rule amendment. In comments filed in this proceeding by the American Radio Relay League, evidence was presented that amateur operations, because of their intermittent nature and relatively low power levels, do not normally present a hazard to the public from RF radiation.¹¹

12. This *Further Notice* proposes to exclude from the provisions of the rule adopted today transmitting facilities and sources not specifically included in the amendment to our list of major actions for NEPA purposes. We believe that such transmitters generally do not individually or cumulatively have a "[significant effect on] the quality of the human environment"¹² under normal

operating conditions and can, therefore, be exempted from consideration under the RF radiation amendment to our rules for environmental processing. Although we believe that our proposed exclusions are supportable, we wish to establish a more complete public record before making a final decision. Therefore, the purposes of this *Further Notice* is to request public comment on our proposed exclusion of various radio services from environmental processing with regard to RF radiation hazards.¹³

13. We are proposing that the Note § 1.1305(d) of the FCC rules and Regulations be amended to provide for this categorical exclusion (see Appendix). As previously discussed, we are also proposing to include shipboard-satellite earth stations in the category of facilities to which § 1.1305(d) would apply. Through this *Further Notice* we are soliciting information, comments, opinions, and suggestions regarding our proposals. Comments received in response to this *Further Notice* will be used to determine whether our proposals are supportable and reasonable or whether further revisions in the FCC's rules may be necessary with respect to RF radiation processing issues. Listed below are several specific questions that will indicate the type of information that would be helpful in our deliberations. Although we recognize that some information of this type has already been provided in our NOI and NPRM in this proceeding, there may be more recent data and information that would be useful to us.

14. *Specific Questions.* (a) What typical and "worst case" electric and magnetic field-strength levels occur near RF transmitters in areas that are accessible to the public or to workers? How were these levels determined? How likely is it that people would be exposed at "worst case" levels? Of special interest are: (1) Base stations and mobile stations in the private land-mobile and common carrier services, (2) amateur radio stations, (3) other fixed and mobile transmitters operating at relatively low power levels, and (4) shipboard-satellite earth stations.

(b) What methods are available for predicting typical electric and magnetic field-strength levels in the vicinity of these transmitters, particularly in the

⁸ See NPRM, note 1, *supra*, at para. 51.

⁹ The NEPA guidelines issued by the Council on Environmental Quality permit agencies to exclude categorically from environmental processing those actions "which do not individually or cumulatively have a significant effect on the human environment . . ." 40 CFR 1508.4 (1980).

¹⁰ See *Report and Order*, note 3, *supra*, at para. 45. See also NPRM, note 1, *supra*, at para. 22-35, and 44-50.

¹¹ See NPRM, note 1, *supra*, at paragraphs 26, 50, 181. See also Comments and "Petitions for Expedited Special Relief and Declaratory Ruling," filed by the American Radio Relay League, Inc., as noted in the *Report and Order*, note 3, *supra*, at para. 16 and 45.

¹² See National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (1976), at 4332(2)(c).

¹³ It should be noted that even though we are proposing to exclude a large number of Commission actions from consideration under this rule, the Commission "on its own motion or on motion of any interested person, may determine that the environmental consequences of a particular action are such as to warrant preparation of an environmental impact statement." See § 1.1305(c) of the FCC Rules and Regulations.

near-field where human exposure might occur? Can field-strength levels be approximated by simple calculations or nomograms?

(c) What measurement equipment and procedures are available for determining typical field-strength levels around such transmitters, and how accurate are these measurements?

(d) Determination of compliance with time-averaged standards is dependent on a knowledge of the duty factor, i.e., the typical fraction or percentage of time that the equipment is actually transmitting. What are typical duty factors for land-mobile and other transmitters, particularly mobile units, and how can duty factors best be estimated to determine compliance with health and safety standards for RF radiation?

(e) Measurements reported by the Environmental Protection Agency and the National Bureau of Standards have indicated that electric field strength levels inside and outside of vehicles with roof-mounted land-mobile antennas could conceivably exceed the ANSI recommended limits.¹⁴ Are such field-strength levels typical for routine operations, and, if so, what measures could be taken to reduce them?

(f) Section 4.2 of the ANSI protection guides provides that at frequencies between 300 kHz and 100 GHz, "the protection guides may be exceeded if the exposure conditions can be shown by laboratory procedures to produce specific absorption rates (SARs) below 0.4 W/kg as averaged over the whole body, and spatial peak SAR values below 8 W/kg as averaged over any one gram of tissue." A recent report¹⁵ on human absorption of RF energy from vehicle-mounted cellular radio antennas concluded that, "the mobile-antenna system can be operated safely . . . with in the guidelines of the ANSI exclusion

clause for input powers up to 35 W." In view of the fact that § 90.635(d) of the FCC Rules and Regulations allow 800 MHz mobile station output powers of up to 100 watts, what is the likelihood that such stations would cause human absorption of RF energy in excess of the ANSI limits?

(g) Would it be feasible for manufacturers of transmitting equipment to provide information to users on how best to ensure compliance with relevant RF safety standards? If so, should this be required of all manufacturers of such equipment, and should the Commission consider such information as part of our equipment authorization procedures?

(h) How can access to land-mobile transmitters, particularly mobile units, best be controlled to minimize risk, if any, to users and to the public? Are there mounting or design modifications that can reduce ambient RF fields around vehicle-mounted antennas?

(i) We are proposing to include shipboard-satellite earth stations, authorized under Part 83, Subpart AA, of the FCC Rules and Regulations, in the category of facilities to which § 1.1305(d) would apply. Is this inclusion justifiable, and is there, indeed, cause for concern over potential hazards from these transmitters? What about other types of shipboard RF sources such as radar and HF antennas? Please provide data and specific evidence to support your comments.

(j) Are there transmitters or transmitting facilities that our proposal would exclude from NEPA processing that could, in fact, result in human exposure in excess of the ANSI guidelines during routine use? If so, please explain and include supportive data or evidence.

15. Comments received in response to this *Further Notice* will be used to evaluate the above issues and to determine whether the Commission's proposal will enable the FCC to best meet its responsibilities under NEPA with regard to assessing the environmental effects of RF radiation. Information developed in this proceeding will also enable us to assist other government agencies that may be developing standards or recommendations in this area. Comments are invited from manufacturers, industry users and associations, unions and labor organizations, consumers, Commission licensees in any service, other government agencies, and all other interested parties.

Ex-Parte Presentations

For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex-parte* contacts are permitted from the time of issuance of a notice of proposed rule making until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex-parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex-parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex-parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex-parte* presentation discussed above must state on its face that the Secretary has been served and must also state by docket number the proceeding to which it relates. See generally, 1.1201 *et seq.* of the Commission's rules, 47 CFR 1.1201 *et seq.*

Regulatory Flexibility Act Final Analysis¹⁶

A. Reason for Action

This Commission has considered comments received in response to its *Notice of Proposed Rule Making* in Docket 79-144. The comments received generally support the view that a clarification of Commission responsibilities is required to avoid confusion among those entities regulated by the Commission regarding their own responsibilities with respect to potential hazards of radiofrequency (RF) radiation. Furthermore, the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* (1976), requires the Commission to consider whether the facilities and operations it licenses and approves will significantly affect "the quality of the human environment." For these reasons, we are amending our rules implementing

¹⁴ See (1) Lambdin, D.L., "An Investigation of Energy Densities in the Vicinity of Vehicles with Mobile Communications Equipment and Near a Hand-held Walkie-Talkie," U.S. Environmental Protection Agency, Report No. ORP/EAD 79-2, March 1979; (2) Adams, J.W., et al., "Electromagnetic Interference ((EMI) Radiative Measurements for Automobile Application," U.S. Department of Commerce, National Bureau of Standards, NBS Technical Note 1014, June 1979. Copies of these two reports have been inserted into the record of General Docket 79-144.

¹⁵ See Guy, A.W. and C.K. Chou, "Impact of the RF Radiation Controversy on Cellular Mobile Telecommunications Systems," p. II-7 to II-17, Proceedings, International Congress on Transportation Electronics, October 22-24, 1984, sponsored by the Vehicular Technology Society—Institute of Electrical and Electronics Engineers, Inc. and Society of Automotive Engineers. IEEE catalog number: 84CH1968-5. Library of Congress Catalog Card Number: 83-83036. A copy of this article has been inserted into the record of General Docket 79-144.

¹⁶ This analysis is made pursuant to the provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 603.

NEPA to address situations involving noncompliance with standards for exposure to RF radiation.

This *Further Notice* has two parts. First, it proposes to exclude certain categories of transmitting facilities and operations from environmental processing with regard to RF radiation because of the lack of evidence that they would significantly affect the quality of the human environment. Second, the *Notice* proposes including another category of facilities to which the rule amendment applies because of evidence that it could potentially have a significant effect on the environment due to the emission of RF radiation.

B. The Objective

The Commission is amending its rules implementing NEPA in order to clarify its policy with regard to potential hazards from RF radiation emitted by transmitting facilities that we license or authorize and to comply with our legal obligations under NEPA. The objective of this *Further Notice* is to limit environmental processing under our rules only to those facilities and operations which could potentially have a significant effect on the human environment due to RF radiation.

C. Legal Basis

This *Notice* and the accompanying *Report and Order* result from obligations imposed on the Commission by NEPA, *supra*, and are in furtherance of sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r) (1978). These provisions permit the Commission to make rules and regulations not inconsistent with other existing laws, "as may be necessary in the execution of its functions," and "to carry out the provisions of" the Communications Act.

D. Description, Potential Impact and Number of Small Entities Affected

It is expected that there will be no significant impact on most small entities that the FCC regulates because the primary purpose of this *Notice* is to exclude from environmental processing small entities that would not significantly affect the human environment due to the emission of RF radiation. Small entities that may be in violation of present or future health and safety standards for RF radiation could be affected because of corrective actions that might be necessary to bring them into compliance. However, we believe that the great majority of the facilities licensed or authorized by the Commission will be in compliance with the indicated radiation guidelines.

E. Recording, Recordkeeping, and Other Compliance Requirements

No specific record-keeping requirements would be required by our proposals. Furthermore, because this *Notice* proposes to exclude many applicants from environmental processing with respect to RF radiation, no compliance requirements would be instituted with regard to such operations and facilities. Applicants for shipboard-satellite terminal construction permits, licenses, renewals, and facility modifications may be expected to show compliance with an RF radiation exposure standard in the future as a result of this *Notice*. However, such a showing could be provided through applicable FCC forms which will be modified to incorporate a question on environmental impact.

F. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules

There are none of which we are aware. This *Notice* and the accompanying *Report and Order* are designed to bring our rules into compliance with the provisions of NEPA, as well as to inform our regulatees what the Commission expects of them with regard to RF radiation exposure. We are pointing to existing or future standards and regulations which may apply to our regulatees, and no overlap or duplication is foreseen.

G. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With the Stated Objective

Because of our legal obligations under NEPA, we believe it necessary to amend our rules to address the environmental impact of RF radiation emitted from transmitting facilities we authorize. We see no reasonable alternative to this action, and our proposed categorical exclusion of certain transmitting facilities and operations minimizes impact on small entities to the greatest extent feasible.

Accordingly, it is ordered that, pursuant to the provisions of sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), and section 553 of the Administrative Procedure Act, 5 U.S.C. 553, there is hereby instituted a *Further Notice of Proposed Rule Making* in this proceeding.

It is further ordered that all interested persons may file comments on the matters discussed in this notice on or before June 19, 1985. Reply comments shall be filed on or before July 19, 1985. In accordance with § 1.419 of the

Commission rules, 47 CFR 1.419, an original and five (5) copies of all filings shall be furnished to the Commission. Copies of comments and reply comments filed in this proceeding will be available for public inspection during regular business hours in the Commission's reference room at 1919 M Street, NW., Washington, DC 20554.

For further information concerning this proceeding contact Dr. Robert Cleveland, Office of Science and Technology, (202) 632-7040, or Mr. Stephen Klitzman, Office of General Counsel, (202) 632-6405.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix

PART 1—[AMENDED]

It is proposed to amend Subpart I, Part 1, Chapter 1 of title 47 of the code of Federal Regulations by changing the Note following § 1.1305(d) to read as follows:

§ 1.1305 [Amended]

* * * * *

(d) * * *
Note.—The provisions of paragraph (d) shall only apply to facilities and services licensed or authorized under Parts 5, 25, 73, 74 (Subparts A and G only), and 83 (Subpart AA only) of the FCC Rules and Regulations. Facilities and services licensed or authorized under all other Parts or Subparts of the FCC Rules and Regulations shall be excluded from consideration under paragraph (d), unless such exclusion is superseded by actions taken by the Commission under the provisions of paragraph (c) of this section.

[FR Doc. 85-6436 Filed 3-15-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-41; RM-4864; FCC 85-73]

Television Table of Assignments to Change Noncommercial Educational Reservations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Commission's Rules to establish a procedure to modify the licenses of commercial and noncommercial educational television stations and to switch the educational channel reservation pursuant to exchange agreements in the course of

rule making proceedings in response to a *Petition for Rule Making* filed by Northwest Indian Broadcasting, Inc., by Great Lakes Broadcasting, Inc., and by Metrowest Corporation.

DATE: Comments must be filed on or before April 8, 1985, and reply comments must be filed on or before April 23, 1985.

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

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television Broadcasting.

Notice of Proposed Rule Making

In the matter of amendments to the television table of assignments to change noncommercial educational reservations (MM Docket No. 85-41; RM-4864).

Adopted: February 14, 1985.

Released: March 8, 1985.

By the Commission.

Introduction

1. Before the Commission is a petition for rule making filed September 14, 1984, by Northwest Indian Broadcasting, Inc., by Great Lakes Broadcasting, Inc., and by Metrowest Corporation ("petitioners"). Petitioners request that the Commission amend its Rules to provide a procedure whereby licensees¹ of commercial and noncommercial educational television stations licensed to the same community could exchange channels and have the TV Table of Assignments amended without opening the subject channels to application by third parties. Petitioners propose that the procedure be limited to situations where the channels are assigned to the same community, where the affected licensees have either requested or specifically consented to the changes, and where there is no resulting reduction in the number of commercial or noncommercial channels assigned to the affected communities. The National Association of Public Television Stations filed comments supporting the petition.

2. According to the petition, the permittee of Channel 50, Gary, Indiana and the permittee of Channel 56, Gary, would exchange channels, and the reservation would be switched from Channel 50 to Channel 56. As a result, the commercial operation on Channel 50 would be able to locate its transmitter on the Sears Tower in Chicago, Illinois, something it could not do on Channel 56

due to a short-spacing problem. In return, the noncommercial operator on Channel 56 would receive funding to construct its facility. Since the noncommercial operator on Channel 56 intends to serve northwestern Indiana and does not intend to compete in the commercial programming market, it is said that the site restriction would not adversely affect its interest.

3. Petitioners state that exchanges of channels between commercial and noncommercial licensees in the same community were originally effectuated through rule making proceedings but that our decision in *Cheyenne, Wyoming*² created a "dangerous procedural gauntlet" by allowing third parties to file expressions of interest in applying for newly allotted channels. Petitioners justify their claim by pointing out that recently such a proposal was withdrawn when an outside party expressed an interest in the channel proposed to be dereserved,³ citing *Tulsa, Oklahoma*, 53 RR 2d 1366 (1983). According to petitioners, since the Commission allowed withdrawal of the rule making request in that case, it declined to decide whether its *Cheyenne* doctrine was applicable, and petitioners know of no similar subsequent requests.

4. Petitioners contend that an agreement between a commercial and a noncommercial licensee to exchange channels can serve the public interest and that the Commission has acknowledged the benefits of improved service in such cases. According to petitioners, Commission precedent indicates that the issue for determination in the context of proposed exchanges is not whether reservation or dereservation of specific channels is in the public interest. Rather, they maintain that the issue is whether the specific terms of an exchange agreement provide sufficient public interest benefits to support approval of an entire proposal and that an examination of that issue is, in substance, no different than the Commission's statutory responsibility to examine a proposal to exchange channels by two commercial licensees in the same community. Accordingly, petitioners argue that it is illogical to employ a rule making procedure rather than the application

process merely because one party operates on a reserved channel.

5. Petitioners contend that adoption of their limited proposal will both eliminate a "difficult procedural area" and facilitate operation of the marketplace. According to petitioners, commercial licensees with significant financial resources might consider providing funding and/or other assets to noncommercial licensees in order to secure such things as a new transmitter site or to be able to provide greater coverage or eliminate interference. They assert that adoption of their limited proposal to provide for "editorial amendments" to the Television Table of Assignments, § 73.606(b) of the Rules, would also enable all parties to examine exchange proposals in the context of the market, since it is logical to assume that licensees will agree to modify their facilities only if their services will be improved, and since it is also logical to assume that reliance on market considerations will also serve the public interest.

6. Finally, petitioners argue that their proposal is consistent with the Commission's recent decision in MM Docket No. 83-1148, *Modification of FM and Television Station Licenses*, 49 FR 34007, published August 28, 1984, wherein the Commission recognized the need to encourage its broadcast licensees to upgrade their facilities by reducing costs and risks associated with comparative application proceedings.⁴ According to petitioners, adopting an "editorial approach" to noncommercial reservation changes here would be consistent with that recent action, because it would also encourage licensees to upgrade. Licensees could adjust their facilities in response to the dictates of competition and not be subject to the "artificial barrier" of another party filing a competing application. Noting that the Commission was aware that the procedure adopted in Docket No. 83-1148 would reduce burdens on its own resources, petitioners claim that their proposal involves similar considerations. They argue that established procedures for examining assignment applications provide an "efficient and thorough" context for examining proposals to switch channels and reservations without unnecessarily involving rule

² In *Cheyenne, Wyoming*, 62 FCC 2d 63 (1976), the Commission ruled that the license of a station operator seeking to upgrade to a higher class of channel could not be modified to specify operation on a newly assigned higher class without affording other interested parties the opportunity to apply.

³ As used herein, "reserved" means that the affected channel is available exclusively for noncommercial educational use. "Dereserved" means the lifting of such restrictions.

⁴ In that proceeding the Commission amended the Rules to provide for modification of FM and television licenses where, in the course of rule making proceedings, other interests in proposed channels are expressed, provided at least one additional equivalent channel is made available to accommodate other expressions of interest.

¹ For convenience, the term "licensee" herein refers to both a television licensee and permittee.

making proceedings in what are substantially routine processing matters.

Discussion

7. The Commission proposes to amend Part 1 of its Rules and Regulations by adding a new § 1.420(h) as set forth in the Appendix to this *Notice of Proposed Rule Making*. This new section would permit the Commission to modify the licenses of commercial and noncommercial educational television stations under circumstances where the licensees agree to exchange channel assignments and where such an agreement is found to serve the public interest, convenience and necessity. In such situations, an existing commercial license could be modified to specify operation on a channel previously reserved for noncommercial educational use, and an existing noncommercial educational license could be modified to specify operation on the channel which was unreserved, both without opening the affected channels to application by third parties. Procedurally, such modifications could be accomplished in two alternative ways—(1) as petitioners suggest, by an "editorial approach" using an application process or (2) in the course of rule making proceedings upon a determination of sufficient public interest benefits.

8. Our initial view is that we have the legal authority to amend the Rules as proposed herein and that there are sound policy reasons to do so. Under *Ashbacker*,⁵ the Commission may not grant one of two mutually exclusive applications for station licenses without affording the competing applicants the statutory right to a comparative hearing.⁶ This principle does not appear to be controlling in connection with channel exchanges between commercial and noncommercial licensees accompanied by switches in educational reservations when such exchanges are accomplished pursuant to rule makings and found to serve the public interest, convenience and necessity. Section 316 of the Act provides that the Commission may modify a broadcast license under such circumstances. The Commission wishes to explore whether the private parties involved should be given the flexibility to enter into agreements to exchange channels made between commercial and noncommercial educational licensees which might provide substantial public interests benefits. Further, there appear to be additional strong policy reasons for

avoiding an *Ashbacker*-type comparative hearing in this context. Even the mere possibility of such a hearing could discourage licensees from entering into exchange agreements that could significantly promote the public interest by making possible a substantially improved noncommercial educational broadcast service.⁷ Given the public benefits that could accrue, we do not believe that the switch of an educational channel designation between two incumbent licensees should cause either license to be placed at risk, if and when these agreements are seen as being in the public interest generally.⁸

9. Despite the hearing requirements of *Ashbacker*, the law is clear that the Commission may promulgate rules limiting applicants' eligibility to apply for channels if, in the Commission's judgment, such action will promote the public interest, convenience and necessity. *Storer Broadcasting v. F.C.C.*, 351 U.S. 192 (1956); *Malrite of New York, Inc., F.C.C.* 84-338, released July 31, 1984. Applications violating such eligibility requirements may be dismissed without a hearing. Our tentative view is that agreements to exchange channels made between commercial and noncommercial educational station licensees may provide substantial public interest benefits that outweigh the benefits of entertaining competing applications.⁹

⁵ See, e.g., *Tulsa, Oklahoma*, *supra*.

⁶ We note that under existing rules, broadcast licensees may agree to sell, assign, or otherwise transfer their broadcast assets, including their licenses. Although a license transfer pursuant to such an agreement is subject to Commission approval, in examining transfer requests the Commission is specifically prohibited by the terms of section 310(d) of the Communications Act from considering whether a transfer or assignment to a party other than the proposed transferee or assignee would better serve the public interest. In a situation involving channel exchanges between commercial and noncommercial television licensees, we similarly do not at this point believe that other parties should be heard to argue that they are entitled to compete for the affected channels. The policy which underlies section 310(d) is sufficiently analogous to our proposal that we believe expressions of interest by other parties need not be entertained.

⁷ Some subsequent cases interpreting *Ashbacker* have suggested that its holding implicitly addresses whether the Commission must entertain competing applications when significant modifications are made to a broadcast facility. See *Rhode Island Television Corporation v. F.C.C.*, 320 F.2d 762, 766 (D.C. Cir. 1963); *Community Telecasting Co. v. F.C.C.*, 255 F.2d 891, 893 (D.C. Cir. 1958); See also *New South Media Corp. v. F.C.C.*, 685 F.2d 708, 714-715 (D.C. Cir. 1982). The gist of these "spirit of *Ashbacker*" decisions is a view that "comparative consideration by the Commission and competition between the applicants is the process most likely to serve the public." *Community Broadcasting Co. v. F.C.C.*, 274 F.2d 753, 758-59. (D.C. Cir. 1960). For the reasons set forth herein, we believe that, even if this

Therefore, with this *Notice* we consider enacting a rule providing that when such an exchange is proposed, we will only consider the petition of the affected licensees and the comments of interested parties to determine the public interest in the proposed agreement to exchange channels. Because one channel will need to be dereserved, while another reserved, we would permit these exchanges to be accomplished in the context of a rule making proceeding to amend the Table.

10. Although the Commission's general channel assignment policy is not to permit channel exchanges merely because a claim is presented that one channel is superior to another, a channel exchange of the sort suggested has been permitted in light of a significant public interest showing. For example, in *San Francisco and San Mateo, California*, 68 FCC 2d 860 (1979), the Commission permitted an exchange of channels between San Francisco and San Mateo, California, switched the reservation from Channel 14 to Channel 60 in San Mateo, making Channel 14 available for commercial use in San Francisco, and modified the licenses to specify operation on the reassigned channels. The Commission took this action despite opposition from the licensee of Channel 20, San Francisco, which claimed that it would suffer adverse competition from another Spanish-language station on Channel 14. The Commission in that case also indicated that it saw no significance in the fact that an alternative offer from the operator of Channel 20 was not accepted. Although the Commission permitted other expressions of interest in the affected channels, none were received. In support of its action, the Commission noted that the proposed exchange agreement could result in substantial public interest benefits. Specifically, the educational licensee in San Mateo would be able to considerably improve its coverage, because it would be able to utilize approximately \$450,000 worth of equipment it would receive from the other licensee, while the latter would be able to provide improved coverage to an important segment of its Spanish-speaking audience. It would appear that other noncommercial stations and their audiences should be able to benefit from similar arrangements in the future and that agreements with commercial television licensees may now be of

interpretation of *Ashbacker* were required, these cases are not controlling in connection with channel exchanges between commercial and noncommercial licensees accompanied by switches in educational reservations.

⁵ *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327 (1945).

⁶ See section 309 of the Communications Act of 1934, as amended.

greater public interest value, especially in light of anticipated reductions of government funding.¹⁰

11. In addition, we note that the Commission encourages its licensees to upgrade their facilities and quality of service. In this regard, the proposal herein is consistent with recent action in *Modification of FM and Television Licenses*, *supra*. A commercial UHF licensee agreeing to exchange a channel with a noncommercial VHF operator could expect to significantly enhance its competitive posture. The noncommercial operator might determine that its switch to UHF operation would likely result in little, if any, audience erosion due to the unique nature of its programming and its availability only on its station. Such exchanges may be particularly advantageous for existing UHF independent stations seeking competitive comparability where affiliate stations now occupy all commercially available VHF channels. See *Memorandum Opinion and Order in General Docket No. 83-1009*, 50 FR 4666, paragraph 22 (February 1, 1985). In addition, the noncommercial VHF licensee could expect to receive needed financial resources and/or equipment and other assets from the commercial licensee in return for their agreement to exchange channels.¹¹ This would enable the educational licensee to upgrade and maintain equipment and facilities and to enhance and sustain worthy programming. In some instances, such support might make possible commencement of public broadcast services which would otherwise be postponed or cancelled. Both commercial and noncommercial licensees could significantly improve service to their audiences. It would appear that both commercial and noncommercial licensees can and would bargain in order to secure the most favorable terms possible to improve their operations.

12. In the context of exchange agreements accompanied by requests for reservation switches, the Commission proposes to make a public

interest determination on the basis of the circumstances of each such proposal. Since the Commission would examine the terms of each exchange agreement in a rule making proceeding, other parties could comment on the public interest benefits of the specific proposals. Such findings could be based on diverse public interest considerations, as exemplified by the case noted in paragraph 10, and would require information on predicted losses and gains in the respective coverage areas of the affected stations. In considering these comments, however, it is not envisioned that the Commission would determine that the proposal lacked the requisite public interest benefits because some other person could have entered into a better agreement, or because the proposal could increase competition in a given market. Rather, it would be incumbent on opposing commenters to show that the proposal before the Commission did not serve the public interest.

13. The Commission proposes that action pursuant to and in furtherance of channel exchange agreements be accomplished in the context of individual rule making proceedings. We note petitioners' proposal that the Commission adopt a procedure that would permit the modification of the noncommercial reservation for existing television channel allocations by "editorial amendment" when the changes are requested by permittees or licensees seeking to exchange channels.¹² We invite comment on this

¹⁰ See paragraph 5, *supra*. Under petitioners' proposal, the procedure for making the public interest determination would be an application process pursuant to Section 308. Petitioners suggest that the application stage is the appropriate context in which to examine the public interest benefits from exchange agreements. They believe that adjudicatory procedures could be used, if necessary, to resolve public interest questions raised by the proposals without placing facilities involved automatically in jeopardy. In this regard, and pursuant to section 309(d)(1), any interested party may file a petition to deny indicating why a grant of an application may be contrary to the public interest. As applications for modifications are filed pursuant to section 309(b), they must set forth facts pertaining to citizenship, character, financial, technical and other qualifications as the Commission requires. It is not envisioned that the Commission would review the general qualifications of the applicants as would be required if a petition to deny were filed raising this issue, because the parties involved in the exchange agreements are current licensees. Rather, we propose to modify the subject licensees under section 316 wherein the Commission could consider technical matters as well as other public interest concerns that are raised. We specifically invite comment on the legality of using section 316 rather than section 309 procedures to implement the contemplated exchange proposals.

¹¹ The Commission believes that agreements by which commercial television licensees compensate noncommercial licensees for channel exchanges may likely benefit not only both licensees but, more importantly, the public served by them.

¹² We propose here to require that all funds raised through these arrangements be expended by noncommercial broadcasters solely to improve or maintain public broadcast programming or facilities or otherwise support their broadcast operations. See *Second Report and Order in BC Docket No. 21136*, 86 FCC 2d 141 (1981). See also paragraph 14, *infra*, where we seek comment on whether to require public broadcasters who exchange their channels to share a portion of any funds received with other public broadcast stations.

and other alternative approaches in connection with this proceeding.

Request for Comments

14. The Commission requests comments concerning the proposal to amend its Rules as set forth herein. Commenters are invited to address issues regarding the Commission's authority to adopt a rule providing for a procedure whereby television channel exchanges between commercial and noncommercial licensees along with appropriate license modifications and reservation switches may be considered in the context of rule making proceedings without permitting application by third parties. Comments are requested concerning the public interest benefits which would result from adoption of the proposal and the public interest showings underlying specific exchange agreements. We also seek comment on whether it would be appropriate to require those public stations that benefit from an exchange of facilities to share a percentage of any funds received with other public broadcast stations, for example by a cash contribution to a national program fund. The Commission further requests comments concerning variations of the proposed rule. For example, comments are requested as to whether the proposed rule should encompass only operating stations or should also include permittees (either commercial or noncommercial) that have not yet constructed facilities. In addition, the Commission seeks comments on whether the proposed rule should also encompass requests from permittees or licensees who are licensed to different communities but who serve the same market.¹³

Regulatory Flexibility Act Initial Analysis

15.

I. Reason for Action

This action derives from the Petition for Rule Making noted above. In this proceeding, we seek to develop a record and to elicit comments on a proposed rule. The proposed rule is designed to improve service to the public.

II

(a) *Objective.* This proceeding will elicit comments on the public interest benefits and costs of the proposed rule change in accordance with fulfilling the mandate of section 309(a) of the

¹³ Proposals as to an appropriate definition of "market" in this context are elicited.

Communications Act of 1934, as amended.

(b) *Legal Basis.* The legal basis for eliciting comments on this proposed rule is found in sections 4(i) and 303(r) of the Communications Act.

III. Description, Potential Impact and Number of Small Facilities Affected

The ability of noncommercial educational television licensees to obtain financial resources and other valuable consideration from commercial television licensees through channel exchange agreements would be enhanced. Commercial television licensees would be able to obtain valuable channels in return.

IV. Recording, Record Keeping and other Compliance Requirements

There is no additional impact.

V. Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rules

There is no overlap, duplication, or conflict.

VI. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives

There is no significant alternative.

Filing Responses to this Notice

16. Authority for this proposed rule making is contained in sections 1, 3, 4 (i) and (j), 303, 307(b), 309 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-609.

17. Pursuant to § 1.410 and 1.415 of the Commission's Rules, interest parties may file comments on or before April 8, 1985, and reply comments on or before April 23, 1985. All relevant and timely comments will be considered. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

Other Matters

18. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the

matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who makes an *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation, and that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served and must also state by docket number the proceeding to which it relates. See 47 CFR 1.1231.

19. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of the proposed rule on small entities. Written public comments are requested on the IRFA. The comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.* (1981).

20. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

For further information on this proceeding, contact Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended. Federal Communications Commission. 1066, 1082; 47 U.S.C. 154, 305)

William J. Tricarico,
Secretary.

Appendix

It is proposed to amend 47 CFR 1.420 by adding new paragraph (h) to read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM, Television or Air-Ground Table of Assignments.

(h) When two (or more) licensees (or permittees) of television broadcast stations jointly petition to amend § 73.606(b) to exchange frequencies, and one of the licensees (or permittees) operates on a commercial frequency while the other operates on a reserved noncommercial educational frequency, and both stations serve substantially the same market, then the Commission may modify the licenses (or permits) of the petitioners to specify operation on the appropriate channel and delete the noncommercial educational reservation from one channel and reserve the other. The Commission shall modify the licenses (or permits) and amend § 73.606(b) only upon a finding that such action will promote the public interest, convenience, and necessity.

[FR Doc. 85-6437 Filed 3-15-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 84-874]

Implementation of the 1900-2000 kHz Frequency Band in the Radiolocation Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The FCC is extending the time for submission of reply comments in this Docket concerning the implementation of the 1900-2000 kHz frequency band in the Radiolocation Service. The Commission has taken this action in order to give all interested parties additional opportunity to comment and to assure a complete record in this proceeding.

DATE: Reply comments are now due by April 2, 1985.

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

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

Order Extending Reply Comment Period

In the matter of amendment of Part 90 of the commission's rules to implement the 1900-2000 kHz frequency band in the radiolocation service; PR Docket No. 84-874.

Adopted: March 6, 1985.

Released: March 11, 1985.

By the Chief, Private Radio Bureau.

1. On September 5, 1984, the Commission adopted a Notice of Proposed Rule Making in the above captioned matter. The Notice was released on September 11, 1984, and appeared in the *Federal Register*, 49 FR 36526, on September 18, 1984. The American Radio Relay League requested and was granted an extension of time for submitting comments and reply comments. Comments were due by January 24, 1985, and reply comments were due by March 11, 1985.

2. On February 15, 1985, the Quarter Century Wireless Association (QCWA) submitted a request for an extension of time for filing reply comments in this proceeding. The QCWA, an organization consisting of approximately 10,000 amateur radio operators who have been licensed for 25 years or more, is having a semi-annual board of directors meeting on March the 15th and 16th, 1985. The QCWA stated that they wished to review the comments at this meeting in order to prepare reply comments, but

that the deadline of March 11, 1985 prohibited this plan. To allow ample time for the QCWA board of directors to review and prepare replies, they requested a three week extension of the reply comment period.

3. We have reviewed the request by the QCWA for an extension of time to prepare reply comments. We find their request has merit and, to ensure that we have a complete record in this proceeding on which to base our decision, we are extending the reply comment period.

4. Accordingly, it is ordered, pursuant to the authority set forth in Section 0.331 of the Commission's Rules and Regulations, that interested parties will have until April 2, 1985 to file reply comments in this proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Robert S. Foosaner,
Chief, Private Radio Bureau.

[FR Doc. 85-6434 Filed 3-15-85; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1171

(Ex Parte No. 55 (Sub-62))

Applications for Certificates of Registration for Certain Foreign Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Correction to notice of proposed rules.

SUMMARY: At 50 FR 9298, March 7, 1985 (decision served March 6, 1985, and published in the ICC Register on March 7, 1985, at page 6) the Commission proposed rules for foreign carriers to use when applying for new certificates of registration. The certificates are required by the Motor Carrier Safety Act of 1984. Those proposed rules contained an inadvertent error, which this notice corrects.

FOR FURTHER INFORMATION CONTACT:

Joseph B. O'Malley, (202) 275-7928

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: At 50 FR 9300, proposed § 1171.5 is corrected by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

At 50 FR 9299 correct the decided date to read March 6, 1985.

Dated: March 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-6334 Filed 3-15-85; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 50, No. 52

Monday, March 18, 1985

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with § 800.6(d)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (38 CFR Part 800), that the Advisory Council on Historic Preservation will meet in the West Conference Room, Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington D.C., on Thursday, April 4, 1985.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the Chairman of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The Agenda for the meeting includes the following:

Thursday, April 4, 1985
West Conference Room
Old Post Office Building
1100 Pennsylvania Avenue, NW
Washington, D.C.
9:30 a.m.
Call to Order
Chairman's Welcome

Consideration of the Minutes of the February 15, 1985, Meeting

- I. Report of the Executive Director
- II. Report of the Regulations Task Force
- Recess for Lunch—12:30 p.m.
- III. Report of the General Counsel
- IV. Report of the Office of Cultural Resource Preservation
- VI. New Business

DATE: The meeting will begin at 9:30 a.m., Thursday, April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW, Suite 809, Washington, D.C. 20004, 202-786-0503

Dated: March 13, 1985.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 85-6431 Filed 3-15-85; 8:45 am]
BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

List of Warehouses and Availability of List of Cancellations and/or Terminations

March 13, 1985.

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Publication of List of Warehouses Licensed Under the U.S. Warehouse Act and Availability of List of Cancellations and/or Terminations Occurring During Calendar Year 1984.

Notice is hereby given that the Agricultural Stabilization and Conservation Service has published a list of warehouses licensed under the U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1984, as required by section 26 of that Act. Also available is a list of cancellations and/or terminations that occurred during calendar year 1984. A copy of the list of warehouses as of December 31, 1984, will be distributed to all licensed warehousemen. Other interested parties may obtain a copy of either list from: Mrs. Judy Fry, Warehouse Division—ASCS, Warehouse Licensing Branch, U.S. Department of Agriculture, Room 5968—South Agriculture Bldg.,

Washington, D.C. 20013, Phone: 202-447-3821.

Signed at Washington, D.C.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-6319 Filed 3-15-85; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Jefferson-Patterson Park & Museum Critical Area Treatment Measure; Calvert County, MD

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Jefferson-Patterson Park & Museum Critical Area Treatment Measure, Calvert County, Maryland.

FOR FURTHER INFORMATION CONTACT:

Mr. Pearl S. Reed, State Conservationist, Soil Conservation Service, 4321 Hartwick Road, College Park, Maryland 20740, telephone 301-344-4180.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that this project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Pearl S. Reed, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The measure concerns a plan to control erosion along 3,000 linear feet of shoreline on the Patuxent River. The planned works of improvement include vegetative stabilization of eroding areas with smooth cordgrass (*Spartina alterniflora*) and saltmeadow cordgrass (*S. patens*) along 2,000 linear feet of low-energy shoreline, and placement of rock riprap at the toe of the slope in high-

energy areas (1,000 linear feet). Installation of both structural and nonstructural practices will also include grading, shaping, backfilling, liming, fertilizing, mulching, and seeding with Kentucky 31 tall fescue, where appropriate.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and various Federal, State, and local agencies and interested parties. The environmental assessment file is available for public inspection through the office of Mr. Pearlie S. Reed. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource conservation and Development Program, Office of Management and Budget Circular No. A-95 regarding State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: March 8, 1985.

Pearlie S. Reed,

State Conservationist

[FR Doc. 85-6404 Filed 3-15-85; 8:45 am]

BILLING CODE 3410-16-M

Dyke Creek Watershed, NY; Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Paul A. Dodd, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the state of New York, is hereby providing notification that a record of decision to proceed with the installation of the Dyke Creek Watershed project is available. Single copies of this record of decision may be obtained from Paul A. Dodd at the address shown below.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423-5521.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable)

Dated: February 15, 1985.

Paul A. Dodd,

State Conservationist.

[FR Doc. 85-6422 Filed 3-15-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-405]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Textile Mill Products From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of certain textile mill products. The estimated net bounty or grant is 3.7 percent *ad valorem* for certain textile mill products. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain textile mill products from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, except entries from companies that have been excluded, and to require a cash deposit on entries of these products in the amount equal to the net bounty or grant.

The scope of this investigation remains the same as announced in the preliminary determination, except as noted below.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey or Vincent Kane, 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) 377-0160 or 377-5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Mexico of certain textile mill products. For purposes of this investigation the following programs are found to confer a bounty or grant:

- FOMEX.
- CEPROFI.
- FONEL.
- FOGAIN.

We estimate the net bounty or grant to be 3.7 percent *ad valorem* for certain textile mill products.

Case History

On July 24, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industries producing certain textile mill products. They did not include apparel in their petition. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of certain textile mill products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 13, 1984, we initiated such an investigation (49 FR 32894). We stated that we expected to issue a preliminary determination by October 17, 1984. On September 21, 1984, we determined this investigation to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determination by 65 days until December 21, 1984 (49 FR 40198).

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to U.S. industries.

Due to the scope of this investigation, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of Mexico in Washington, D.C., on August 24, 1984. The government of Mexico identified 28 exporters who account for approximately 60 percent of the textile mill products exported to the United States. We requested responses from all 28 to our detailed company questionnaire. On October 26, 1984, we presented the detailed government and company questionnaires to the government of Mexico in Washington,

D.C. The responses to our detailed questionnaires were received on December 3, 1984.

We received timely requests for exclusion from nineteen companies. Two of those do not produce or export the products under investigation and are therefore outside the scope of this investigation. Of the remaining seventeen, thirteen submitted questionnaire responses. These responses indicated that the companies received no countervailable benefits above *de minimis*. We verified these responses. These thirteen companies, which are listed in the "Suspension of Liquidation" section of the notice, have been excluded from the scope of this determination and order.

On December 21, 1984, we issued our preliminary determination in this investigation (50 FR 301). We preliminarily determined that benefits constituting bounties or grants within the meaning of the Act are being provided to manufacturers, producers, or exporters in Mexico of the subject merchandise.

From January 8 to January 18, 1985, we conducted a verification in Mexico. Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We conducted a hearing on February 5, 1985. We received written views from interested parties and have taken them into consideration in this determination.

Certain respondents in the *Certain Textile Mill Products and Apparel* investigations have raised issues as to whether petitioners have standing to file these cases. Petitioners have also made comments regarding our methodology in selecting companies to receive detailed questionnaires and our investigation of only those companies that account for 60 percent of exports of the subject merchandise to the United States. We have addressed these issues in our final determinations of *Certain Textile Mill Products and Apparel from Malaysia*, issued on March 4, 1985. See that notice for our comments on these issues.

Scope of the Investigation

The products covered by this investigation are certain textile mill products which are described in Appendix A that is attached to this notice.

In the notice of the preliminary determination, we solicited further comments regarding the standing of the petitioners to file a petition against the producers and exporters of chemical fibers in Mexico. We have received no further comments which are dispositive of this issue, although we were given a thorough presentation of the

composition and manufacturer of the exported chemical fibers during verification. These products therefore remain within the scope of this investigation.

On February 6, 1985, respondent Celulosa y Derivados, S.A. submitted a letter which alleged that none of the eight petitioners produces continuous filament rayon yarn, classified under TSUSA Item No. 310.0230. A supporting statement from a U.S. importer of this product was included with this submission. On February 22, 1985, petitioners amended their petition to exclude textile products entering the United States under TSUSA 310.0230. We have accepted that amendment and have excluded continuous filament rayon yarn from this determination and order.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the *Federal Register* (49 FR 18006).

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Mexico of certain textile mill products under the following programs. The period of investigation is calendar year 1983.

A. *Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX)*. FOMEX is a trust of the Secretaría de Hacienda y Credito Publico to promote the manufacture and sale of exported products with the Bank of Mexico acting as the trustee. On July 27, 1983, FOMEX was formally incorporated into the National Bank for Foreign Trade. The National Bank for Foreign Trade administers the financial institutions that establish contracts for lines of credit with manufacturers and exporters.

During the period for which we are measuring bounties or grants, exporters could obtain FOMEX pre-export loans denominated in pesos with a maximum nominal annual interest rate of 10 percent, or export loans denominated in dollars with a maximum annual interest rate of 6 percent. We verified that many of the companies under investigation received both pre-export peso-denominated FOMEX loans and export

dollar-denominated FOMEX loans to finance exports to the United States during the period under investigation.

Because the FOMEX pre-export financing program provides short-term loans for export-related purposes at lower interest rates than those for comparable commercially available loans, we determine that this program confers a bounty or grant upon the exportation of certain textile mill products.

We used a national average commercial borrowing rate as the benchmark for short-term peso-denominated borrowing. In this case, since we could not determine an effective interest rate for FOMEX loans, we compared the nominal interest rates of the FOMEX pre-export loans with the nominal rates published monthly by the Banco de Mexico in the *Indicadores Economicos* (the "IE" rate). The IE rate is the weighted average of the rates charged by commercial banks on peso loans.

Since FOMEX export loans also allow exporters to obtain short-term loans for export-related purposes at lower interest rates than those for comparable commercially available loans, we determine that this program confers a bounty or grant upon the exportation of certain textile mill products. For FOMEX export loans denominated in dollars, we used as our benchmark the prime rate charged by banks on short-term business loans in the United States, as published in the *Federal Reserve Bulletin*. This rate is the weighted average of the rates charged by commercial banks in the United States. We determined the benefits from these loans based on the interest rate differential between FOMEX financing and the benchmark.

Because FOMEX loans are export-related and we had data on all FOMEX loans to the United States, we allocated the benefit of the companies who actually received FOMEX financing over the exports to the United States of the 15 major exporters. On this basis, we calculated a bounty or grant in the amount of 3.7 percent *ad valorem*.

B. *Preferential Federal Tax Credits (CEPROFI)*. CEPROFI are tax credits used to promote National Development Plan (NDP) goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small- and medium-sized firms. CEPROFI tax credits are granted for certain investments in plant and equipment and for certain payments relating to wages for increased employment. The value of the tax

credits is established as a percentage of the investment made. Certain types of investments receive tax credits at higher percentages than do others.

CEPROFI certificates are tax certificates of fixed value which may be used for a five-year period to pay Mexican federal taxes. Certain CEPROFI certificates are granted for carrying out investments in "priority" industrial activities; others are available to all industries on equal terms.

Article 25 of the decree authorizing the issuance of CEPROFIs, published in the *Diario Oficial de la Federacion (Diario Oficial)* on March 6, 1979, requires each recipient to pay a 4 percent supervision fee. The 4 percent supervision fee is "paid in order to qualify for, or to receive" the CEPROFIs, and is therefore an allowable offset from the gross bounty or grant as defined by section 771(6)(A) of the Act.

Four of the textile mill products companies under investigation were authorized to receive CEPROFIs for increased employment and for investment in equipment and buildings. Because these types of CEPROFIs are limited to companies located in specific regions, we determine that these CEPROFIs confer a bounty or grant.

We allocated the amount of CEPROFI benefits received for the products under investigation over the 15 companies' total sales of the products under investigation. On this basis we calculated a bounty or grant of 0.0005 percent *Ad valorem*.

C. Fund for Industrial Development (FONEI). FONEI is a specialized financial development fund, administered by the Bank of Mexico, which grants long-term credit at below-market rates for the creation, expansion, or modernization of enterprises in order to foster industrial decentralization and promote the efficient production of goods capable of competition in the international market. FONEI loans are available under various programs having different eligibility requirements.

Two textile mill products companies under investigation receive FONEI for investment in equipment, and one company received a FONEI loan to improve existing capacity. These loans are only available to companies located outside Zone IIIA (Mexico City and environs). Because such loans are limited to particular geographic regions and are made on terms inconsistent with commercial considerations, we determine that FONEI loans for investment in equipment and to improve existing capacity confer bounties or grants upon respondents. Because the interest rates on the FONEI loans under review are subject to change and have

changed over the life of the loans, we treated these loans as a series of short-term loans. To evaluate the benefit of these loans, we compared the cost of the FONEI loans with the cost of commercially available loans bearing an interest rate equivalent to the nominal IE rate. We then divided the amount of the benefit (i.e., the difference in the cost of the two loans) by the total sales of the 15 major exporters of textile mill products. In this manner, we calculated a benefit of .009 percent *ad valorem* for FONEI loans.

D. Guarantee and Development Fund for Medium and Small Industries (FOGAIN). The FOGAIN program provides financing at interest rates below prevailing commercial rates to all small- and medium-sized firms in Mexico. Interest rates vary depending upon whether a small- or medium-sized business has been granted priority status, and whether a business is located in a zone targeted for industrial growth. Small- and medium-sized businesses with priority designation and located in specific zones targeted for industrial growth receive the most preferential rate. Medium-sized businesses, not designated as priority and located in an area of controlled industrial growth, receive the least preferential FOGAIN interest rate. We do not consider a rate available to all small- and medium-sized businesses to be limited to a specific enterprise or industry or group of enterprises or industries. Therefore, we have used this rate as the benchmark against which to measure benefits under this program.

Three textile mill products companies under investigation received FOGAIN financing limited to firms in particular zones. Because the interest rates on these loans are subject to change and have changed over the life of the loans, we treated these loans as a series of short-term loans. To determine the estimated bounty or grant, we used as our benchmark the least beneficial interest rate that would have been available under FOGAIN. We computed annual interest costs based on the outstanding balance of each loan, first at the preferential rate, then at the benchmark rate. We determined the amount of the bounty or grant to be the difference in the interest costs between those actually paid and those that would have been paid under the non-preferential interest rate. We allocated the benefit amount over total sales for the period. On this basis we calculated a bounty or grant of .005 percent *ad valorem*.

II. Programs Determined Not To Confer Bounties for Grants

We determine that bounties or grants are not being provided to manufacturers, producers or exporters in Mexico of certain textile mill products under the following programs.

A. CEPROFIs for Investment in Mexican-Made Equipment. Certain textile mill product companies received 5 percent CEPROFIs for investments in Mexican-made equipment. We determine that these types of CEPROFIs do not confer a bounty or grant because they are not limited to a specific industry, group of industries, or to companies located in specific regions of the country.

B. Accelerated Depreciation for the Textile Industry. The textile industry in Mexico is allowed to depreciate its machinery and equipment at a rate of 11 percent *per annum*. We determine that this rate is not an accelerated rate but merely the depreciation rate set by Mexican Income Tax Law for the textile industry. It is based upon the life expectancy of machinery and equipment used in the manufacture of clothing and textiles. Therefore, we determine that this program does not confer a bounty or grant upon the respondents.

In addition, the government of Mexico amended its Income Tax Law on December 31, 1982, to provide for accelerated depreciation of new machinery and equipment acquired between August 1, 1983, and December 31, 1983, at a rate of up to 50 percent. While the amendment stated that the rate was available to all industries in "priority zones," the law defined "priority zones" as including all territories and all industries in Mexico. Because accelerated depreciation was not limited to a specific enterprise, industry, or group of enterprises or industries, we determine that it does not confer a bounty or grant.

III. Programs Determined Not To Be Used

We determine that the following programs listed in our notice of initiation have not been used by the companies that manufacture, produce, or export certain textile mill products from Mexico.

A. Export Credit Insurance. Under this FOMEX program, exporters are granted insurance credit against expropriations, defaults and other political risks. Petitioners alleged that FOMEX premiums are inadequate to cover the long-term operating costs of the program and that these programs may offer subsidies to exporters. This

insurance program was not used by the companies under investigation.

B. NAFINSA. Companies in priority areas may receive certain counteravailable loans at preferential interest rates through NAFINSA and they may receive additional benefits from the following trusts administered by NAFINSA:

a. Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN);

b. National Preinvestment Fund for Studies and Projects (FONEP).

These loans and trusts were not used by the companies under investigation.

C. Energy Subsidies. The Mexican government provides bounties or grants for electrical, fuel and petrochemical costs of firms locating or expanding in certain zones of the country. Petitioners alleged that certain textile mill products companies may receive benefits from these energy subsidies. These benefits were not received by the companies under investigation.

D. Import Duty Reductions and Exemptions. Certain companies may receive import duty reductions or exemptions on imported machinery and equipment to be used in manufacturing exported products, based on export performance and location within priority zones. The companies under investigation did not receive import duty reductions or exemptions.

E. Foreign Currency for Financing of Imports. PROFIDE, under the auspices of FOMEX, provides exporters with access to foreign exchange at preferential officially-controlled rates to purchase imports. The companies under investigation did not use this program.

F. Bancomext. Bancomext provides financing for capital investment, production costs and importation of raw materials for the manufacture of exports. The companies under investigation did not use Bancomext financing.

G. Preferential State Investment Incentives. Certain Mexican states offer Mexican industries partial or total exemption from state taxes, free or low cost land, or certain local infrastructure improvements as incentives for expanding industrial facilities or as incentives for exporting. Preferential state investment incentives were not given to the companies under investigation.

H. Articles 94 Loans. Under section II of article of the General Law of Credit Institutions and Auxiliary Organizations, the Bank of Mexico provides preferential loans to exporter for the financing of manufactured products and production and/or inventory of goods produced in Mexico for export. Petitioners alleged that

textile mill products companies may benefit from these export bounties or grants. The companies under investigation did not receive Article 94 loans during the period of review.

I. Fondo Nacional de Fomento Industries (FOMIN). FOMIN operates as a trust fund, providing funding to certain small- and medium-sized companies by either buying stock or providing loans at below market rates. This fund was not used by the companies under investigation.

Petitioners' Comments

Comment 1: Petitioners contend that the appropriate benchmark for calculating the benefit conferred by Mexico's preferential loan programs is an effective interest rate, which reflects the full cost of alternative financing available to this industry.

DOC Position: Ideally, we attempt to quantify the total effective cost of both the benchmark and the loans under investigation. Many times, however, the fees, charges, etc. which should be added to the nominal interest rates for each loan cannot be quantified. In such cases, our calculations are based on the difference between the quantifiable aspects of the loan terms. It was not possible to verify any fees, charges, etc. added to the nominal interest rates of the loans to the textile mill product companies under investigation. Therefore, in this case we are using nominal interest rates in our calculations.

This is in contrast to our final determination in *Fabricated Automotive Glass from Mexico*, 50 FR 1906 (1985). In that case we were able to establish the effective interest rate for FOMEX loans received by the companies under investigation, and therefore used what was published as an effective interest rate as the benchmark.

Comment 2: Petitioners contend that the DOC should find FONEI loans for investments to improve existing capacity and all other types of FONEI loans received by the textile companies under investigation to be counteravailable.

DOC Position: Because FONEI loans for investment in equipment and FONEI loans to improve existing capacity, the only two types of loans received by the companies under investigation, are limited to companies in particular geographic regions and are made at rates that are inconsistent with commercial considerations, we determine that the FONEI loans under review confer a bounty or grant upon respondents. We verified that one of the textile mill products companies received a FONEI loan to improve existing

capacity. This loan was included in the preliminary determination and is also included in this final determination. We do not reach any new determination about FONEI loans not received by the textile companies under investigation.

Comment 3: Petitioners contend that all FOGAIN financing is counteravailable because a program that is restricted to small- and medium-sized businesses is simply not generally available. Such a program, they argue, is similar to regional subsidy programs, which have been found counteravailable by the Department.

DOC Position: Consistent with the Department's policy, we determine certain types of FOGAIN loans to be counteravailable because they are provided on terms inconsistent with commercial considerations to firms located in particular zones. We disagree that a program made available to all small- and medium-sized businesses constitutes a benefit to a specific enterprise or industry or group of enterprises or industries.

Comment 4: Regarding FOGAIN loans, petitioners also contend that Commerce should calculate the bounty or grant by comparing the interest rates on FOGAIN loans with the national average commercial interest rate rather than using the rate FOGAIN provides on its least preferential loans to all small- and medium-sized businesses as the benchmark.

DOC Position: Where, as with FOGAIN, a part of the program is not limited to a specific enterprise or industry or group of enterprises or industries, the Department uses that part of the program as the standard against which to measure the benefits provided under other portions of the program. Since all small- and medium-sized firms can receive the highest interest rate under FOGAIN, only more preferential rates provided counteravailable benefits.

Comment 5: Petitioners contend that NAFINSA provides equity infusions to Mexican textile firms, which should be examined and taken into account in this determination.

DOC Position: The Department believes, and has stated in the above-cited "Subsidies Appendix", that government ownership *per se* does not confer a bounty or grant. We have further stated that equity infusions provided by a government are only counteravailable to the extent that they are inconsistent with commercial considerations. For this reason, we only investigate equity infusions when we are given specific information about certain companies and their worth as commercial investments. The

Department initiated an investigation of equity infusions by NAFINSA to Grupo Pliana, the only company about which specific details were provided. Grupo Pliana does not, however, export the merchandise under investigation. Therefore, NAFINSA equity infusions were not a part of this investigation. The petitioners have not provided any details about the financial situation of any other companies involved in this investigation that would lead us to investigate possible equity participation in them by the government of Mexico.

Comment 6: Petitioners contend that all CEPROFI received by the textile mill products industry should be found to be countervailable. CEPROFI for Category II investments are limited to specific producers and are directed to a limited geographic area, because they are granted for capital investments in priority industries located outside Zone IIIA, the Mexico City area. CEPROFI for investment in Mexican-made machinery and equipment and for antipollution equipment, which have been found not to confer a bounty or grant in previous determinations, must be re-examined, according to petitioners. To be considered generally available in this investigation, they must be found not to favor the textile industry through their distribution. Absent specific information demonstrating their *de facto* general availability, these CEPROFI should be considered to be countervailable. Finally, petitioners argue that the question of general availability is actually beside the point because CEPROFI are linked to exportations, and are therefore countervailable as export subsidies.

DOC Response: We agree with petitioners that CEPROFI for Category II investments are countervailable, and we have included the benefits received under this type of CEPROFI in the calculation of the countervailing duty rate.

With respect to CEPROFI for Mexican-made machinery and equipment and for antipollution equipment, petitioners have not provided any new information that the program operates *de facto* to provide benefits to a specific industry or group of industries. The Department does not re-examine programs that have been determined not to be countervailable in prior cases unless new facts are presented indicating some change that would lead to a finding that a program is countervailable.

Petitioners rest their argument that the CEPROFI program is an export subsidy on the statement by the Government of Mexico, in its supplemental questionnaire response, that "the

CEPROFI Program is linked to exportations." The government of Mexico has subsequently corrected this erroneous statement. Their statement should have read "the CEPROFI Program is not linked to exportations." Based on our experience in previous investigations of Mexican exports, we have no reason to believe that the original response was anything other than a typographical or clerical error. We have never uncovered any evidence that the CEPROFI program confers an export bounty or grant.

Comment 7: Petitioners also assert that it would be inappropriate to allow an offset for the 4 percent supervision fee which is paid in order to receive CEPROFI, if the supervision fee is already deducted before the CEPROFI are issued.

DOC Position: This supervision fee is actually paid to the government by the companies that receive CEPROFI. It is not deducted from the value of the CEPROFI before they are issued.

We have recently learned that the payment of this supervision fee is required in 4 installments of 1 percent each, at six-month intervals, beginning 6 months after the issuance of each CEPROFI. This information was gathered during verification of the countervailing duty investigation of welded carbon steel pipe and tube products from Mexico. This does not alter our view that the 4 percent fee is an allowable offset. However, it may result in an adjustment in our calculation of CEPROFI benefits. For the purpose of this investigation, we have not changed the procedure for calculating CEPROFI benefits. The level of gross CEPROFI benefits received is so low that any adjustment would have been insignificant and would have no effect on the countervailing duty rate.

Comment 8: Petitioners argue that only firms which have received no benefits whatsoever and whose questionnaire responses have been verified may be excluded from the countervailing duty order. Firms that have received any benefits, including benefits at a level the Department considers *de minimis*, should not be excluded.

DOC Position: We verified all responses from firms that requested exclusion at the offices of the relevant ministries of the government of Mexico. We were able to confirm to our satisfaction that each of these firms received no benefits above *de minimis*. In addition, we verified two of these responses at the companies themselves.

Benefits below *de minimis* are the functional equivalent of no benefits. Therefore, the Department excludes

companies with *de minimis* benefits as well as those firms that receive no countervailable benefits, as long as they submit timely exclusion requests and otherwise cooperate in the investigatory process. Petitioners have given no argument justifying a departure from this general rule. Therefore, we have excluded the thirteen firms that complied with these requirements.

Comment: Petitioners contend that certain textile mill product companies under investigation use a preferential 11 percent accelerated depreciation rate for machinery and equipment. Petitioners argue that this rate confers a bounty or grant upon the textile industry. As the basis for their argument, petitioners cite a tax schedule in a booklet issued by Price Waterhouse, "On Doing Business in Mexico." On page 190 of the booklet, the different depreciation rates are listed for various industries in Mexico. As stated in the schedule, these rates are the maximum annual rates of amortization and depreciation for income tax purposes, calculated on a straight-line basis only. Petitioners argue that since the textile industry receives an 11 percent rate and other industries receive different (some higher, some lower) rates, the textile industry is given preferential treatment.

DOC Position: This is not the case. Various industries use different types of machinery and equipment, which have different life expectancies. The Price Waterhouse appendix simply states the depreciation rates for industries in Mexico. The word "accelerated" does not appear in this appendix. Up until 1981, the U.S. Internal Revenue Code also distinguished between industries and set depreciation rates accordingly. To depreciate machinery and equipment at varying rates based on the useful lives of that machinery and equipment is not preferential.

Based on the foregoing, we determine that the Mexican textile industry does not receive countervailable benefits under an accelerated depreciation program.

Comment 10: Petitioners also contend that Fibras Químicas, S.A. depreciated machinery and equipment according to the schedule in the tax law which is called "priority industries." Petitioners argue that the Department should include these write-offs in the calculation of bounties or grants in the final determination.

DOC Position: The tax law to which petitioners refer is an amendment to the Mexican Income Tax Law. This Amendment allows companies to depreciate new machinery and equipment acquired between August 1,

1983, and December 31, 1983, at the rate of up to 50 percent. During this period, while the law stated that the 50 percent depreciation rate was available to companies in a "priority zone" the text of the law also clearly states that priority zones included all of the territories and all industries in Mexico.

We verified the Fibras Químicas, S.A. used the 50 percent accelerated depreciation rate for new machinery and equipment acquired between August 1, 1983, and December 31, 1983. However, because the law defines "priority zones" to be all the territories in Mexico, we determine that, for the period mentioned above, the accelerated depreciation rate is not limited to an enterprise or industry, or group of enterprises or industries.

Respondents' Comments

Comment 1: Certain respondents argue that the FOMEX program is not a subsidy, because exports which receive FOMEX export loans or pre-export loans do not actually enjoy any benefit or bonus in comparison with commercially available loans. With regard to export loans, exporter must assign their rights to receive dollars to, and are actually given pesos by the intermediary banks at the controlled exchange rate, which provides significantly less pesos per dollar than the free market rate. The result is that the government of Mexico actually obtains the only benefit attributable to these loans—U.S. dollars at a more favorable rate of exchange. With regard to pre-export loans, these are granted only on the basis that the borrower is eventually going to export, and when he does must exchange the dollars he receives for pesos at the controlled exchange rate. Again, the government benefits from the granting of pre-export loans, at the expense of the exporters.

DOC Position: Section 771(6) of the Act provides for three types of permissible offsets in the calculation of a net subsidy. The Department has consistently interpreted this provision as the exclusive source of permissible offsets. Adjustments which do not strictly fit the descriptions under section 771(6) have been disallowed.

The Department has previously acknowledged that the dual exchange rate system in Mexico potentially harms Mexican exporters. See *Portland Hydraulic Cement and Clinker from Mexico*, 48 FR 43063 (1983). Yet this system applies to practically all exporters in Mexico regardless of whether those exporters have applied for or received FOMEX financing. Exchanging dollars at the controlled exchange rate is a condition of

exporting, rather than an application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit or a specific subsidy program. Therefore, the effects of the dual exchange system have not been taken into account in the calculation of the benefits of FOMEX loans.

With regard to the requirement that exporters must assign away their right to receive dollars under FOMEX export loans, respondents have not submitted sufficient information that would establish that this is indeed the current practice, and the Department is not aware of any such requirement. Therefore, we do not address the effect, if any, such assignment might have.

Comment 2: Respondents allege that the Department's method of calculating the alleged FOMEX benefit was faulty because: 1) the devaluation of the peso over the period of the loan, which is mandated by the government, is an "application fee, deposit or similar payment made in order to qualify for, or to receive" the benefit; 2) the Department did not take into account the fact that interest on FOMEX loans is paid up front; and 3) the Illustrative List of Export Subsidies, Annex A to the GATT Subsidies Code, states in subparagraph (K) that the rates against which export credits are to be measured are the rates which governments must pay in order to obtain the funds employed for the credits. Therefore, the Department should have used the cost of money to the Mexican government as the benchmark.

DOC Position: We disagree. The progressive devaluation of a currency clearly is not an "application fee, deposit, or similar payment made in order to qualify for, or receive" (emphasis added) a benefit. Rather, it is an economy-wide adjustment mechanism.

Secondly, because the Department used a nominal FOMEX interest rate, we used a nominal benchmark rate. Nominal and effective interest rates are not directly comparable. Thus, to use a FOMEX interest rate that had been partially converted to an effective rate by taking into account that the interest was paid up front and comparing it to a nominal benchmark rate would understate the bounty or grant.

Thirdly, while the rate that the respondents cite is the standard for determining a GATT-inconsistent export subsidy, we have consistently determined the bounty or grant of a loan by determining what would have been the alternative commercial financing for loans of a similar duration and under similar conditions. We believe this is the

accurate measure of the bounty or grant conferred to the companies investigated.

Comment 3: Respondents contend that there were errors in the calculations for FONEI, FOGAIN, and CEPROFI benefits.

DOC Position: We agree. The errors in the calculations of the benefit under the FONEI, FOGAIN and CEPROFI programs have been corrected for this final determination.

Comment 4: Respondents contend that the Department should allocate benefits over the period for which the loan is outstanding, not on a full one-year basis.

DOC position: We agree. For purposes of the preliminary determination, DOC allocated the benefits of certain long-term loans on a full year basis because no other information was available. For purposes of this final determination, we have allocated the benefits over the period for which the loan is outstanding.

Comment 5: Respondents contend that Commerce should take into account, for duty deposit purposes, the April, 1984, increase in the FOMEX interest rates.

DOC Position: We attempt to take into account program-wide changes that occur prior to our preliminary determination when the changes can be verified. However, for certain types of programs this is not always possible. The effects of modifications in short-term loan programs are not easily quantified, nor do they occur immediately. In this case, the verified companies were unable to provide sufficient information to substantiate the claim that the textile mill products companies use the new FOMEX interest rates. Thus, we used the interest rates supplied to us by the Mexican government for the period of investigation, 1983.

Comment 6: Respondents contend that the Department should not count as countervailable benefits FOMEX loans which were granted on shipments, originally destined for the United States, that were embargoed and directly sold in Canada, or stored in customs warehouses and later sold in Canada.

DOC Position: We agree. We have included FOMEX loans only on exports that actually entered the United States in our countervailing duty rate, and we verified that all of the embargoed exports were actually sold in Canada rather than the United States. As to petitioners' counter-argument that embargoes are often circumvented by transshipping through a third country, no evidence of transshipping has been provided or discovered.

Comment 7: Respondents contend that the Department should exclude alleged 5 percent CEPROFI benefits given for

acquisition of Mexican-made machinery. In addition, where CEPROFI's greater than 5 percent are given for the acquisition of Mexican-made machinery, the amount of the 5 percent non-countervailable CEPROFI should be deducted from the total CEPROFI before determining the bounty or grant.

DOC Position: We agree. Because 5 percent CEPROFI benefits for the acquisition of Mexican-made machinery and equipment are provided to more than a specific enterprise, industry or group of enterprises or industries, and receipt is not contingent upon geographic location or exportation, we have found that they do not confer a bounty or grant. We also agree with the respondents' second point. Because the 5 percent CEPROFI's are not countervailable, the benefit is the difference between the 5 percent rate and the rate on the countervailable CEPROFI's.

Comment 8: Respondents agree that the Department should publish a two-tier rate for the Mexican textile mill products industry. The first rate would include the 5 companies receiving the most benefits and the second rate would be for the remaining companies which, according to respondents, received little or no benefits.

DOC Position: Section 355.33 of the Commerce regulations provides that when separate enterprises have received materially different benefits, those differences shall be taken into account in a final countervailing duty determination. In light of the fact that the country-wide rate is only 3.7 percent, this condition is not satisfied, so we have declined to create a two-tier rate. However, the 13 companies which made timely requests for exclusion and were verified as receiving no benefits above *de minimis* have been excluded.

Verification: In accordance with section 776(a) of the Act, we verified the data used in making our final determination. We conducted the verification in Mexico from January 8 through 18, 1985. We verified the responses of the 15 firms upon which we based the countervailing duty rate and the 13 firms which requested exclusions at the offices of various ministries of the government of Mexico. We also visited seven companies, two of which had requested an exclusion. We visited an eighth company, Hilaturas Lerma, just to verify FOMEX loans on shipments which were embargoed in the United States, because FOMEX officials stated that their records would not reflect the effects of an embargo and were therefore incomplete with respect to this company.

Product	Ad valorem rate (percent)
Textile Mill Products	3.7

Imports of the subject merchandise from the following companies are excluded from this determination: Fibras Químicas, S.A., Nylon de Mexico, S.A., TEXEL, S.A., de C.V., Finofil, S.A., Terza, S.A., Lycratex, S.A., Continental de Textiles, S.A., Tejidos Especiales Doble Ancho, S.A., Texanta, S.A. (Santa Clara, Mexico), Textiles Miguel, S.A., Filorama, S.A., Redes, S.A., and Grupo Industrial Interamericano, S.A.

Administrative Procedures

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). We conducted a hearing on February 5, 1985. Written and oral views

have been received and considered in reaching this final determination.

Suspension of Liquidation

The suspension of liquidation with regard to textile mill products, ordered in our preliminary affirmative determination, shall remain in effect until further notice. The estimated net bounty or grant for duty deposit purposes is 3.7 percent *ad valorem* for certain textile mill products.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise from Mexico which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register* and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

William T. Archey,
Acting Assistant Secretary for Trade Administration.

Appendix.—List of TSUSA Codes Which Covered Mexico's Exports of Certain Textile Mill Products to the United States in 1983

A. Textile Mill Products					
Yarns					
300.6020	300.6024	300.6028	301.0000	301.1000	301.2000
301.3000	302.0024	302.1024	302.1028	302.2020	302.2024
302.2026	302.2028	302.3024	302.3028	302.3028	302.4026
303.2040	303.2042	307.6810	310.0106	310.0109	310.0110
310.0114	310.0130	310.0149	310.0150	310.0206	310.0209
310.0249	310.0250	310.0270	310.0510	310.1015	310.1070
310.1109	310.1150	310.1170	310.2150	310.4027	310.4047
310.4050	310.5046	310.5047	310.5049	310.6034	310.9000
310.9120	310.9140				
Cordage					
310.5500	316.5800	316.7000	319.0300	319.0700	
Fabric					
320.0003	320.0021	320.0022	320.0024	320.0031	320.0034
320.0038	320.0042	320.0045	320.0049	320.0054	320.0057
320.0062	320.0063	320.0065	320.0066	320.0071	320.0072
320.0074	320.0077	320.0080	320.0098	320.1002	320.1034
320.1045	320.1062	320.1063	320.1071	320.1077	321.0077
321.1034	321.1071	322.0062	322.0063	322.1006	322.1010
322.1015	322.1017	322.1025	322.1029	322.1030	322.1034
322.1036	322.1037	322.1040	322.1041	322.1045	322.1047
322.1048	322.1050	322.1051	322.1052	322.1053	322.1055
322.1056	322.1060	322.1065	322.1068	322.1070	322.1071
322.1075	322.1077	322.1079	322.1081	322.1084	322.1085
322.1086	322.1088	322.1089	322.1090	322.1091	322.1095
322.1097	322.2016	322.2023	322.2069	322.2073	322.4003
322.4021	322.4022	322.4024	322.4038	322.4042	322.4049
322.4054	322.4057	322.4065	322.4072	322.4074	322.4080
322.4098	322.5016	322.5023	322.5026	322.5069	322.5073
322.8016	322.8023	322.8069	322.8073	322.9003	322.9021
322.9022	322.9024	322.9038	322.9042	322.9049	322.9054
322.9057	322.9065	322.9072	322.9074	322.9080	322.9094
322.9098	324.2021	324.2022	324.2024	324.2031	324.2038
324.2042	324.2049	324.2054	324.2057	324.2065	324.2072
324.2074	324.2080	324.2096	324.8065	324.8072	324.8074
324.8080	324.8098	325.1050	325.1051	325.1052	325.1085

Appendix.—List of TSUSA Codes Which Covered Mexico's Exports of Certain Textile Mill Products to the United States in 1983—Continued

325.1089	325.1091	325.1095	325.8021	325.8022	325.8024
325.8031	327.2021	327.2022	327.2024	327.2031	327.2038
327.2042	327.2049	327.2054	327.2057	327.2065	327.2072
327.2074	327.2080	327.2086	327.3003	327.3021	327.3022
327.3024	327.3038	327.3042	327.3049	327.3054	327.3057
327.3065	328.2003	328.2031	328.2021	328.2022	328.2024
328.2038	328.2042	328.2049	328.2054	328.2057	328.2065
328.2072	328.2074	328.2080	328.2098	331.2021	331.2022
331.2024	331.2031	331.2038	331.2042	331.2049	331.2054
331.2057	327.2065	327.2072	327.2074	327.2080	327.2098
336.1540	336.6251	336.6253	336.6257	338.4004	338.5007
338.5009	338.5010	338.5013	338.5021	338.5024	338.5030
338.5031	338.5036	338.5041	338.5045	338.5046	338.5049
338.5064	338.5065	338.5069	339.1000		

Special Construction Fabrics

345.5053	345.5055	345.5057	345.5073	345.5075	345.5077
346.6050	346.6065	346.7000	347.6040	347.6800	348.0065
351.3000	351.5010	351.5060	351.6010	351.7060	351.8060
351.9060	352.2060	352.8010	352.8060	353.1000	353.5012
353.5052	355.1600	355.2500	355.4530	355.8100	356.2510
357.4500	357.7010	357.8060	358.0290	358.0690	358.1400
358.3500	358.5040	359.1010	359.1030		

Textiles Furnishings

360.0600	360.1515	360.2500	360.4225	360.4335	360.4825
360.4835	360.7000	360.7800	360.7900	360.8300	360.8400
361.0530	361.0540	361.2410	361.4200	361.4500	361.4600
361.4800	361.5420	361.5426	361.5610	361.5650	363.0510
363.0515	363.1020	363.1040	363.2000	363.2562	363.2564
363.2575	363.2580	363.2590	363.4500	363.6030	363.6540
363.8506	363.8509	363.8515	363.8525	363.8545	363.8550
363.8555	364.0500	364.1300	364.1800	364.2000	364.2300
364.2500	363.3000	365.5060	365.7815	365.7825	365.7865
365.8400	365.8810	365.8620	365.8640	365.8660	365.8670
365.8680	366.1820	366.2400	366.2480	366.4200	366.4600
366.4700	366.5100	366.7700	366.7925	366.7930	366.8400
367.3424	367.3428	367.6025	367.6440	367.6060	

For the woven cotton fabric under investigation the U.S. Dept. of Commerce, in preparing the appendices for these investigations, has used the U.S. Import Statistical numbers which closely parallel the TSUSA numbers. For example U.S. Import Statistical number 320.0003 represents TSUSA number 320.0103 through 320.0903 and 331.2098 represents TSUSA numbers 331.2098 through 331.2998. The fourth and fifth digits of these TSUSA numbers are the yarn count numbers.

[FR Doc. 85-6058 Filed 3-15-85; 8:45 am]

BILLING CODE 3510-DS-M

Telecommunications Equipment; Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held April 2, 1985, 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 telecommunications equipment or technology.

The Committee 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 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 of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377-4217. For further information contact Mrs. Margaret A. Cornejo (202) 377-5542.

Dated: March 13, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-6445 Filed 3-15-85; 8:45 am]

BILLING CODE 3510-DT-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-411,196 (4,497,989)

Spectrophotometric Method for Simultaneously Analyzing Protein and Fat Contents in Milk

SN 6-646,730

Improved Transport Carriage

SN 6-649,038

Fabricated Wood Beam

SN 6-650,462

Process for Enhanced Fermentation of Xylose to Ethanol

SN 6-650,587

Improved Locking Balls for Logging Carriage

SN 6-662,378

Device and Method for Measuring the Energy Content of Hot and Humid Air Streams

SN 6-662,284

Diagnostic Reagent for Swine Trichinosis

Department of Health and Human Services

SN 6-596,636 (4,497,730)

Method for Obtaining Periplasmic Proteins from Bacterial Cells Using Chloroform

SN 6-680,992

Method for Rapid DNA Sequencing

Department of the Air Force

- SN 6-258,500 (4,487,476)
Method of Multivariant Intraclass
Pattern Recognition
- SN 6-308,972 (4,484,297)
Variable Data Base Generator
Apparatus
- SN 6-324,346 (4,488,311)
Optically Pumped Iodine
Monofluoride Laser
- SN 6-343,042 (4,495,502)
Multiple Loop Sidelobe Canceller
- SN 6-366,732 (4,495,466)
Eddy Current Test Probe with
Circumferential Segments and
Method of Testing Material
Surrounding Fastener Holes
- SN 6-366,746 (4,489,289)
Saw Oscillator with Digital
Compensation for Temperature
Related Frequency Changes
- SN 6-373,084 (4,495,501)
Method and Means for Providing
Frequency Agile Operation of MTI
Radar
- SN 6-375,621 (4,483,006)
Axial Flow Laser Cavity
- SN 6-384,292 (4,484,332)
Multiple Double Heterojunction
Buried Laser Device
- SN 6-393,834 (4,484,722)
Translating Rudder Pedal System
- SN 6-396,132 (4,494,838)
Retinal Information Mapping System
- SN 6-417,726 (4,482,900)
Deployable Folded Antenna
Apparatus
- SN 6-418,952 (4,482,112)
Windblast Arm Protector Assembly
- SN 6-422,430 (4,496,917)
RF-Primed High Power Halogen Vial
Apparatus
- SN 6-435,522 (4,494,827)
Imaging Apparatus for Transverse
Electrode Electro-Optic Tunable
Filter
- SN 6-437,655 (4,488,914)
Process for the Epitaxial Deposition of
III-V Compounds Utilizing a
Continuous In-Situ Hydrogen
Chloride Etch
- SN 6-444,003 (4,491,845)
Wide Angle Phased Array Dome Lens
Antenna with a Reflection/
Transmission Switch
- SN 6-445,639 (4,489,324)
Low Sidelobe Phased Array Antenna
System
- SN 6-445,646 (4,490,829)
Detection of Angular Modulated
Electromagnetic Signals
- SN 6-445,887 (4,490,002)
Releasable Cable Connector Assem-
bly for Use Between a Mobile and
Stationary Object
- SN 6-452,604 (4,485,361)
Pulse Transformer Package for
Impedance Matching A Laser Diode

- to a Transmission Line
- SN 6-455,673 (4,483,198)
Osteoclast for Whole Bone Testing
- SN 6-461,424 (4,487,550)
Cooled Turbine Blade Tip Closure
- SN 6-461,427 (4,489,322)
Radar Calibration Using Direct
Measurement Equipment and
Oblique Photometry
- SN 6-465,213 (4,480,958)
High Pressure Turbine Rotor Two-
Piece Blade Retainer
- SN 6-468,781 (4,487,640)
Method for the Preparation of
Epitaxial Films of Mercury
Cadmium Telluride
- SN 6-469,176 (4,485,314)
Power Circuit Utilizing Self-Excited
Hall Effect Switch Means
- SN 6-469,370 (4,481,707)
Method for the Fabrication of
Dielectric Isolated Junction Field
Effect Transistor and PNP
Transistor
- SN 6-475,664 (4,488,713)
Pneumatic Clamping Device
- SN 6-484,329 (4,490,973)
Flameholder with Integrated Air
Mixer
- SN 6-493,387 (4,495,505)
Printed Circuit Balun with a Dipole
Antenna
- SN 6-498,238 (4,482,259)
Laser Clock
- SN 6-498,335 (4,495,764)
Integrated Insulation Wall Assembly
- SN 6-502,771 (4,487,068)
Method and Apparatus for Detecting
Acoustic Emissions from Metal
Matrix Wire
- SN 6-552,555 (4,495,782)
Transmissive Dewar Cooling
Chamber for Optically Pumped
Semiconductor Ring Lasers
- SN 6-574,433 (4,482,398)
Method for Refining Microstructures
of Cast Titanium Articles
- SN 6-643,203
Tally Cell Circuit
- SN 6-649,445
Automated Parts Storage and
Retrieval System Positioning Device
and Method
- SN 6-659,920
High Voltage RF Coaxial Cable
- SN 6-679,333
Double Pinhole Spatial Phase
Correlator Apparatus

Department of the Army

- SN 6-488,249 (4,493,741)
Amine Salts as Bonding Agents
- SN 6-669,147
Normal Coordinate Monolithic Crystal
Filter
- SN 6-677,274
Freeze Dried Raw Meats
- SN 6-690,358
Stress Compensated Crystal Device

Department of the Interior

- SN 6-168,815 (4,497,578)
Machine for Mixing and Injecting
Water and Grout into a Roof Bolt
Hole
- SN 6-577,459 (4,498,928)
Ductile Duplex Iron-Based Alloy
Containing Aluminum
- [FR Doc. 85-6345 Filed 3-15-85; 8:45 am]
BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE**Department of the Army****Army Medical Research and
Development Advisory Committee,
Partially Closed Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 USC Appendix, sections 1-15), announcement is made of the following Subcommittee meeting:

Name of committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Blood Preservation and Substitutes.

Date of meeting: 12 April 1985.

Time and place: 0900 hours, Room AS3102, Letterman Army Institute of Research, Presidio of San Francisco, CA.

Proposed agenda: This meeting will be open to the public from 0900 to 1100 hours on 12 April for the administrative review and discussion of the scientific research program of the Letterman Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), US Code, Title 5 and sections 1-15 of Appendix, the meeting will be closed to the public from 1110-1715 hours on 12 April for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications, and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. R. A. McHenry, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129-6800 (415/561-4367) will furnish summary minutes, roster of

Subcommittee members and substantive program information.

Philip Z. Sobocinski,

Colonel, MSC, Deputy Commander for Science & Technology.

[FR Doc. 85-6281 Filed 3-15-85; 8:45 am]

BILLING CODE 3710-92-M

Intent To Grant a Limited Exclusive Patent License to Biosearch Medical Products Inc.

Pursuant to the provisions of the General Services Administration's licensing regulations, the Department of the Army announces its intention to grant Biosearch Medical Products Inc., a corporation of the State of New Jersey, a limited exclusive license under U.S. Patent Application Serial No. 657,438, filed October 3, 1984, entitled "Electrolytic Pressure Transduction System", by Gordon H. Bryant.

This license will be granted unless compelling reasons for not granting such a license are received by the Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency, 5811 Columbia Pike, Falls Church, VA 22041-5013 within 60 days of this notice.

For further information concerning this notice, contact: Lieutenant Colonel Francis A. Cooch, USALSA (JALS-PC), Nassif Bldg.—Room 332A, Falls Church, VA 22041-5013, Telephone No. (Area Code 202) 756-2435.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-6282 Filed 3-15-85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers; Department of the Army

Intent to Prepare Draft Environmental Impact Statement

AGENCY: Department of Defense, U.S. Army Corps of Engineers, St. Louis District.

ACTION: Notice of Intent to prepare a Draft Supplement No. 1 to the 1975 Environmental Impact Statement titled, "Operation and Maintenance Pools 24, 25 and 26 Mississippi and Illinois Rivers." This environmental impact statement will address resource conflicts associated with the potential for increased flooding along that portion of Pool 26 extending along on the Mississippi River between L&D 25 and L&D 26, and along the Illinois River between River Miles 0.0 to 5.0.

SUMMARY:

1. *Proposed Action.* The proposed action, referred to as the "Pool 26 Shoreline Management Investigation", is part of an effort to develop and implement a balanced management plan to minimize potential resource conflicts associated with future flooding.

2. *Alternatives.* Alternative management plans will be evaluated and from these, a proposed plan will be selected. The preliminary objectives in developing the plans are to:

a. Include consideration of all involved interests on Pool 26.
b. Improve the level of pre-application information available to the potential permit applicant.

c. Reduce the time required for processing a flooding permit application in Pool 26.

d. Reduce levels of existing controversy and minimize future conflicts.

3. *Scoping.* It is clear to the District that increasing demands for the limited water surface area in Pool 26 at Alton, Illinois, are presently causing conflicts between various resource interests. It is the District's conclusion that a multiple resource management approach is needed.

Accordingly, the investigation's scoping activities are directed toward (1) identification and mapping of areas of significant resources, (2) identification and mapping of resource sensitivity to barge flooding, (3) identifying resource conflicts, (4) attempting to resolve those resource conflicts.

Consideration will be given to the views of Federal and state agencies, industry, resource interest groups, and the general public. To facilitate the scoping process, numerous interagency coordination meetings have been and will be conducted. This investigation was initiated with a public meeting held in St. Louis, Missouri on August 28, 1984. In addition, two public involvement sessions were held in Alton, Illinois (October 18, 1984 and November 8, 1984). A final public meeting will be held in conjunction with the normal 45-day review period for the Draft Supplemental Environmental Impact Statement.

The DSEIS will be mailed out in April 1985.

Address for further information: U.S. Army Corps of Engineers, Environmental Analysis Branch, ATTN: Mr. Owen Dutt, 210 Tucker Boulevard, North, St. Louis Missouri 63101, Commercial phone: (314) 263-5711; FTS 273-5711.

Dated: March 11, 1985.

Gary D. Beech,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-6420 Filed 3-15-85; 8:45 am]

BILLING CODE 3710-GS-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Flood Protection in the Ecorse Creek Drainage Basin, Wayne County, MI

Proposed Actions:

The purpose of this study, which is being conducted under the River and Harbor Act of 1966 (Pub. L. 89-789 approved 7 November 1966), section 102, is to determine a plan which best resolves the flooding problems in the Ecorse Creek Drainage Basin, Wayne County, Michigan. The Detroit District, in the reconnaissance study phase of the project, considered one non-structural basin management alternative and eleven structural alternatives. These alternatives have been reduced to the non-structural basin management and three structural alternatives for detailed feasibility studies and Environmental Impact Statement preparation.

Alternatives:

The non-structural basin management alternative, currently under consideration for flood control protection in the Ecorse Creek Drainage Basin, consists of several component items which could be used to supplement the proposed structural solutions to achieve an acceptable level of flood protection. The extent of development and nature of flooding that exists within the basin realistically precludes the non-structural approach in itself as an alternative that could stand alone as a complete solution to the flood problem. These items could include: (1) Relocation of residential structures, (2) raising first floor and relocation of basement mechanical equipment of residential structures, and (3) a flood warning system. However, the level of detail in the analysis of these alternatives will remain low.

Three structural alternatives and the No Action alternative will be addressed in detail in the Draft Environmental Impact Statement:

(1) Detention Basins. This alternative includes the construction of six (6) detention basins. During flood events water in excess of bank flow capacity would be diverted into detention basins

and later returned to streams after the flood threat would subside.

(2) **Earth Open Channel Modifications.** This alternative involves channel modifications of Ecorse Creek in the form of widening and deepening as well as clearing and snagging operations along twenty (20) miles of stream.

(3) **Paved Open Channel Modifications.** This alternative would involve the same stream reaches as the Earth Open Modification Alternative. However, less excavating would be required because channel widths would be narrower.

(4) **No Action.** This alternative is the without-plan condition which is the most probable future expected to prevail if no plan (non-structural or structural) is implemented.

Scoping Process.

a. **Public Involvement**—An initial public meeting was held on January 28, 1982 at Kennedy High School in the City of Taylor. The purpose of that meeting was to afford an opportunity to all parties to express their views concerning the need for flood protection in the Ecorse Creek Drainage Basin. Public meetings, interim workshops, and informal planning meetings have and will continue to be held throughout the study process to insure complete consideration of public interests.

b. **Significant issues to be addressed in the EIS are:** (1) Water quality impacts to both Ecorse Creek and the Detroit River that would result as a consequence of the proposed flood control alternatives.

(2) Potential sediment contamination, volume of sediment to be disposed, method of sediment disposal and location of disposal sites.

(3) Impacts of vegetation losses on water quality, erosion, wildlife and local composition.

(4) Nature of soil to be excavated from detention basin sites, the method of disposal and location of disposal sites.

c. **Other Environmental Review and Consultation Requirements**—This project will be reviewed for compliance with the following: The Fish and Wildlife Act of 1958; Fish and Wildlife Coordination Act of 1958; National Historic Preservation Act of 1966; National Environmental Policy Act of 1969; Endangered Species Act of 1973; Water Resources Development Act of 1976; Executive Order 11990, Wetlands Protection, May 1977; Executive Order 11988, Floodplain Management, May 1977; Clean Air Act of 1977; Clean Water Act of 1977; Corps of Engineers, Department of the Army, 33 CFR, Part

230, Environmental Quality; Corps of Engineers, Department of the Army, Policy and Procedure for Implementing NEPA (ER 200-2-2).

Estimated Date of Environmental Impact Statement Release: It is anticipated that the Draft Environmental Impact Statement will be available to the public in July 1986.

ADDRESS: Questions about the proposed action and Environmental Impact Statement can be answered by Mr. Ross Lunetta, Environmental Analysis Branch, U.S. Army Corps of Engineers, Box 1027, Detroit, Michigan 48231.

Raymond T. Beurket, Jr.,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 85-6358 Filed 3-15-85; 8:45 am]

BILLING CODE 3710-92-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Personal Excellence and National Security Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Personal Excellence and National Security Task Force will meet April 4-5, 1985, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine Navy personnel policies and programs. The entire agenda for the meeting will consist of discussions of key issues regarding future U.S. and Soviet naval manpower requirements, the national security implications of the dwindling quantity of quality youth in the U.S. and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the

CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756-1205.

Dated: March 13, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 85-6348 Filed 3-15-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the David W. Taylor Naval Ship Research and Development Center (DTNSRDC) Review Team of the Naval Research Advisory Committee Panel on Laboratory Oversight will meet on April 2-3, 1985, at the David W. Taylor Naval Ship Research and Development Center, Carderock, Maryland. The first session of the meeting will commence at 8:00 A.M. and terminate at 4:30 P.M. on April 2. The second session will commence at 8:30 A.M. and terminate at 4:30 P.M. on April 3, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical, and engineering health of DTNSRDC. The entire meeting will consist of classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincey Street, Arlington, VA 22217-5000. Telephone number (202) 696-4870.

Dated: March 13, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-6349 Filed 3-15-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Closed Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 2-4, 1985, 9:00 A.M. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, D.C. 20202 (202/732-1887).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street, NW., Washington, D.C. 20004 (202)/376-8882).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The closed meeting will start at approximately 9:00 A.M., and will end at the conclusion of business each day, approximately 5:00 P.M. The Council will be reviewing applications submitted under the Planning, Pilot and Demonstration Projects and Education Personnel Development (sections 1005 and 422) authorized by Part B of the Indian Education Act. And, for the purpose of reviewing applications submitted under the Indian Controlled Schools authorized by Part A of the Indian Education Act. The reviewing of applications must be held in the highest confidence until the announcement is released by the proper authorities as to which projects will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of agency action. Financial information which is privileged or confidential contained in and related to these proposals will be discussed at the review session.

Discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4) and (6) of section 552(b)(c) of Title 5 U.S.C. The agenda includes reviewing of applications submitted under the Planning, Pilot and Demonstration Projects and Education Personnel Development (sections 1005 and 422) authorized by Part B of the Indian Education Act, reviewing of applications submitted under the Indian Controlled Schools authorized by Part A of the Indian Education Act, and making recommendations to the Secretary of Education with respect to their approval, as authorized under section 442(b)(2) of the Act.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: March 6, 1985. Signed at Washington, D.C.
Lincoln C. White,
Executive Director, National Advisory Council on Indian Education.
[FR Doc. 85-6432 Filed 3-15-85; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85-05-NG]

Czar Resources Inc.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 25, 1985, of an application filed by Czar Resources Inc. (Czar Inc.) to import on a best efforts, interruptible basis, up to 63,000 Mcf per day of Canadian natural gas from Czar Resources Ltd. (Czar Ltd.) for resale to Mobil Oil Corporation (Mobil). The maximum volume sought to be imported is 4.6 Bcf over a period of two years beginning on the date of first delivery. During the initial six-month term the

price of the gas at the international border would be \$2.94 (U.S.) per MMBtu; \$3.70 (U.S.) delivered to Mobil. Thereafter, pricing adjustments may be made semi-annually to reflect prevailing market conditions.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act. Protests or petitions to intervene are invited.

DATE: Protests, motions to intervene or notices to intervene, as applicable, and written comments are to be filed no later than 4:30 p.m., April 17, 1985.

FOR FURTHER INFORMATION CONTACT:

P. J. Fleming (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-4819.

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: On February 25, 1985, Czar Inc. filed an application to import from Czar Ltd. on an interruptible, best efforts basis, up to 63,000 Mcf per day of Canadian natural gas for resale to Mobil. Czar Inc. is a wholly owned U.S. subsidiary of Czar Ltd., a Canadian based natural gas producer. The maximum volume sought to be imported is 4.6 Bcf over a period of two years beginning on the date of first delivery. Following the initial two-year term, the arrangement is to continue on a month-to-month basis until terminated by any party or until a maximum of 4.6 Bcf of gas has been delivered, whichever occurs first. The imported gas is intended to displace No. 6 fuel oil used at Mobil's Ferndale, Washington, petroleum refinery.

The gas would be purchased under an agreement entered into February 15, 1985, by the three companies. The agreement specifies that it would enter the U.S. at a point near Sumas, Washington, by means of existing pipeline facilities owned and operated by Northwest Pipeline Corporation (Northwest). Northwest would then transport the gas to the facilities of Cascade Natural Gas Corporation, which would complete ultimate delivery to the Ferndale refinery. At this time, no final transportation agreements have been reached by the parties.

The sales contract provides that, during the first six months, the price

Czar Inc. would pay Czar Ltd. for the gas is \$2.94 (U.S.) per MMBtu. The delivered cost to Mobil during that period would be \$3.70 (U.S.) per MMBtu. Thereafter, price redeterminations may be made semi-annually, subject to mutual agreement, to reflect prevailing market conditions. Any party may terminate the arrangement if agreement on an acceptable import or delivered price cannot be reached. In the absence of a minimum purchase obligation or take-or-pay requirement, Mobil has agreed that all of the natural gas needed for fuel oil displacement at its refinery would be supplied by Czar Ltd., provided the volumes requested can be delivered and the price is competitive. Under the contract Mobil is entitled to determine, at its sole discretion, the amount of gas required daily for its refinery on the basis of operating, economic, or any other consideration.

In support of the application, Czar Inc. asserts that the imported gas would provide Mobil with a cost-effective means of improving refinery operating economics because it represents a significant saving over Mobil's present cost for No. 6 fuel oil of approximately \$3.88 (U.S.) per MMBtu. According to the applicant, the import is in the public interest because it would (1) provide an environmental advantage compared to burning fuel oil; (2) reduce or eliminate Mobil's requirement for fuel oil, thus freeing that oil for use by other domestic purchasers; (3) reduce reliance on imported foreign crude oil; (4) serve an incremental market which the existing transmission and distribution systems have not been able to serve under similar competitive conditions; and (5) increase revenues for the transporting pipelines which will benefit their residential and industrial customers.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received by persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments

must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033, RG-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., April 17, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues.

A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Czar Inc.'s application is available for inspection and copying in the Natural Gas Division Docket Room, GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on March 6, 1985.

James W. Workman,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 85-6442 Filed 3-15-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP85-16-000; J.D. No. 8510119]

Conoco, Inc.; Protest to Negative Well Determination

March 11, 1985.

On February 5, 1985, Conoco, Inc. (Conoco) filed with the Federal Energy Regulatory Commission (Commission) a protest against the negative determination under section 102(d) Natural Gas Policy Act of 1978 (NGPA)¹ issued by the Mineral Management Service (MMS), Metairie, Louisiana on Grand Isle Block 41 E-10 Sidetrack No. 1 well. The negative determination was made by MMS on December 24, 1984, and received by the Commission on December 28, 1984.²

Conoco states that the negative determination issued by the MMS in the instant proceeding is (1) not supported by substantial evidence and (2) contrary to the intent of the laws and regulations governing new reservoirs on old OCS leases under NGPA section 102(d). Conoco contends the determination was based exclusively on a single 1969 log indicating the well penetrating the subject reservoir was commercially producible and that this log was inconsistent with the remaining well data available at the time, all of which indicated that the reservoir was not commercially producible. The effect of the MMS's negative determination is to limit the price that Conoco can lawfully charge for gas produced from the subject well to the maximum price under section 104 of the NGPA rather than the higher section 102 price.

Any person who desires to be heard or to make any response to this protest should file, within 30 days after this notice is published in the *Federal Register*, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All protests filed will be considered, but will not make the protestants parties to the proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6286 Filed 3-15-85; 8:45 am]

BILLING CODE 6717-01-M

¹ 15 U.S.C. 3301-3432 (1982).

² Notice of receipt of the negative determination was issued by the Commission on January 16, 1985.

[Docket No. SA85-14-000]

G.E.C. Oil and Gas Operations; Petition for Adjustment Relief From Refund Obligation

Issued: March 12, 1985.

On November 5, 1984, G.E.C. Oil and Gas Operations (GEC), 7001 Fruitvale Extension, Bakersfield, California 93308, filed with the Federal Energy Regulatory Commission (Commission) a petition for relief from Order Nos. 399 and 399-A¹ under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and the Commission's Rules of Practice and Procedure.²

GEC sells certain gas from the Semi-Tropic Field, located in Kern County, California, to the Pacific Lighting Gas Supply Company (Pacific Lighting). Pacific Lighting has informed GEC that under the subject gas purchase contract, GEC owes \$14,197.25 plus \$2,556.39 in interest for overcollections resulting from Btu measurement adjustment during the period of December 1978 through January of 1984.³

GEC is seeking a hardship adjustment relieving it from collecting amounts from royalty owners owing amounts of \$200 or less. GEC informs us that if it were relieved from collecting such amounts, a balance of \$12,222.38 would remain. GEC states that of this amount, 76.1% represents amounts owed by it and the other working interest owners, and the remainder represents amounts owed by royalty owners. The majority of the royalty owners owe amounts of \$100 or less. GEC states that repayment of such amounts would impose a hardship on such royalty owners.

Any person desiring to participate in this adjustment proceeding shall file a motion to intervene in accordance with Rule 1105 of the Commission's Rules of Practice and Procedure. All motions to

intervene must be filed within 15 days after publication in the Federal Register.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-6287 Filed 3-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-15-000]

G.E.C. Oil and Gas Operations; Petition for Adjustment Relief From Refund Obligation

Issued: March 12, 1985.

On November 5, 1984, G.E.C. Oil and Gas Operations (GEC), 7001 Fruitvale Extension, Bakersfield, California 93308, filed with the Federal Energy Regulatory Commission (Commission) a petition for relief from Order Nos. 399 and 399-A¹ under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and the Commission's Rules of Practice and Procedure.²

GEC sells certain gas from the Trico Field, located in Kern County, California, to the Pacific Lighting Gas Supply Company (Pacific Lighting). Pacific Lighting has informed GEC that under the subject gas purchase contract, GEC owes \$6,873.75 in principal plus \$1,664.82 in interest for overcollections resulting from Btu measurement adjustment during the period of December 1978 through January 1984.³ GEC states that of this amount, \$4,023.55 in principal is attributable to the Alpaugh lease and \$2,849.80 in principal is attributable to the Bryson lease, plus interest.

GEC states that all wells on the Alpaugh lease have been abandoned and that there are 275 royalty holders involved. GEC states that it would present a gross hardship to locate these royalty holders. GEC is seeking an abatement of the full refund regarding the Alpaugh lease. GEC further states that the Bryson lease, which has only

one well, produces less than 30 Mcf's per day. GEC requests an adjustment relieving it from seeking refunds from royalty owners owing amounts of \$200.00 or less.

Any person desiring to participate in this adjustment proceeding shall file a motion to intervene in accordance with Rule 1105 of the Commission's Rules of Practice and Procedure. All motions to intervene must be filed within 15 days after publication in the Federal Register.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-6288 Filed 3-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-14-002]

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

March 12, 1985.

Take notice that on March 6, 1985 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing two (2) substitute revised gas tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, both of which are dated as issued on March 5, 1985 proposed to become effective February 1, 1985 and, identified as follows:

Substitute Thirty-fifth Revised Sheet No. 4
Substitute Thirty-first Revised Sheet No. 18

Lawrenceburg states that its substitute tariff sheets were filed under its Purchased Gas Adjustment (PGA) Provision and to comply with the Commission's January 15, 1985 order in this docket that required Lawrenceburg to track any reduction in the rates being tracked of its pipeline supplier. On March 1, 1985 Texas Gas Transmission Corporation filed to reduce its February 1, 1985 PGA, promoting Lawrenceburg to refile its previously approved February 1, 1985 PGA.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 19, 1985. 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

¹ Order No. 399, Docket Nos. RM84-6-000, RM84-6-001 and RM84-6-002, 28 FERC ¶ 61,379 (September 20, 1984) and Order No. 399-A, Docket No. RM84-6-003 through 014, 29 FERC ¶ 61,254 (November 20, 1984). These orders implement the

Court's decision in *Interstate Natural Gas Association v. Federal Energy Regulatory Commission*, 716 F.2d 1 (D.C. Cir. 1983), cert. denied, 104 S.Ct. 1616 (1984) (INGAA).

² 18 C.F.R. 385.1101-1117 (1983).

³ This refund is owed as a result of the INGAA decision. In INGAA, the Court concluded that charges for gas must be determined by measurement of Btu's under wet conditions rather than the "as delivered" basis as promulgated by the Commission. See Order 93-A, Order Denying Rehearing and Clarifying Order 93, 15 FERC ¶ 61,075 (1981). The Court in INGAA ordered refunds of overcollections above the NGPA maximum lawful price based on recalculations using the "wet method".

¹ Order No. 399, Docket Nos. RM84-6-000, RM84-6-001 and RM84-6-002, 28 FERC ¶ 61,379 (September 20, 1984) and Order No. 399-A, Docket No. RM84-6-003 through 014, 29 FERC ¶ 61,254 (November 20, 1984). These orders implement the Court's decision in *Interstate Natural Gas Association v. Federal Energy Regulatory Commission*, 716 F.2d 1 (D.C. Cir. 1983), cert. denied, 104 S.Ct. 1616 (1984) (INGAA).

² 18 C.F.R. 385.1101-1117 (1983).

³ This refund is owed as a result of the INGAA decision. In INGAA, the Court concluded that charges for gas must be determined by measurement of Btu's under wet conditions rather than the "as delivered" basis as promulgated by the Commission. See Order No. 93-A, Order Denying Rehearing and Clarifying Order No. 93, 15 FERC ¶ 61,075 (1981). The Court in INGAA ordered refunds of overcollections above the NGPA maximum lawful price based on recalculations using the "wet method".

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-6289 Filed 3-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-40-000; TA85-2-40-001]

Raton Natural Gas Co.; Change in Rates

March 12, 1985.

Take notice that Raton Natural Gas Company (Raton) on February 28, 1985, tendered for filing, proposed changes in its FERC Gas Tariff, Volume No. 1, consisting of Thirty-Fourth Revised Sheet No. 3a. The change in rates is for jurisdictional gas service. The proposed effective date is April 1, 1985. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 6, 1985.

Raton states that the instant notice of change in rates is occasioned solely for changes in cost of gas purchased from Colorado Interstate Gas Company (CIG). The tracking of CIG gas cost change results in increase of \$0.44 per Mcf demand charge and decrease of 4.3¢ per Mcf in commodity charge. On an annual basis the changes result in a revenue decrease of \$2,822.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, 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 19, 1985. 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. 85-6290 Filed 3-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS69-41, et al.]

RPL Oil Company, Inc. (Earl R. Bruno), et al.; Applications for Small Producer Certificates¹

March 12, 1985.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before March 29, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS69-41	2/25/85	RPL Oil Company, Inc. (Earl R. Bruno), P.O. Box 5456, Midland, Texas 79701
CS74-293	2/25/85	Brady W. Production, Inc. (W.H. Brady), P.O. Box 9128, Midland, Texas 79708
CS85-37-000	2/14/85	Mixtex Petroleum, Box 928, Borger, Texas 79008-0928
CS85-38-000	2/19/85	Thor Energy of Louisiana Inc., P.O. Box 160, Ruston, Louisiana 71273
CS85-39-000	2/19/85	Normandy Oil and Gas Company, Inc. (formerly Saxony Industries, Inc.), 14114 Dallas Parkway, Suite 400, Dallas, Texas 75240

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS85-40-000	2/20/85	James M. Condra, Jr., P.O. Box 396, Sonora, Texas 76950
CS85-41-000	2/20/85	Linder Oil Company, a partnership, 1800 Carol Sue Ave, Suite 6A, Gretna, Louisiana 70053
CS85-43-000	2/28/85	Robert Cantor and Edd Cantor, c/o Stuart Cantor, P.O. Box 6877, Richmond, Virginia 23230

¹ Letter received dated February 21, 1985, requesting that the small producer certificate be amended to include Earl R. Bruno.

² Letter received dated February 19, 1985 requesting that the small producer certificate issued to W.H. Brady be amended to include Brady W. Production, Inc.

[FR Doc. 85-6291 Filed 3-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI81-38-001, et al.]

Shell Offshore Inc. (Successor in Interest to NT Corp.), et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates¹

March 12, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before March 29, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
C181-38-001, E, Feb. 21, 1985.	Shell Offshore Inc. (successor in interest to NT Corporation), P.O. Box 4480, Houston, Texas 77210.	Transcontinental Gas Pipe Line Corporation, West Delta Block 34, Offshore Louisiana.	(1)	15.025
C182-404-002, E, Feb. 21, 1985.	do	Texas Eastern Transmission Corporation, East Cameron Block 336, Offshore Louisiana.	(1)	15.025
C183-32-002, E, Feb. 27, 1985.	do	Transcontinental Gas Pipe Line Corporation, Vermilion Block 25, Offshore Louisiana.	(1)	15.025
C183-33-002, E, Feb. 27, 1985.	do	Transcontinental Gas Pipe Line Corporation, Vermilion Block 310, Offshore Louisiana.	(1)	15.025
C185-240-000, A, Feb. 19, 1985.	Koch Industries Inc., Post Office Box 2256, Wichita, Kansas 67201.	Natural Gas Pipe Line Company of America, West Cameron Block 81, Offshore Louisiana.	(2)	15.025
C185-246-000, A, Feb. 19, 1985.	Pogo Producing Company, Post Office Box 61289, Houston, Texas 77208.	Texas Gas Transmission Corporation, Eugene Island Block 337, Offshore Louisiana.	(2)	15.025
C185-247-000, A, Feb. 15, 1985.	Pennzoil Oil & Gas Inc., P.O. Box 2967, Houston, Texas 77001.	Texas Gas Transmission Corporation, Block 337, Eugene Island Area, Offshore Louisiana.	(2)	15.025
C185-253-000, F, Feb. 25, 1985.	ARCO Oil and Gas Company, Division Of Atlantic Richfield Company (partial successor to TXQ Production Company), P.O. Box 2819, Dallas, Texas 75221.	Valero Interstate Transmission Company, Everett Bell Lease, Tabasco Field, Hidalgo County, Texas.	(1)	14.73
C185-254-000, A, Feb. 25, 1985.	ARCO Oil and Gas Company, Division Of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	ANR Pipeline Company, Eugene Island Block 208 (W/2), Platform "H", Offshore Louisiana.	(*)	15.025
C183-360-002, C, Feb. 26, 1985.	Samedan Oil Corporation, 110 West Broadway, P.O. Box 909, Ardmore, Oklahoma 73401.	ANR Pipeline Company, south half of Eugene Island Block 247, Offshore Louisiana.	(1)	15.025
C185-260-000 A, Feb. 27, 1985.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	United Gas Pipe Line Co., Chauvin Field, Terrebonne Parish, Louisiana.	(*)	14.73
C185-261-000, E, Feb. 28, 1985.	Sun Exploration and Production Company (successor in interest to Robert G. Hall, an individual), P.O. Box 2680, Dallas, Texas 75221.	Northwest Central Pipeline Corporation, Section 9-27N-10W and Section 16-28N-10W, Alfalfa County, Oklahoma.	(*)	14.73
C185-262-000, E, Feb. 28, 1985.	Cities Service Oil and Gas Corporation (successor to Shell Western ESP Inc.), P.O. Box 300, Tulsa, Oklahoma 74102.	Northern Natural Gas Company, Wilburton Field Area, Morton County, Kansas.	(12)	14.73
C185-263-000, A, Mar. 1, 1985.	Oxy Petroleum Inc., P.O. Box 300, Tulsa, Oklahoma 74102.	Amoco Gas Company, Matagorda Island Area, Block 624, Offshore Louisiana.	(11)	14.73
C176-192-001, E, Mar. 1, 1985.	Shell Offshore Inc. (successor in interest to Florida Exploration Company), P.O. Box 4480, Houston, Texas 77210.	Transcontinental Gas Pipe Line Corporation, South Timberlake Block 185 Field, Offshore Louisiana.	(12)	15.025
C176-616-001, E, Mar. 1, 1985.	do	Transcontinental Gas Pipe Line Corporation, Ship Shoal Block 246, Offshore Louisiana.	(12)	15.025
C177-835-001, E, Mar. 3, 1985.	do	Trunkline Gas Company, South Timberlake Block 86, Offshore Louisiana.	(12)	15.025
C178-510-001, E, Mar. 4, 1985.	do	Texas Eastern Transmission Corporation, East Cameron Block 118 Field, Offshore Louisiana.	(12)	15.025
C188-816-003, Mar. 6, 1985.	Phillips Petroleum Company, 336 HS&L Building Bartlesville, Oklahoma 74004.	Northern Natural Gas Company, Parhandle Area, Gary County, Texas.	(12)	14.73
C185-219-000, A, (C176-578), (C177-428 & C177-677, C176-579), B, Feb. 1, 1985.	Southern Union Exploration Company, 1217 Main Street, Suite 400, Dallas, Texas 75202.	Southern Union Company, Western Gas Interstate Company, El Paso Natural Gas Company, Phillips Petroleum Company, Lee and San Juan Counties, Texas.	(14)	
C177-50-003, E, Mar. 7, 1985.	Shell Offshore Inc. (successor in interest to Florida Exploration Company), P.O. Box 4480, Houston, Texas 77210.	Florida Gas Transmission Company, Vermilion Blocks 21 and 22, Offshore Louisiana.	(12)	15.025
C181-21-001, E, Mar. 7, 1985.	do	Florida Gas Transmission Company, West Cameron Block 65, Offshore Louisiana.	(12)	15.025

¹ Effective as of December 31, 1984, SOI acquired all of the interest of NT Corporation in the leases covered by the certificates issued to NT Corporation.

Footnotes continued on next page.

⁸ Applicant is filing under Gas Purchase Contract dated November 7, 1984.

⁹ Applicant is filing under Gas Purchase Contract dated February 7, 1985.

¹⁰ Not used.

¹¹ Applicant acquired certain interests in the Everett Bell Gas Unit in Hidalgo County, Texas, from TXO Production Corporation under an instrument entitled "Partial Assignment of Oil and Gas Lease" dated effective August 30, 1982.

¹² Applicant is filing under Gas Purchase Contract dated January 17, 1985.

¹³ Applicant is filing to amend its Rate Schedules 52-59 to add acreage.

¹⁴ Applicant is filing under Gas Purchase and Sales Agreement dated April 9, 1980, and Ratification Agreement dated November 1, 1980.

¹⁵ Effective April 5, 1984 Sun Exploration and Production Company acquired certain pipelines which are now in place and located in Alfalfa County, Oklahoma.

¹⁶ Effective July 1, 1984, Cities Service Oil and Gas Corporation acquired the interest of Shell Western E&P Inc., in certain leases in Morton County, Kansas.

¹⁷ Applicant is filing under Gas Purchase Contract dated December 6, 1984.

¹⁸ Effective as of September 21, 1984, Florida Exploration Company assigned to FEC Offshore Productive Inc. its interest in the leases covered by the certificate held by FEC.

¹⁹ Applicant is filing to amend its certificate to add two additional exchange points under the contracts.

²⁰ Southern Union Exploration Company (SX) requests authorization under Section 7(b) of the NGA to abandon a portion or all of certain sales made to Southern Union Company, Western Gas Interstate Company, and El Paso Natural Gas Company and requests authorization under Section 7(c) of the NGA to sell the Lea County production instead to Phillips Petroleum Company. On February 25, 1985, SX requested its application be disregarded as to that portion that requests a certificate of public convenience and necessity, because the sale proposed to be made to Phillips is under a percentage-of-proceeds contract and Section 154.91(e) of the Commission's regulations does not permit certificate applications to be filed by producers making percentage sales.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-6292 Filed 3-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP79-389-006; RP80-117-007; RP83-30-033]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

March 12, 1985

Take notice that on March 4, 1985, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet Nos. 2169 through 2187
Original Sheet Nos. 2187-A, 2187-B, 2187-C
Substitute Sixth Revised Sheet No. 2169-A
Original Sheet No. 2169-B
First Revised Sheet No. 2169-B
Second Revised Sheet No. 2169-B
Third Revised Sheet No. 2169-B

Transco states that subject filing reflects a revision of its Rate Schedule X-222, which is a transportation agreement with Public Service Electric and Gas Company (Public Service), dated June 22, 1979 and authorized by Commission order issued April 16, 1980 in Transco, Docket No. CP79-389. The revised transportation arrangement was included in amendatory agreements dated December 5, 1980, November 19, 1981, January 25, 1983 and December 6, 1983 between Transco and Public Service. Such revised transportation arrangements include several additional points of receipt for interruptible transportation of gas, modification of the agreement to provide for firm transportation service from Vermilion Block 310 and establish rates and conditions therefor and increase the maximum daily quantities from 50,000 dt to 75,000 dt. In Ordering Paragraph (A) of the aforementioned certificate, Transco was granted flexible authority to transport gas for Public Service from new sources without obtaining additional transportation authority for each new field. On January 4, 1983, the

Commission issued an order in Docket No. CP79-389-003 amending the April 16, 1980 order to include the firm transportation service for Public Service from Vermilion Block 310 and authorizing increased daily quantities.

A copy of the instant filing has been served upon Public Service.

It is proposed that First Revised Sheet Nos. 2169 through 2187 and Original Sheet Nos. 2187-A, 2187-B and 2187-C be made effective January 4, 1983, the date the Commission authorized the revised transportation service to commence pursuant to the Commission's order amending order issuing certificate of public convenience and necessity. Substitute Sixth Revised Sheet No. 2169-A (Interruptible Rates and Fuel Requirements), which is being filed only for tariff continuity to amend certain references to provisions of the transportation agreement necessitated by other amendments herein described and reflects no changes in the rates for interruptible transportation service under Rate Schedule X-222 from those currently on file with the Commission in Sixth Revised Sheet No. 2169-A, is proposed to be effective March 1, 1985, which is the effective date of the currently effective interruptible rates. Original Sheet No. 2169-B, proposed to be effective April 22, 1983; Second Revised Sheet No. 2169-B, proposed to be effective April 22, 1983; Second Revised Sheet No. 2169-B, proposed to be effective October 1, 1983; and Third Revised Sheet No. 2169-B, proposed to be effective April 1, 1984, reflect Commission approved changes in Transco's rates for firm transportation service resulting from the settlement of Docket No. RP80-117 and the proceedings and settlement concerning Transco's production area transportation rates in Docket No. RP83-30.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.311, 385.214). All such motions or protests should be filed on or before March 19, 1985. 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. 85-6293 Filed 3-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-300-000, et al.]

Colorado Interstate Gas Co., et al.; Natural Gas Certificate Filings

March 12, 1985.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP85-300-000]

Take notice that on February 21, 1985, Colorado Interstate Gas Company (CIG); P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-300-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Peoples Natural Gas Company, Division of Internorth, Inc. (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG requests authority to transport up to 3,185 Mcf of natural gas per day on an interruptible basis for Peoples. CIG states it would receive gas from Peoples at the McClave delivery point, Bent County, Colorado, and redeliver thermally equivalent volumes to Peoples at one or more existing redelivery points located in Colorado, it is explained. The redelivery points are designated as Widefield, Castle Rock, Cheyenne Wells and Hugo, it is stated. CIG states that it would charge 57.54 cents per Mcf for the transportation of redelivery volumes after deducting applicable fuel gas and unaccounted-for gas volumes. The transportation charge is computed as follows: (1) 56.29 cents per Mcf which is CIG's margin for its Rate Schedules G-1 and P-1 commodity charge as settled in Docket No. RP82-54 and (2) 1.25 cents

per Mcf for the Gas Research Institute funding fee, it is explained. CIG states that the transportation charge assures that Peoples will continue to bear its fair share of CIG's System fixed costs. CIG further states that because the proposed transportation will displace CIG's firm sales to its core markets, CIG's proposed transportation charge, which is equivalent to the non-gas component of its Rate Schedule G-1 commodity sales rate, is consistent with the methodology approved in the Commission's order in Docket No. C183-269-000, *et al.* While the proposed transportation charge will permit CIG to offset the revenue loss of its on-system sales market, it will not protect CIG and its customers from any resulting take-or-pay obligations, it is explained.

Comment date: April 2, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP85-292-000]

Take notice that on February 15, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-292-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Holly Farms Poultry Industries, Inc. (Holly Farms), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 175 million Btu equivalent of natural gas per day for Holly Farms through June 30, 1985. Columbia states that the gas to be transported would be purchased from Energy Management, Inc. (EMI), and would be used as boiler fuel in Holly Farms' Harrisonburg, Virginia, plant.

It is indicated that Columbia has released certain gas supplies of EMI and that these supplies are subject to the ceiling price provisions of sections 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Holly Farms has made arrangements to purchase this released gas from EMI. Columbia states that it would receive the gas from EMI and redeliver the gas to Columbia Gas of Virginia, Inc. (CVA), the distribution company serving Holly Farms, near Harrisonburg, Virginia.

Columbia states that it would charge its Rate Schedule TS-1 rates for its transportation service and that for gas

received from receipt points other than Leach, Kentucky the rate would be 29.23 cents per million Btu provided the volumes are within CVA's total daily entitlements (TDE) and 41.27 cents per million Btu if the volumes are in excess of CVA's TDE. Columbia further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested would apply only to points related to sources of gas supply, not to delivery points in the market area. Columbia would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Florida Cities, Complainant vs. Florida Gas Transmission Corporation and Houston Natural Gas Corporation, Respondents

[Docket No. CP85-296-000]

Take notice that on February 13, 1985, Florida Cities,¹ 1350 New York Avenue, N.W., Suite 1100, Washington, D.C. 20005-4798, filed in Docket No. CP85-296-000 pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) a complaint against the acquisition of Florida Gas Transmission Corporation (FGT) by Houston Natural Gas Corporation (HNG), a request that Commission investigate whether HNG would operate FGT to determine whether section 7 of the Natural Gas Act is applicable, and a petition for a declaratory order, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Florida Cities state that pursuant to published reports, HNG and FGT have signed an agreement by which HNG would acquire FGT as well as FGT's interest in Transgulf Pipeline Company

(TPC), Continental Cortez Pipeline Company (CCPC), Florida Intrastate Pipeline Company (FIPC) and Florida Hydrocarbons Company (FHC). Florida Cities aver that HNG may not acquire FGT without the prior approval of the Commission pursuant to section 7 of the Natural Gas Act. It is stated that Florida Cities have received a letter from FGT stating that the Commission does not have jurisdiction over the acquisition because it is a stock acquisition. Florida Cities further state that according to HNG's announced supply and marketing plans, the acquisition would result in HNG's operation of FGT's system. The acquisition, therefore, would be subject to section 7 of the Natural Gas Act, Florida Cities aver. Florida Cities state that they do not, at this juncture, assert that the Commission ultimately withhold approval of this acquisition. However, a Commission investigation into the public convenience and necessity of the acquisition would be necessary and appropriate and conditions are likely to be required to protect Florida gas consumers if the Commission should issue a certificate of public convenience and necessity for the acquisition, Florida Cities further aver.

Florida Cities state that FGT is a certificated natural gas company, which owns and operates an extensive pipeline network extending from near McAllen, Texas, to southern Florida, and that FGT is the sole supplier of natural gas to peninsular Florida. Florida Cities aver that FGT was acquired through its parent Florida Gas Company, by the Continental Group, Inc. (Continental Group), in December 1979 and that that stock acquisition was held to be non-jurisdictional. At the same time, Florida Cities aver, the Continental Group acquired other subsidiaries of FGT, notably Florida Gas Exploration Company and FHC.

Florida Cities state that HNG is a natural gas company engaged in the transmission and sale of natural gas as well as exploration for oil and gas. It is further stated that HNG has an extensive pipeline system in Texas and that, in December 1984, HNG completed its purchase of Transwestern Pipeline Company (Transwestern). This purchase, along with the purchase of FGT, would reportedly give HNG the longest pipeline in the nation, it is averred. Florida Cities indicate that on or about November 30, 1984, HNG publically announced that HNG agreed to purchase FGT and that HNG would acquire certain related transmission and production companies including FHC, FIPC, TPC, and CCPC. It is stated that HNG has made no filing with the

¹ Florida Cities consist of the Ft. Pierce Utilities Authority, the Orlando Utilities Commission, the Sebring Utilities Commission and the cities of Gainesville, Homestead, Kissimmee, Lakeland, Starke, Tallahassee, and Vero Beach, Florida.

Commission seeking a certificate of public convenience and necessity in accordance with section 7 of the Natural Gas Act to acquire FGT. Further, Florida Cities state that they have been informed by a representative of FGT that it believes there is no need to seek Commission approval of the acquisition.

It is asserted that in numerous public statements regarding the takeover, HNG has characterized the acquisition as extending HNG's pipeline network. It is further asserted that various articles described HNG as having a network which stretches from California to Florida, as having the flexibility to buy from and deliver gas to new markets and as nearly doubling HNG's pipeline mileage and enabling HNG to pick and choose the cheapest supplies for the various parts of its new transmission market. Florida Cities state that they have the impression that HNG has already begun the centralization of decision making for HNG and FGT and that, in any event, HNG plans to control and utilize the facilities of FGT and operate FGT. Therefore, Florida Cities' aver, the acquisition is subject to Commission jurisdiction.

Florida Cities state they have a real and immediate economic interest in the transaction at issue, that they all are customers of FGT and that they all buy gas from FGT for use in the municipal power plants. It is stated that certain of these cities maintain retail gas distributorships. Florida Cities further aver that all are concerned with the economic availability of natural gas from FGT as a seller or transporter. Florida Cities assert that without a certificate HNG would not be obligated to consider the public interest in determining how to serve its various gas markets and that FGT would not be an independent source to protect the Florida market. It is further stated that FGT would not provide transportation service for Florida Cities to reach other suppliers such as HNG as an alternative to Florida Cities' buying from FGT.

Comment date: April 11, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[Docket No. CP85-312-000]

4. Lone Star Gas Company, a Division of ENSERCH Corporation

Take notice that on February 25, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP85-312-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to

construct and operate sales taps and appurtenant facilities for three residential customers and one commercial customer, under the certificate issued in Docket Nos. CP83-59-000 and CP83-59-001, as amended in CP83-59-002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Lone Star proposes to construct and operate sales taps and appurtenant facilities in order to sell and deliver approximately 100 Mcf of natural gas per year to each of the following residential customers: (1) Don Bone in Love County, Oklahoma; (2) Greg Aiken in McClain County, Oklahoma; and (3) W. J. Blodgett in Carter County, Oklahoma. Lone Star also proposes to sell approximately 200 Mcf of natural gas per year to Select Industries, a commercial customer in Wichita County, Texas.

Lone Star states that these sales would be at its residential and commercial rates, as approved by the Oklahoma Corporation Commission and Texas Railroad Commission. It is indicated that the subject volumes of gas are not expected to have any significant impact on Lone Star's peak day or annual system operations.

Comment date: April 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85-290-000]

5. Natural Gas Pipeline Company of America

Take notice that on February 25, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60143, filed in Docket No. CP85-290-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Olin Chemicals (Olin). The request is pursuant to the Commission's order issued October 29, 1984, in Docket No. CP84-577-000 authorizing Trunkline Gas Company's (Trunkline) sales for take-or-pay relief program (STOPR), all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Natural states that it proposes to transport pursuant to a limited term gas transportation agreement dated February 15, 1985, a maximum of 3.5 billion Btu of natural gas per day for Olin from Moultrie County, Illinois, to Livingston County, Illinois. It is explained that the gas to be transported by Natural is purchased by Olin from Trunkline under Trunkline's STOPR

program for Olin's end use in its facility in Joliet, Illinois. It is stated that Trunkline and Panhandle Eastern Pipe Line Company have filed a joint request under the notice procedures for authorization to make a sale of STOPR gas to Olin and to transport such gas on Olin's behalf, respectively. Natural requests authorization for a term of service commencing on the date of initial deliveries with termination the earlier of one year thereafter, or such date the STOPR program expires. Natural proposes to charge a transportation fee of 2.8 cents per million Btu of gas it receives for Olin's account, it is indicated.

Comment date: April 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85-298-000]

6. Natural Gas Pipeline Company of America

Take notice that on February 20, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-298-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for LTV Steel Company (LTV) under the certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport a maximum of 10 billion Btu of natural gas per day for LTV from Custer, Woodward and possibly Beaver Counties, Oklahoma, to Cook County, Illinois. Natural states that it would charge transportation fees of 27.2 cents, 27.2 cents, and 28.6 cents per million Btu of gas received from Custer, Woodward and Beaver Counties, respectively. It is explained that in addition, LTV would pay the Gas Research Institute's surcharge funding unit per million Btu as shown on Sheet No. 5 of Natural's FERC Gas Tariff, Volume No. 1.

Natural states that it commenced this service on January 1, 1985, pursuant to Section 157.209(e)(1) for a 120-day period that terminates on April 30, 1985, and that it proposes to continue this service from April 30, 1985, through June 30, 1985.

Additionally, Natural seeks "flexible authority" to add and/or delete sources of gas and/or receipt points in performance of this transportation service for LTV.

Comment date: April 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85-270-000]

7. Northern Natural Gas Company, Division of InterNorth, Inc.

Take notice that on February 8, 1985, as supplemented March 7, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-270-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon and remove thirty-three small volume measuring stations in Kansas, Minnesota, Iowa, Montana, South Dakota, and Nebraska, under the abandonment authorization issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern has been advised by Peoples Natural Gas Company, Division of InterNorth, Inc., that thirty-two small volume measuring station customers no longer desire natural gas service and wish to have their meters removed. (One customer has two adjacent taps on his property.)

Consequently, Northern is requesting permission and approval to abandon thirty-three small volume measuring stations. The estimated cost of removing such facilities is \$10,472.

Comment date: April 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85-293-000]

8. Northern Natural Gas Company, Division of InterNorth, Inc.

Take notice that on February 15, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-293-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install, operate, and maintain five small volume meters to be added to five existing small volume sales taps as set forth in the appendix hereto under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it proposes to install, operate, and maintain five small volume meters to accommodate natural

gas deliveries to five non-right-of-way grantors to be served through their local distribution company, Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples). Northern advises that the deliveries would be made within Peoples' presently authorized firm entitlements. Northern further states that because the proposed volumes to be

sold are within Peoples' current firm entitlement the proposed five small volume meters would have a *de minimus* impact on Northern's peak day and annual deliveries. Northern avers that the gas that flows through the proposed facilities would be sold under its contract demand Rate Schedule CD-1.

APPENDIX—LIST OF CUSTOMERS TO BE SERVED

Name of customer	End-user	Location of meter	Peak/annual usage (Mcf)	End use	Estimated cost
Peoples	Curtis Mott	Scott County, MN	3.00 184	Residential	\$700
Do	Keith Bester	Dakota County, MN	1.02 128	do	700
Do	Fred Richtsmeier	Blackhawk County, IA	1.50 200	do	700
Do	Ed Muelken	Scott County, MN	2.60 400	Space Heating	700
Do	Ron Jantz	Gray County, KS	57.60 7,373	Irrigation Engine Fuel	700

Comment date: April 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP85-304-000]

9. Panhandle Eastern Pipe Line Company

Take notice that on February 22, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-304-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Texas Petroleum Corporation (Union Texas) under its certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated August 13, 1984, Panhandle proposes the transportation of up to 15,000 Mcf of natural gas per day for Union Texas. Panhandle estimates peak day and average day transportation quantities of up to 15,000 Mcf and 10,000 Mcf, respectively, and annual quantities of approximately 3,650,000 Mcf. It is asserted that Union Texas has purchased the subject gas from Union Texas Products Corporation (Union Texas Products) for use in Union Texas' petrochemical plant near Geismar, Louisiana.

Panhandle explains that it would receive up to 15,000 Mcf of natural gas per day on an interruptible basis at an existing point of receipt between Panhandle and the tailgate of Union Texas Products' Chaney Dell plant in Major County, Oklahoma. It is stated that Panhandle would transport and deliver such gas, less 3.1 percent

reduction for fuel to Trunkline Gas Company (Trunkline) at an existing point of receipt in Douglas County, Illinois. It is further stated that Trunkline would transport and deliver the gas to Acadian Pipeline Company (Acadian) at the outlet of Exxon Corporation's Garden City plant, St. Mary Parish, Louisiana, and/or to Acadian in Freetown, St. Mary Parish, Louisiana, which would make ultimate delivery to Union Texas near Geismar, Louisiana.

It is asserted that pursuant to the transportation agreement, the transportation charge was to be based on Panhandle's Rate Schedule AIC. It is further asserted that effective February 1, 1985, Rate Schedule AIC is no longer in effect, therefore, in accordance with Article I(1) of the transportation agreement and § 284.103(c) of the Commission's Regulations, the transportation charge would be based on Panhandle's Rate Schedule IT.

Panhandle further requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85-286-000]

Take notice that on February 14, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001 filed in Docket No. CP85-286-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its Rate Schedule T-81 transportation service for Bay State Gas Company (Bay State), effective March 31, 1985, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it was authorized to render the subject transportation service for Bay State in Docket No. CP78-523. Application states that the service was necessary to enable Bay State to receive volumes of natural gas equivalent to volumes of liquefied natural gas which Bay State purchases from Distrigas of Massachusetts Corporation. It is stated that Bay State has informed Applicant that the transportation service would not be required after March 31, 1985, and that the parties have agreed to terminate the transportation agreement effective March 31, 1985.

Comment date: April 2, 1985, in accordance with Standard Paragraph F at the end of this notice.

11. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85-295-000]

Take notice that on February 19, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001 filed in Docket No. CP85-295-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in place certain pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests Commission approval to abandon 0.25 mile of 12-inch gathering lateral. Applicant states that said gathering lateral was installed pursuant to authorization granted in Docket No. CP68-237 and that said 12-inch gathering lateral was constructed to attach Mobil Oil Corporation's (Mobil) West Cameron Block 176-2 platform to Applicant's 26-inch 507K-100 pipeline in the West Cameron Area, offshore Louisiana.

Applicant states that in April 1981, Mobil advised Applicant that a 6-inch pipeline to transport the production from the West Cameron 176-2 platform to its

East Cameron 64-A platform, which is connected to Applicant's 507K-200 pipeline, was constructed by Mobil. Applicant alleges that all production from the West Cameron 176-2 platform is not transported through Mobil's 6-inch pipeline.

Applicant further states that the 12-inch lateral constructed by Applicant has internal corrosion problems causing leakage all along the pipeline and that continual operation of the pipeline would jeopardize the integrity of its side valve and 26-inch pipeline. Applicant requests Commission approval to abandon so as to avoid possible damage to connecting facilities.

Comment date: April 2, 1985, in accordance with Standard Paragraph F at the end of this notice.

12. Trunkline Gas Company

[Docket No. CP85-305-000]

Take notice that on February 22, 1985, Trunkline Gas Company (Applicant), P.O. 1642, Houston, Texas 77001, filed in Docket No. CP-85-305-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of a qualified end-user under its certificate issued in Docket No. CP83-84-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant requests authority to transport gas on behalf of The Alpha Corporation (Shipper) pursuant to a transportation agreement dated December 17, 1984, between Shipper and Applicant (agreement). It is explained that the agreement provides for Applicant to receive a transportation quantity of up to 750 Mcf of gas per day on an interruptible basis, at an existing point of interconnection between Applicant and Panhandle Eastern Pipe Line Company in Douglas County, Illinois. Applicant states that it would then transport and redeliver such gas, less a one percent reduction for fuel, to Shipper for its end-use at its facilities in Collierville, Tennessee. It is stated that Shipper is an existing direct industrial sales customer of Applicant.

Applicant states that it would be compensated in accordance with its Rate Schedule OST, currently 31.00 cents plus a 1.17 cent GRI surcharge for each million Btu redelivered at the point of redelivery.

Applicant states that the term of the authorization sought herein would be from the date automatic authorization expires (May 15, 1985) until the earlier of, eighteen months from the effective

date of the agreement, termination of the authorization as provided by Subpart F of Part 157 of the Commission's Regulations or termination of the agreement by either party.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 26, 1985, in accordance with Standard Paragraph G at the end of this notice.

13. Trunkline Gas Company

[Docket No. CP85-306-000]

Take notice that on February 22, 1985, Trunkline Gas Company (Trunkline), P.O. 1642, Houston, Texas 77001, filed in Docket No. CP-85-306-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Union Texas Petroleum Corporation (Union Texas) under its certificate issued in Docket No. CP83-84-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated August 13, 1984, Trunkline proposes the transportation of up to 15,000 Mcf of natural gas per day on an interruptible basis for Union Texas. Trunkline estimates peak day and average day transportation quantities of up to 15,000 Mcf and 10,000 Mcf, respectively, and annual quantities of approximately 3,650,000 Mcf. It is asserted that Union Texas has purchased the subject gas from Union Texas Products Corporation for use in Union Texas' petrochemical plant near Geismar, Louisiana.

It is stated that Trunkline would receive up to 15,000 Mcf of gas per day at an existing point of receipt between Trunkline and Panhandle Eastern Pipeline Company in Douglas County, Illinois. It is further stated that Trunkline would transport and redeliver the gas to the outlet of Exxon Corporation's Garden City plant, St. Mary Parish, Louisiana, for Acadian Pipeline Company (Acadian) and/or to

Acadian in Freetown, St. Mary Parish, Louisiana, which would in turn make ultimate delivery to Union Texas near Geismar, Louisiana.

It is asserted that the transportation charge is based upon Trunkline's currently effective Rate Schedule IT. It is further asserted that service is conditioned upon the availability of capacity sufficient to provide service without detriment or disadvantage to Trunkline's existing customers which are dependent on Trunkline's general system supply.

Trunkline further requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Trunkline would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 26, 1985, in accordance with Standard Paragraph C at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests

filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-0425 Filed 3-15-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of February 8 through February 15, 1985

During the week of February 8 through February 15, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

March 11, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 8 through Feb. 15, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 13, 1984	Office of Special Counsel, Washington, D.C.	HRZ-0233	Interlocutory order. If granted: The Office of Hearings and Appeals would give no weight to certain affidavits submitted by Texaco, Inc. in connection with the Statement of Objections to the May 1, 1979 Proposed Remedial Order issued to the firm.
Jan. 26, 1985	Kenneth Walker, Abilene, Texas	HRZ-0234	Interlocutory order. If granted: The Proposed Remedial Order issued to Kenneth Walker (Case No. HRO-0256) would be withdrawn or amended, and Mr. Walker would not be required to file a Statement of Objections.
Do	Office of Special Counsel, Washington, D.C.	HRZ-0232	Interlocutory order. If granted: The Office of Hearings and Appeals would review and make determinations regarding certain requests for admissions submitted by Texaco, Inc. that were previously deferred in a December 18, 1984 Decision and Order (Case No. HRZ-0170).
Feb. 11, 1985	Delaware County Oil Company, Manchester, Iowa	HEE-0118	Exception to the reporting requirements. If granted: Delaware County Oil Company would not be required to file Form EIA 782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."
Feb. 14, 1985	Cedar Valley Cooperative Company, Cedar Rapids, Nebraska	HEE-0119	Exception to the reporting requirements. If granted: Cedar Valley Cooperative Company would not be required to file Form EIA-821, "Annual Fuel Oil and Kerosene Sales Report."
Do	Chuck Hansen, Sunnyvale, California	HFA-0274	Appeal of an information request denial. If granted: The December 27, 1982 Freedom of Information Request Denial issued by the Office of Military Application would be rescinded, and Chuck Hansen would receive access to a document entitled "History of Modification of USAF Aircraft for Atomic Weapon Delivery, 1946-1954."

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Feb. 8 through Feb. 15, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Do	Rice Oil Company, Denver, Colorado	HRR-0099	Motion for modification/rescission. If granted: The December 19, 1984 Decision and Order (Case Nos. HRD-0143 and HRR-0143) issued to Rice Oil Company would be modified regarding the firm's requests for discovery and an evidentiary hearing. Interlocutory order. If granted: The April 21, 1983 Proposed Remedial Order issued to Rice Oil Company (Case No. HRO-0154) would be dismissed with prejudice. Appeal of an information request denial. If granted: The January 24, 1985 Freedom of Information Request Denial would be rescinded and Kramer Associates, Inc. would receive access to an investigative report entitled "Alleged Contract Procurement Irregularities by Kramer Associates" (PI-82-95) and related documents.
Do	Rice Oil Company, Minot, North Dakota	HRZ-0235	
Feb. 15, 1985	Kramer Associates, Inc., Washington, D.C.	HFA-0275	

REFUND APPLICATION RECEIVED

[Week of Feb. 11 to Feb. 15, 1985]

Date	Name of refund proceeding/name of refund applicant	Case No.
Feb. 8, 1985	Vickers Energy Corp./Bob Ross, Inc.	RF1-376
Feb. 11, 1985	APCO/Gramco, Ltd.	RF83-4
Do	Van Gas, Inc./R.M. Mulhall	RF68-11
Do	Aztex Energy/Merle Oaks	RF73-10
Feb. 8, 1985	Aminoli/Chevron	RF98-1
Do	Belco Petroleum/Chevron	RF99-1
Do	Grace Petroleum/Chevron	RF100-1
Do	Mountain Fuel/Chevron	RF101-1
Do	Oxnard Refining/Chevron	RF102-1
Do	Superior Oil/Chevron	RF103-1
Feb. 12, 1985	Aztex Energy/Mansfield Oil Company	RF73-11
Do	Hertz Corp./HBE Corp.	RF76-2
Do	Van Gas, Inc./Mt. Lasser Trout Farms, Inc.	RF68-12
Do	Union Texas Petroleum/Reed Distributing Co., Inc.	RF104-1
Feb. 13, 1985	Amoco/Amcorp Oil	RF21-12379 to RF21-12380
Feb. 14, 1985	Amtal/Loran D. Rieger	RF46-29
Feb. 12, 1985	Amoco/Belridge/Three Affiliated Tribes	RQ21-153 to RQ8-154
Feb. 15, 1985	Wisconsin Industrial Fuel Oils/Oils, Inc.	RF75-2
Do	Van Gas, Inc./Barbara A. Day	RF68-13
Feb. 11, 1985 to Feb. 15, 1985	Gulf Refund Applications	RF40-1688 to RF40-1710

[FR Doc. 85-6441 Filed 3-15-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Week of Jan. 7 through Jan. 11, 1985

During the week of January 7 through January 11, 1985, the notice of objection to the proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of

Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as nonparticipants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.
March 11, 1985.

Questor Petroleum Corp.; Kyle S. McAlister;
New Braunfels, Texas; HRO-0269, crude oil

On January 11, 1985, Questor Petroleum Corporation; Kyle S. McAlister, 1150 Highway 46 South New Braunfels, Texas 78130 filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Special Counsel of the Economic Regulatory Administration issued Questor and to Mr. McAlister on July 27, 1984. In the PRO, the ERA found that during the period January 1978 through June 1979, Questor resold crude oil in excess of the maximum lawful selling prices set forth in 10 CFR Part 212, Subpart L.

According to the PRO the violation resulted in \$8,173,986.19 of overcharges.

[FR Doc. 85-6439 Filed 3-15-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals
Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of \$52,885.52 to members of the public. This money is being held in escrow following the settlement of an enforcement

proceeding involving Armour Oil Company (HEF-0031).

DATE: Date and address: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the above case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Armour Oil Company (Armour). The Consent Order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The Consent Order settled possible pricing violations in Armour's sales of petroleum products to customers during the relevant audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Armour pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Armour who establish that they were injured by Armour's alleged overcharges. Such customers will receive refunds based on the amounts designated for them under the terms of the Consent Order. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the

proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the *Federal Register*, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 10:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 11, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Mar. 11, 1985.

Name of Firm: Armour Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0031.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the affects of alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that OHA implement a proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Armour Oil Company (Armour) of San Diego, California.

I. Background. Armour Oil Company is a "reseller-retailer" of petroleum products, as this term was defined in 10 CFR 212.31. An ERA audit of Armour's operations during the period May 1974 through December 1979 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations. In a Notice of Probable Violation (NOPV) issued to Armour on March 25, 1981, the ERA alleged that during the audit period Armour overcharged its customers by \$5,583,410.00. In order to settle all claims and disputes between Armour and the DOE regarding Armour's compliance with the DOE price and allocation regulations in sales of gasoline, diesel fuel, fuel oil, and kerosene (hereinafter referred to as refined products) during the period May 1, 1974 through January 28, 1981 (the consent order period), the firm entered into a Consent Order with

the DOE on November 10, 1982.¹ Armour thereby agreed to refund a total of \$475,000 to customers who were allegedly overcharged by the firm's pricing practices in sales of refined products during the consent order period. Under the terms of the Consent Order, the firm was to refund \$379,235.66 directly to specified customers through cash or credit memoranda, \$52,968.55 to the U.S. Treasury, and \$42,795.79 into an interest-bearing escrow account pending distribution by the DOE.² The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. Additionally, the Consent Order states that Armour does not admit that it committed any such violations.

II. Jurisdiction. The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process maybe used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Armour consent order fund. We therefore

propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures. Insofar as possible, the consent order fund should be distributed to those customers of Armour who were injured by the firm's alleged pricing and allocation violations. The ERA records concerning this Consent Order include a schedule prepared in accordance with the terms of the Consent Order. The schedule sets forth the names of 304 customers who were allegedly overcharged by Armour, along with designated refund amounts. In our view, these firms and their downstream customers, are most likely the only parties who were adversely affected by any alleged violations by the firm. All but 14 of the customers listed in the schedule were to receive their designated refund amounts directly from Armour, as mandated by the Consent Order. The refund amounts attributable to the remaining 14 customers were paid into the DOE escrow account. The names of these customers and their designated refund amounts are set forth in the Appendix to this Proposed Decision and Order.³ While we recognize that there may be other customers of Armour refined products who were not listed in the audit files and who may have been injured by Armour's pricing or allocation practices during the consent order period, we believe that the 14 customers listed in the Appendix are most likely the only parties eligible for refunds in this proceeding.

All of the identified customers of Armour listed in the Appendix are resellers (retailers or wholesalers) or refiners of petroleum products. We propose that these firms be required to demonstrate that they did not pass on to their customers price increases implemented by Armour. See, e.g., *Vickers*. In order to qualify for a refund base on injury due to Armour's pricing practices, firms which acted in the capacity of resellers of Armour refined products must show that during the consent order period they would have maintained their prices for the refined products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller or refiner should generally demonstrate that at the time it purchased refined products from

¹ Armour and the DOE entered into a separate Consent Order regarding sales of crude oil. Distribution procedures for funds obtained pursuant to that Consent Order have already been established by the DOE. See *A. Johnson & Co., Inc.*, 12 DOE ¶ 85,102 (1984). In the present proceeding, we are only considering distribution procedures for funds obtained pursuant to the Consent Order covering refined products. Accordingly, only those customers who purchased refined products from Armour will be eligible to apply for a refund in this proceeding.

² The \$52,968.55 paid to the U.S. Treasury was attributable to overcharges made to company-owned subsidiaries of Armour located in San Diego, California, and Chula Vista, New Mexico. In addition, although the Consent Order initially required Armour to pay \$42,795.79 into the DOE escrow account, the DOE subsequently directed Armour to pay the amount designated for direct payment to EZ Serve, Inc., one of the customers listed in the schedule, into the escrow account as well. Consequently, the amount of \$10,089.73 was added to the \$42,795.79 consent order fund, for a total of \$52,885.52 to be distributed in the present proceeding.

³ We currently do not have addresses for some of the 14 customers listed in the Appendix. In order to insure that these customers receive notice of this proceeding, we ask that anyone aware of their addresses send us this information.

Armour, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges to its customers. In addition, the reseller or refiner must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.⁴ The maintenance of a bank will not, however, automatically establish injury. See *Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

Alternatively, since the Consent Order also covers Armour's compliance with the allocation regulations, reseller and refiner claimants may establish eligibility by showing that they were injured by Armour's allocation practices.⁵ See *Office of Enforcement*, 9 DOE ¶ 82,551 at 85, 268-69 (1982).

As in many prior special refund cases, we will adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumption we will adopt in this case is used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The presumption that claimants seeking smaller refunds were injured by

the pricing and allocation practices settled in the Armour Consent Order is based on a number of considerations. See, e.g., *Urban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of this presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Armour and were in the chain of distribution where the alleged violations occurred. Therefore, they bore some impact of the alleged violations, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under this presumption, a refiner, reseller, or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level.⁶ Previous OHA refund

⁴ We propose that resellers and refiners who made only spot purchases from Armour be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396-97. See *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to exercise discretion as to where and when they made the purchase(s) on which their refund claim is based.

decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose that the same approach be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where much of the consent order period was fairly distant, we believe that the establishment of a presumption of injury for all claims of \$5,000 or less is reasonable.⁷ See *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984).

IV. *Calculation of Refund Amounts.* We must further determine the proper method for dividing the consent order fund among successful applicants. Although we recognize that our records do not provide conclusive evidence as to the identity of all eligible parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case. Specifically, we note that the ERA audit was at an advanced stage and the allegedly overcharged parties were very well-defined, as evidenced by the detailed schedule prepared in accordance with the terms of the Consent Order. Accordingly, the information provided in the ERA audit files and set forth in the schedule can be used to fashion a refund plan which will correspond closely to the injuries experienced. See, e.g., *Marion*. We therefore propose that the maximum refund for the firms listed in the Appendix be equivalent to the refund amounts set forth in the Appendix.⁸

⁷ Any reseller whose potential refund amount is above the threshold amount may elect to apply for a refund based on the threshold amount.

⁸ Those customers who were entitled to receive a direct refund from Armour pursuant to the Consent Order will not be eligible for a refund in the present proceeding unless they can show that they did not receive a refund from Armour. In the event that any claims are successfully made by firms not listed in the Appendix, we may have to adjust the maximum refund amounts set forth in the Appendix. Accordingly, we do not intend to issue final

⁴ Some of the refined product sales covered by the Consent Order occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers. See 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) [effective July 15, 1979]. Accordingly, retailers will not be required to submit bank information concerning any purchases of refined products they may have made after July 15, 1979.

⁵ In prior cases, we have required allocation claimants to (i) show that they contemporaneously notified appropriate DOE personnel of the alleged allocation violations and (ii) make a reasonable demonstration that they incurred injury as a result of the alleged violations. See *Standards Oil Co. (Indiana)/Anchor Distributors, Inc.*, 12 DOE ¶ 85,030 (1984).

Successful refund applicants will also receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

We further propose to establish a minimum amount of \$15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than \$15 outweighs the benefits of restitution in those situations. See, e.g., *Amoco; Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). See also 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the *Federal Register* copies will be provided to any of the Armour customers listed in the Appendix for whom we are able to determine addresses.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage of this refund proceeding is completed.

It is therefore ordered that: The refund amount remitted to the Department of Energy by Armour Oil Company pursuant to the Consent Order executed on November 10, 1982 will be distributed in accordance with the foregoing Decision.

ARMOUR OIL COMPANY APPENDIX

Identified customers	Potential refund
Kerr-McGee Chemical Co., Kerr-McGee Center, Oklahoma City, OK	\$3,123.93
Carbonyl Four Corners, P.O. Box 457, Alton, WY 83110	2,992.87
Giant Industries, Inc., 5107 North 7th Street, Phoenix, AZ 85014	533.09
USA Petroleum Corporation, 1633 26th Street, Santa Monica, CA 90404	869.43
Newhall Refining, 1000 Santa Monica Blvd., Suite 200, Los Angeles, CA 90067	32.05
Franko Oil Co.	322.13
Olympian Oil Company, 39 S. Linden Avenue, S. San Francisco, CA 94060	111.16
Diges Company of Delaware	12,307.55
Powertine Oil Company, 12354 Lakeland Road, Santa Fe Springs, CA 90670	4,942.36
Simmons Oil Corporation, P.O. Box 4520, Scottsdale, AZ 85258	715.41
Golden Gate Petroleum, P.O. Box 8820, Emeryville, CA 94662	10,031.60

determinations on any refund claims in this proceeding until the deadline for applications has passed.

ARMOUR OIL COMPANY APPENDIX—Continued

Identified customers	Potential refund
Southland Corporation, 2444 Moore Park Place, Suite 316, San Jose, CA 95128	6,609.41
EZ Serve, Inc., P.O. Box 3579, Abilene, TX 79604	10,089.73
Venture Trading Company, 9701 Wilshire Blvd., Beverly Hills, CA 90212	204.60

[FR Doc. 85-0440 Filed 3-15-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Bayou State Oil Corporation and Ida Gasoline, Inc. in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by June 17, 1985, should conspicuously display a reference to case number HEF-0202, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of consent order between Bayou State Oil Corporation and Ida Gasoline, Inc. (Bayou) and DOE. The consent order settled all disputes between DOE and Bayou concerning possible violations of DOE price regulations with respect to the firm's sales of refined petroleum products to its customers, and possible violations concerning Bayou's participation in the Entitlements Program, during the period September 1973 through December 1977.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be

postmarked by June 17, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW, Washington, D.C. 2058.

Dated: March 11, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order; Implementation of Special Refund Procedures

Name of Firm: Bayou State Oil Corporation, Ida Gasoline, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0202.

Under the procedural regulations of the Department of energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially-designed process to distribute funds obtained at the resolution of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of special Refund Procedures in connection with a consent order that it entered into with Bayou State Oil Corporation and Ida Gasoline, Inc. (together referred to as Bayou).¹

On December 12, 1984, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by Bayou's alleged violations. 49 FR 49891-3 (December 24, 1984). In the proposed decision we described a two-stage process for the distribution of the funds made available by the Bayou consent order. In the first stage, we will refund money to identifiable purchasers of covered products who may have been injured by Bayou's pricing practices during the period September 1, 1973 through December 31, 1977. This decision describes the information that a purchaser of Bayou petroleum products should submit in order to demonstrate eligibility to receive a

¹ Both Bayou State Oil Corporation and Ida Gasoline, Inc. are engaged in the refining and reselling of petroleum products. They have some common stockholders, and are considered by the ERA to be one firm. The term "Bayou," as used in this Decision and Order, refers to both Bayou State and Ida.

portion of the consent order funds. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. See generally *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed). However, because our determination concerning the disposition of any remaining funds will necessarily depend on the size of the fund, it is premature for us to address this issue. In response to our December 12, 1984 proposed decision, several states filed comments concerning the disposition of possible funds remaining at the conclusion of the first stage proceedings. Those comments will not be discussed here.

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Bayou consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. See, e.g., *Office of Enforcement, Economic Regulatory Administration: In re Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,284 (1982). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant ERA's petition and assume jurisdiction over the distribution of the Bayou consent order funds.

II. Background

Bayou was a refiner, as that term is defined in 10 CFR 212.31, and maintained its headquarters in Shreveport, Louisiana. Three separate DOE audits of Bayou's records revealed possible regulatory violations by the firm. The three ERA audits which form the basis for the Bayou consent order covered different aspects of Bayou's business activities and different time periods. Two of those audits, Nos. NOOS90113 and NOOS90126, concern agreements whereby several refiners allegedly engaged in sham transactions for the purpose of increasing benefits obtained through the Crude Oil Entitlements Program, 10 CFR 211.67. Audit No. NOOS90113 covered the period October 1976 through May 1977, and Audit No. NOOS90126 covered the period January 1977 through May 1979. The third audit, No. 641SOO396, concerns alleged overcharges by Bayou during the period September 1973

through December 1977 in sales of refined petroleum products.

In order to settle all claims and disputes between Bayou and the DOE regarding the firm's compliance with DOE regulations during the period September 1, 1973 through December 31, 1977, Bayou and the DOE entered into a consent order on October 20, 1981. Under the terms of the consent order, Bayou agreed to remit \$950,000 to DOE. These funds are being held in an interest-bearing escrow account established with the United States Treasury pending a determination of their proper distribution, and as of January 31, 1985, the Bayou escrow account had earned \$329,600 in interest. This Decision concerns the distribution of the funds in the escrow account, plus the account, plus the accrued interest.

III. Proposed Refund Procedures

A. Crude Oil Claims

Because the consent order resolves two different kinds of violations, we shall divide the escrow account funds into two pools. Of the alleged violations set forth in the consent order, 36.6289% of their aggregate amount relate to Bayou's participation in the Crude Oil Entitlements Program during the consent order period. A division of the consent order funds on that basis is reasonable and has been used in the past. See *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). We therefore propose that a pro rata portion of the consent order fund—a pool of \$347,975 plus accrued interest—be set aside to satisfy claims filed by participants in the Crude Oil Entitlements Program Claimants in this category must show that they were injured by Bayou's alleged violations of those regulations.

We have previously established refund procedures for consent orders involving crude oil-related violations comparable to those resolved in the current consent order. Bayou is alleged to have reported as its own crude oil runs to stills, crude oil located at a different refinery. This alleged misrepresentation would have increased the number of entitlements issued to Bayou, and thereby reduced the value of the entitlement benefits available to all other refiners. This would in turn have increased the cost of crude oil to all domestic refiners. IN *Office of Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶ 82,521 (1982), 47 F.R. 2196 (January 14, 1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the matter of Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982), 47 Fed. Reg. 16381 (April 16, 1982) (hereinafter cited as *Adams*)

and *A. Johnson & Company, Inc.*, 12 DOE ¶ 85,102 (1984) (hereinafter cited as *Johnson*) which involved settlements with 252 firms, we established a two-stage refund procedure for consent orders funds received as a result of alleged crude oil regulatory violations. Because the types of alleged violations that underlie the crude oil-related portion of the present proceeding would have an impact similar to those that were the subject of the *Alkek*, *Adams*, and *Johnson* proceedings, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after those proceedings. We therefore shall establish first-stage refund procedures for the Bayou crude oil pool in which we will accept first-stage refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek*, *Adams*, and *Johnson* determinations.

In its comments on the proposed decision, the Sun Oil Company suggested that the so-called "regulatory methodology" which it advocated for distributing the Stripper Well overcharges would also be appropriate in this case. For an explanation of Sun's position see *Stripper Well Exemption Litigation*, 12 DOE ¶ 85,017 (1984), and Documents No. 00200 and 00235 filed therein. Sun alternatively suggested that, regardless of whether we adopt its "methodology," the Entitlements-related portion of the Bayou consent order fund should be distributed in the same way as the Stripper Well overcharges. Sun's position is premised on the reasonable assumption that the cost of these alleged violations by Bayou probably was spread through the Entitlements Program in a manner similar to that of the Stripper Well overcharges. See *Union Oil v. DOE*, 688 F.2d 797 (Temp. Emer. Ct. App. 1982). We anticipate that we will adopt a method of granting refunds in the consolidated *Alkek*, *Adams*, and *Johnson* proceeding which is consistent with that which OHA ultimately recommends to the District Court in the Stripper Well Exemption Litigation. However, because those matters are all currently under active consideration, this is neither an appropriate time nor place for discussing the merits of Sun's proposal.

Parties who have filed claims in the *Alkek*, *Adams*, or *Johnson* refund proceedings, and have not had a decision on those claims, will be deemed to have filed similar applications in this proceeding and therefore will not need to file a separate application. As we noted in *Alkek*, it

would be premature for consumers and consumer groups to file applications for refund until the refiners' and resellers' claims have been resolved. *Alkek* at 85,136.

B. Refunds to Refined Product Purchasers

The remainder of the Bayou settlement funds, 63.3711% of the total amount or \$602,025 plus accrued interest, shall be distributed to claimants who can demonstrate that they have been adversely affected by Bayou's alleged violations in sales of refined petroleum products during the consent order period. The petroleum products purchased by these claimants were purchased either directly from Bayou or from other firms in a chain of distribution leading back to Bayou. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Bayou refined petroleum products for the period September 1973 to December 1977. If the product was not purchased directly from Bayou the claimant must include a statement setting forth its reasons for maintaining the product originated with Bayou. In addition, a reseller or retailer that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, a reseller or retailer claimant will be required to show initially that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. See *Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *ADA*). In addition, it will have to demonstrate that, at the time it purchased the product from Bayou, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *Id.*

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Bayou during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing

the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.²

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata amount determined by the volumetric presumption. See, e.g., *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Bayou consent order is based on a number of considerations. See, e.g., *Urban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured

parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Bayou and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, and the time period of the consent order is quite distant, we believe that the establishment of a presumption of injury for all claims of \$5,000 is reasonable.³ See *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.

The Ida/Bayou Marketers and the Jobbers' Group filed a consolidated

² The states of North Carolina and Texas have objected to some aspects of the use of presumptions in these cases. We have considered and ultimately rejected identically worded comments from these states in several past cases. *Amtel, Inc.* 12 DOE ¶ 85,073 (1984). Because no new arguments have been offered, we will not further address the merits of these arguments in the present decision.

³ Resellers or retailers whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than \$5,000 but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund of the \$5,000 threshold amount without being required to submit additional evidence of injury. See *Vickers* at 85,396; see also *Ada* at 88,122.

comment which suggested that the threshold level for presumption of injury is too low. They point out that for refunds below the threshold level, applicants need only prove that they purchased covered products from Bayou. For larger refunds (above \$5,000, exclusive of interest) they must provide both records of banks of unrecouped costs and some additional evidence of injury. The consolidated comment claimed that many medium-sized resellers were not required to, and did not, contemporaneously calculate banks of unrecouped costs.⁴ It claimed that to make these calculations at this late date would cost much more than the \$5,000 threshold refund amount, and would generally not be worth the effort. It suggested an alternative method of demonstrating that applicants would have had banks, based on profit margins. The base period for the reseller-retailer price rule in 10 CFR 212.93 was May 15, 1973. By this method, a firm would calculate its per gallon profit margin for the month of May 1973, or a longer period if May 1973 is atypical of the company's general profitability. The applicant would then calculate its profit margin for all months for which it expects to receive refunds. The company would be eligible for refunds for the volumetric amount in months in which its profit margin was less than during May 1973.⁵ The company would be ineligible for any refund in a month where its profit margin exceeded that of the base period.

We have decided that the threshold level for refunds should not be increased in the present case. However, there is a difference between the argument that the threshold is too small, and the suggestion that an alternative calculation could be used as evidence of having had banks during the consent order period. The OHA is not wedded in every case to a requirement that resellers submit their actual, contemporaneous cost banks to show that they were unable to increase prices to recoup alleged overcharges during the period covered by a consent order. Subject to the limitations discussed below, we will permit applicants in this

proceeding to submit their cost bank data in a different form.

In our view, the Ida/Bayou marketers and the Jobbers' Group suggestion has serious limitations. The alternative method of calculation which has been suggested differs from the use of banks primarily because banks are cumulative. That is, if a reseller had a gross profit margin in a particular period which was less than its gross margin on May 15, 1973 it would accumulate a bank of unrecouped costs. In a future period, it could use these banked costs to legally increase its profit margin beyond its May 15, 1973 level. This would have the effect of reducing the reseller's total cumulative bank. As noted previously, companies that "built" banks in a particular month that later were "drawn down" to zero should not receive refunds, since they ultimately were able to pass through any possible overcharges. Yet under the suggested methodology they would be eligible for refunds if their profit margin in any period was lower than the historic level. There were also other important limitations on the passthrough of banked costs which would not be taken into account by the suggested alternative method, namely the "equal application rule," and the "deemed recovery rule."

However, we are always eager for refund mechanisms that have the advantage of simplicity while providing a reasonably accurate estimate of actual injury. Accordingly, in this proceeding we will accept some aspects of the commenters' suggestion that simplified calculations of banks should be allowed. In a case where a reseller did not contemporaneously calculate banks, and a particular aspect of the cost banks rules makes precise calculation prohibitively expensive, resellers who purchased from Bayou may make legitimate simplifying assumptions. To the extent that resellers are able to submit the type of profit margin information that demonstrates the existence of banks, it will be permitted. However, the limitations inherent in this method, discussed above should apply. For example, an increase in a reseller's gross profit margin above its May 15, 1973 level would indicate that a portion of its banks would have been passed through. In such cases, the applicant for a refund must explain why it believes that it still at that time had sufficient banks available to be eligible for refunds in previous and subsequent months. As in any refund proceeding, the burden of proving injury is on the applicant.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. See *Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶85,072 (1983); see also *Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Bayou petroleum products need only document their purchase volumes from Bayou to make a sufficient showing that they were injured by the alleged overcharges.

We note that if a reseller or retailer make only spot purchases from Bayou, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases of [the firm's] product at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396-97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit specific and detailed evidence to establish that it was unable to recover the increased prices it paid for Bayou petroleum products. See *Amoco* at 88,200.

Delta Petroleum and E-Z Mart Stores expressed concern that they have not saved records from the time of the consent order period, so they may be unable to collect refunds even at the presumption level, despite substantial purchases from Bayou. Bayou itself claims that it no longer possesses records from the consent order period, and is unable to help its current or former customers. The OHA will attempt to assist individual applicants in establishing their level of purchases from Bayou.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund

⁴ Resellers were, however, required to maintain sufficient records to demonstrate compliance with the price regulations. From such records, a reseller could easily calculate banks.

⁵ If the volumetric amount is greater than the difference between the company's profit margin in a particular month and that of the base period, the company may qualify for a partial refund. For example, if the base period profit margin is \$.015/gallon, and a particular month's margin is \$.013/gallon, the reseller can receive a refund of no more than \$.002/gallon, even if the volumetric amount is higher, as in this proceeding.

amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is \$0.003671 per gallon, exclusive of interest.* As of January 31, 1985, accumulated interest increased the per gallon refund amount to \$0.04991 per gallon.

As in previous cases, we will establish a minimum refund amount of \$15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than \$15.00 outweighs the benefits of restitution in those situations. See, e.g., *Urban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

IV. Applications for Refund

After having considered all the comments received concerning the first stage proceedings tentatively adopted in our December 12, 1984 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased Bayou petroleum products. An application must be in writing, signed by the applicant, and specify that it pertains to the Bayou State/Ida Special Refund Proceeding, Case Number HEF-0202.

An applicant should indicate from whom the covered product was purchased and, if the applicant is not a direct purchaser from Bayou, it should also indicate the basis for its belief that the petroleum product purchased originated from Bayou or Ida Gasoline Company. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. Each applicant should specify how it used the Bayou petroleum product, such as whether it was a reseller or ultimate consumer. If the applicant is a reseller, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1973 through January 27, 1981. The applicant must submit evidence to establish that it did not pass on the alleged injury to its

customers, if the applicant is a reseller. For example, a firm may submit market surveys or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible. The applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is being considered. See 10 CFR 205.9(d).

Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." See 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1001 Independence Avenue, Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Bayou State Oil Company Special Refund Proceedings, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the Bayou consent order funds must be postmarked within 90 days after publication of this Decision and Order in the Federal Register. See 10 CFR 205.286. All publications for refund received within the time limit specified will be processed pursuant to 10 CFR § 205.284.

V. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a

position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Bayou State Oil Corporation and the Ida Gasoline Company pursuant to the consent order executed on August 31, 1979, may now be filed.

(2) All applications must be postmarked within 90 days after publication of this Decision and Order in the Federal Register.

[FR Doc. 85-6438 Filed 3-15-85; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

San Francisco Operations Office; Environment, Safety and Quality Assurance Division; Certification of Radiological Condition of Gilman Hall Site, University of California, Berkeley, CA

AGENCY: San Francisco Operations Office, Department of Energy.

ACTION: Notice of conditional certification.

SUMMARY: The Department of Energy has completed the radiological surveys and has taken remedial action to decontaminate and shield areas of Gilman Hall that were found to contain low levels of contamination resulting from research conducted in the building in support of the Manhattan Engineer District and Atomic Energy Commission activities. The Department, through the San Francisco Operations Office, has issued the following statement:

Statement of Conditional Certification of Gilman Hall, University of California, Berkeley, California

The DOE Office of Terminal Waste Disposal and Remedial Action and the DOE SAN office have reviewed the final remedial action and radiological survey report of the Gilman Hall Site. Based on this review, the DOE certifies that the condition of the site is radiologically acceptable for restricted use under the controls provided by the University of California's State General License 1333-62 and is therefore removed from the Formerly Utilized Sites Remedial Action Program under the condition that the Campus Office of Environmental Safety & Health continues to survey Gilman Hall and monitor whenever remodeling or renovation takes place. If or when final decontamination of Gilman Hall is required for unrestricted use, it will be accomplished through the normal

* During the consent order period, Bayou sold 163,983,372 gallons of petroleum products. The volumetric refund amount is obtained by dividing the portion of money remitted by Bayou set aside for refunds to refined product purchasers by the volume of products sold (\$602,025 divided by 163,983,372 gallons = \$0.003671 per gallon).

closeout procedures of Contract DE-AC03-76SF00098.

FOR FURTHER INFORMATION CONTACT: Mr. W.W. Warner, U.S. Department of Energy, San Francisco Operations Office, Environment, Safety and Quality Assurance Division, 1333 Broadway, Oakland, California 94612, Phone: FTS: 536-6442 or (415) 273-273-6442.

SUPPLEMENTARY INFORMATION: The DOE has established a program to characterize and, where necessary, correct the radiological conditions at sites formerly used by the Army Corps of Engineers, Manhattan Engineer District and the Atomic Energy Commission during the early years of nuclear research, development, and production. The ultimate objective of the program is to ensure that these formerly utilized sites and any associated properties in their vicinity, are within the radiological guidelines established to protect the general public. Gilman Hall of the University of California, Berkeley, California, is one of the formerly utilized sites.

Gilman Hall was used to support the Manhattan Engineer District and early Atomic Energy Commission activities in the early 1940's. Research involved the production of minute quantities of plutonium by bombarding uranium with cyclotron-produced neutrons. During this research, some areas of the building became contaminated from uranium spillage.

Radiological surveys conducted in 1976 detected low levels of alpha contamination and cesium-137 contamination. Additional surveys in 1981 revealed the extent of the contamination which initiated remedial action to decontaminate and shield the effected areas. These remedial activities were completed in February 1983.

Based on the review of the final remedial action project report, the DOE SAN office has concluded that the Gilman Hall site is radiologically acceptable for restricted use under the controls provided by the University of California's State General License 1333-62 and is removed from the Formerly Utilized Sites Remedial Action Program under the condition that the Campus Office of Environmental Safety and Health continues to survey Gilman Hall and monitor whenever remodeling or renovation takes place. If or when final decontamination of Gilman Hall is required for unrestricted use, it will be accomplished through the normal closeout procedures of Contract DE-AC03-76SF00098.

These findings are supported by the Department of Energy Certification Docket for Gilman Hall, University of

California, Berkeley, California. The docket is available for review between 8:00 am and 4:00 pm, Monday through Friday (except Federal holidays) at the following locations:

- (1) Department of Energy, San Francisco Operations Office, Technical Information Center, 1333 Broadway, Oakland, California, 94612
- (2) Department of Energy, Public Document Room, Forrestal Building—Room 1E-190, 1000 Independence Avenue, SW., Washington, D.C. 20545.

Dated: February 28, 1985.

William R. Voigt,

Acting Director, Office of Terminal Waste Disposal and Remedial Action.

[FR Doc. 85-6443 Filed 3-15-85; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Federal Assistance for Alternative Fuels Demonstration Facilities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Federal Assistance for Alternative Fuel Demonstration Facilities.

Date and time: Friday, April 12, 1985—9:00 a.m. to 12:00 p.m.

Place: Sheraton Bismarck Galleria 6th & Broadway, Bismarck, ND 58501, (701) 255-6000, Room: Picasso/Davinci.

Contact: Patricia Dickinson, Office of Oil, Gas, Shale and Coal Liquids, U.S. Department of Energy, Germantown, Maryland 20545, Room D-114, Mail Stop D-122, Telephone: (301) 353-2430.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to the development of alternative fuels.

Tentative agenda:

- Welcome.
- Great Plains Coal Gasification Project (GPCGP) Status Review Presentation.
- Panel Discussion:
 - Great Plains Coal Gasification Project's Air Quality Impacts
 - DOE Actions
 - North Dakota Department of Health—Air Quality Control Program
- Advisory Committee Deliberations.
- Public Commentary and Discussion (10 minute rule)
- Closing Remarks

Public participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Mr. Keith N. Frye at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the

agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 12, 1985.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-6285 Filed 3-15-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2797-6]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Health Committee of the Science Advisory Board will be held on April 10-11, 1985, in Conference Room 3906-3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 1:30 p.m. on April 10, 1985, and adjourn no later than 4:00 p.m. on April 11, 1985.

The principal purposes of the meeting will be: (1) To review the typical wording of some sections of the carcinogenicity chapters in the Agency's Health Assessment Documents; (2) to review and comment on the scientific adequacy of a draft Mutagenicity and Carcinogenicity Assessment of 1,3-Butadiene, prepared by the Office of Research and Development (ORD) and dated February 1985 (EPA-600/8-85-004A); (3) to discuss a report by the Committee's Health Assessment Document Subcommittee; and (4) to discuss upcoming issues of interest to the Committee.

Prior to the meeting, for information on the typical working of carcinogenicity assessments please contact Dr. Robert E. McGaughy by phone at (202) 382-5898 or by mail to: Acting Technical Director, Carcinogen Assessment Group (RD-689), 401 M Street, S.W., Washington, D.C. 20460. For information on how to obtain copies of the draft assessment of 1,3-butadiene, please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA,

Cincinnati, Ohio 45268 or call (513) 684-7562.

The meeting will be open to the public. Any member of the public wishing to attend or present information, or desiring further information on the report of the Health Assessment Document Subcommittee, should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Patti Howard, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), 401 M Street, S.W., Washington, D.C. 20460, no later than c.o.b. April 5, 1985.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 85-6353 Filed 3-15-85; 8:45 am]

BILLING CODE 8560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 85-62; File Nos. 20128-CD-P-1-82; 21601-CD-P-01-82]

Southern Radio-Phone, Inc. and Tel Car Corp.; Order Designating Applications for Hearing

In re the matter of applications of Southern Radio-Phone, Inc. for a construction permit to build an additional facility for one-way Station WRD433 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Grassy Key, Florida (CC Docket No. 85-62; File No. 20128-CD-P-1-82), and Tel-Car Corp. for a construction permit to build an additional facility for one-way Station KRM961 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Marathon, Florida, File No. 21601-CD-P-01-82).

Adopted February 26, 1985.

Released March 13, 1985.

By the Chief, Mobile Services Division.

1. On October 13, 1981, Southern Radio-Phone, Inc. (now TEL/CALL Systems, Inc.) filed an application for an additional facility on frequency 152.24 MHz at Grassy Key, Florida. Tel-Car Corporation (Tel-Car), a subsidiary of Graphic Scanning Corporation, filed an application for an additional facility on frequency 152.24 MHz at Marathon, Florida on December 28, 1981. TEL/CALL filed a petition to dismiss and responsive pleadings have been filed.

2. The sole question presented by TEL/CALL's petition is whether Tel-Car has adequately demonstrated public need for its proposed service.

3. TEL/CALL maintains that Tel-Car's showing of public need is inadequate because it fails to disclose survey methodology, inflates demand and does not reflect the actual needs of the proposed service area.

4. In General Docket No. 80-183, *First*

Report and Order, 89 FCC 2d 1337 (1982), we eliminated the requirement of demonstrating public need for the proposed facilities for applications requesting an initial one-way frequency in a particular location. This policy change was applied to all one-way paging applications that had been previously filed and to all one-way applications filed after it was adopted April 29, 1982. Thus, Tel-Car's application was not defective for failure to adequately demonstrate public need.

5. We further find both applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. The proposals of TEL/CALL and Tel-Car to use the same frequency, 152.24 MHz, in the same geographical area are electrically mutually exclusive. Although the applications are for initial one-way frequencies in particular locations, they are not subject to lottery selection because they are for additional locations on an existing frequency. *Random Selection Lotteries*, Gen. Docket No. 81-768, 93 FCC 2d 952 (1983), recon. granted in part, FCC 84-596, released December 4, 1984.

6. Accordingly, it is ordered that the Petition to Dismiss filed by TEL/CALL Systems, Inc. is denied.

7. It is further ordered, pursuant to section 309 of the Communications Act of 1934, as amended, that the application of Southern Radio-Phone, Inc. (now TEL/CALL Systems, Inc.), File No. 20128-CD-P-1-82, and the application of Tel-Car Corp., File No. 21601-CD-P-1-82, to operate on 152.24 MHz are designated for hearing in a consolidated proceeding upon the following issues.

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,¹ based upon the standards set forth in § 22.504(a) of

¹ For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from Section 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

² Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50.50) for the facilities involved in this proceeding. (The

the Commission's Rules,² and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

8. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

9. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

10. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date for a hearing and written notice stating an intention to appear on the date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

11. This authorization is conditioned on and without prejudice to reexamination and reconsideration of the basic qualifications of Tel-Car Corporation to hold a license following a decision in *A.S.D. Answer Service, Inc. et al.*, F.C.C. 82-391, released August 24, 1982, and is specifically conditioned upon the outcome of that proceeding.

12. This Order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

13. The Secretary shall cause a copy of this order to be published in the Federal Register.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-6413 Filed 3-15-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1501]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

March 8, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must

applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Proposed Modification of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporation. (CC Docket No. 80-170.)

Filed by: A. Doyle Cloud, Vice President & Nathaniel P. Breed & Robert E. Conn, Attorneys for Fedex International Transmission Corporation on 2-19-85.

Subject: Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations to Expand the Frequencies Available for use by Aural Broadcast STL and Intercity Relay stations. (Gen Docket No. 82-335.)

Amendment of Parts 2, 21, 74 and 90 of the Commission's Rules and Regulations to Make Available to Aural Broadcast STL and Intercity Relay Stations the 942-947 MHz Band on a Primary Basis. (RM-2697.)

Amendment of Parts 2, and 74 of the Commission's Rules to permit broadcast aural studio-transmitter links to operate on a secondary, non-interfering basis in unassigned UHF television channels. (RM-3246.)

Amendment of Parts 2 and 74 of the Commission's Rules to permit Aural Broadcast STL operations in the band 2150-2160 MHz and to accommodate STL, Intercity Relay Stations and certain low power broadcast auxiliary stations within the frequency band 947-952 MHz. (Docket No. 19130.)

Amendment of Parts 2 and 74 of the Commission's Rules to permit Aural Broadcast STL operations in the band 2110-2113 MHz. (Docket No. 19494.)

Amendment of Parts 2 and 74 of the Commission's Rules to expand frequencies available to the Auxiliary Broadcast Service in Puerto Rico. (RM-4712.)

Filed by: Marvin J. Diamond, Attorney for Service Broadcast Company (KKDA-AM-FM), on 2-19-85.

Subject: Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Hatch and Las Cruces, New Mexico.) (BC Docket No. 82-754, RM's 4200 & 4250.)

Filed by: Raul R. Tapia, Attorney for Omega Broadcasting Corp., on 2-22-85.

Subject: Creation of an Additional Private Radio Service. (Gen Docket No. 83-28, RM-4121.)

Filed by: Ray Newhall on 1-30-85; Corwin D. Moore, Jr., Administrative Coordinator for The Personal Radio Steering Group, Inc., on 2-6-85.

Subject: Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish other Rules and Policies Pertaining to the Use of radio in Establishing a Public Air-ground Telephone System. (Gen Docket No. 83-30, RM's 3524 & 3885.)

Filed by: Gordon E. Kaiser, Solicitor for Skytel Communications Corporation on 2-25-85; Eric L. Bernthal & Gerald E. Oberst, Jr., Attorneys for Airfone, Inc., on 2-25-85; John A. Hacking, Solicitor for Skytel Communications Limited on 2-25-85.

Subject: Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Arecibo, Cayey, San Juan, and Utuado, Puerto Rico.) (MM Docket No. 84-32.)

Filed by: Andrew C. Bisulca, Attorney for Fundacion E Education Cristiana, Inc., on 1-28-85.

Subject: Amendment of § 73.3555 (formerly §§ 73.35, 73.240 and 73.636) of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations. (Gen Docket No. 83-1009.)

Filed by: Michael P. McDonald, General Counsel for The American Legal Foundation on 3-4-85.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 85-6435 Filed 3-15-85; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Barclays Bank PLC, Barclays Bank International Limited, Barclays U.S.A. Inc.; Applications To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed applications under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)), to engage *de novo* through national bank subsidiaries in the making of commercial loans, and other activities specified below. The proposed subsidiaries will not engage in demand deposit transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of these applications, under established Board policy the record of the applications will not be regarded as complete and the Board will not act on the applications unless and until a preliminary charter

for each proposed national bank subsidiary has been submitted to the Board.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than April 4, 1985.

A. Federal Reserve Bank of New York
(A. Marshall Puckett, Vice President) 33
Liberty Street, New York, New York
10045:

1. *Barclays Bank PLC and Barclays Bank International Limited*, both located in London, England, and *Barclays U.S.A. Inc.*, New York, New York; to engage through the following national bank subsidiaries in making, acquiring or servicing commercial and consumer or mortgage loans (1-4 family dwellings only) or other extensions of credit for the company's account or for the accounts of others, such as would be made by a commercial or consumer finance or mortgage banking company; to engage in the acceptance of time and savings deposits; to engage in the sale of credit life and credit accident and health insurance (which may be underwritten by a credit insurance underwriting subsidiary of the applicants); and to engage in performing a full range of trust services (including activities of a fiduciary, agency, advisory or custodial nature), in the manner authorized by federal or state law. The time and saving deposits activities will be conducted statewide by each subsidiary; all other activities will be conducted nationwide: *Barclays Bank of Connecticut, N.A.*, Stamford,

Connecticut; Barclays Bank of Florida, N.A., Orlando, Florida; Barclays Bank of Georgia, N.A., Marietta, Georgia; Barclays Bank of Clarkston, N.A., Clarkston, Georgia; Barclays Bank of Indiana, N.A., Clarksville, Indiana; Barclays Bank of Indianapolis, N.A., Indianapolis, Indiana; Barclays Bank of Louisiana, N.A., Metairie, Louisiana; Barclays Bank of Baton Rouge, N.A., Baton Rouge, Louisiana; Barclays Bank of Maryland, N.A., Hagerstown, Maryland; Barclays Bank of New Mexico, N.A., Albuquerque, New Mexico; Barclays Bank of North Carolina, N.A., Raleigh, North Carolina; Barclays Bank of Ohio, N.A., Columbus, Ohio; Barclays Bank of Cincinnati, N.A., Cincinnati, Ohio; Barclays Bank of Oregon, N.A., Gresham, Oregon; Barclays Bank of Pennsylvania, N.A., Lower Burrell, Pennsylvania; Barclays Bank of Lancaster, N.A., Lancaster, Pennsylvania; Barclays Bank of South Carolina, N.A., Charleston, South Carolina; Barclays Bank of Tennessee, N.A., Memphis, Tennessee; Barclays Bank of Knoxville, N.A., Knoxville, Tennessee; Barclays Bank of Texas, N.A., Plano, Texas; Barclays Bank of El Paso, N.A., El Paso, Texas; Barclays Bank of Virginia, N.A., Virginia Beach, Virginia; Barclays Bank of Vienna, N.A., Vienna, Virginia; and Barclays Bank of Washington, N.A., Tacoma, Washington.

Board of Governors of the Federal Reserve System, March 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6275 Filed 3-15-85; 8:45 am]

BILLING CODE 6210-01-M

Fifth Third Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on

an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received no later than April 8, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp.*, Cincinnati, Ohio; to acquire 100 percent of the voting shares of The Fifth Bank of Columbus, Upper Arlington, Ohio.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Winona National Holding Company*, Winona, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Winona National and Savings Bank, Winona, Minnesota.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Banks of Colorado, Inc.*, Denver, Colorado; to acquire 100 percent of the voting shares of The Colorado Springs National Bank, Colorado Springs, Colorado.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Heritage Bankshares, Inc.*, Dallas, Texas; to become a bank holding company by acquiring Turtle Creek National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, March 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6276 Filed 3-15-85; 8:45 am]

BILLING CODE 6210-01-M

Key Banks Inc., Key Bancorp of the Pacific Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The companies listed in this notice have applied under section 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies also have applied

under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Key Banks Inc.*, Albany, New York, to acquire 100 percent of the voting shares of Alaska Pacific Bancorporation, Anchorage, Alaska, and thereby indirectly acquiring Alaska Pacific Bank, Anchorage, Alaska and First National Bank of Fairbanks, Fairbanks, Alaska.

In connection with this application, Key Bancorp of the Pacific Inc., Anchorage, Alaska, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Alaska Pacific Bancorporation, Anchorage, Alaska.

Applicants have also applied under section 4(c)(8) to acquire 100 percent of Alaska Pacific Mortgage Company,

Anchorage, Alaska, and thereby engage in mortgage banking activities in the states of Alaska and Washington; All Coast Financial, Inc., San Diego, California, and thereby engage in mortgage banking activities throughout the United States; and Pentek Leasing, Inc., San Jose, California, and thereby engage in leasing activities in the states of California, Oregon, Washington, and Alaska by writing and brokering full pay out and net leases which are primarily: tax oriented leases; direct finance leases; or nonrecourse leases on all types of personal property.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation*, Appleton, Wisconsin, to acquire 100 percent of the voting shares of United Banks of Wisconsin, Inc., Madison, Wisconsin, and thereby indirectly acquiring United Bank, Madison, Wisconsin, Farmers & Citizens United Bank in Sauk City, Sauk City, Wisconsin, United Bank of Menomonie, Menomonie, Wisconsin, and United Bank of Sun Prairie, Sun Prairie, Wisconsin.

Valley Bancorporation has also applied to acquire United Mortgage of Wisconsin, Inc., Madison, Wisconsin and thereby engage in making, acquiring, or servicing loans or other extension of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made by a mortgage company.

Board of Governors of the Federal Reserve System, March 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6277 Filed 3-15-85; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial Corp, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 5, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp*, Pittsburgh, Pennsylvania; to engage *de novo* through a subsidiary in trust company activities under New York law. The trust company will engage only in those activities as listed in § 225.25(b)(3) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Totalbank Corporation of Florida*, Miami, Florida, *Ballerton Corporation*, N.V., a Netherlands Antilles Corporation and *Milford, N.V.*, a Netherlands Antilles Corporation; to engage *de novo* through its subsidiary, Totalbank Mortgage Company, Miami, Florida, in making, negotiating, soliciting, acquiring, investing in, servicing or selling loans secured by mortgages on real property, and in making appraisals of real estate.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Irwin Union Corporation*, Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Corporation, Columbus, Indiana, in providing portfolio investment advice, general economic information and financial advice to clients; engaging in

underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in; and providing management consulting advice to nonaffiliated bank and nonbank depository institutions.

2. *Lakeland Financial Corporation*, Warsaw, Indiana; to engage *de novo* through its subsidiary, Lakeland Mortgage Corporation, Warsaw, Indiana, in the origination, servicing, and selling of residential, commercial, and industrial mortgages.

Board of Governors of the Federal Reserve System, March 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6278 Filed 3-15-85; 8:45 am]

BILLING CODE 6210-01-M

Ranier National Bank; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An Application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. 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, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than April 4, 1985.

A. Board of Governors of the Federal Reserve System, (William W. Wiles, Secretary) Washington, D.C. 20551:

Ranier National Bank, Seattle, Washington; To establish a corporation to be known as Ranier Bank International. Ranier Bank International would operate as a subsidiary of Ranier National Bank. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, March 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6279 Filed 3-15-85; 8:45 am]

BILLING CODE 6210-01-M

Saver's Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 25.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 10, 1985.

A. Federal Reserve Bank of Boston
(Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Saver's Bancorp, Inc.*, Littleton, New Hampshire; to acquire 100 percent of the voting shares of North Country Bank, Berlin, New Hampshire.

B. Federal Reserve Bank of Richmond
(Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *One Valley Bancorp of West Virginia, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of One Valley National Bank of Hurricane, Hurricane, West Virginia.

C. Federal Reserve Bank of Atlanta
(Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Community Banks of Florida, Inc.*, Mims, Florida; to become a bank holding company by acquiring 80 percent of the

voting shares of Community National Bank, Mims, Florida.

D. Federal Reserve Bank of Chicago
(Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northwestco, Inc.*, Northbrook, Illinois; to acquire 100 percent of the voting shares and 100 percent of nonvoting Class A preferred stock of Lake View Bancorp, Inc., Northbrook, Illinois, and Lake View Trust and Savings Bank, Chicago, Illinois.

2. *Northwestco, Inc.*, Northbrook, Illinois; to acquire 100 percent of the voting shares and 100 percent of nonvoting Class A and B preferred stock of Northbrook Bancorp, Inc., Northbrook, Illinois, and Northbrook Trust & Savings Bank, Northbrook, Illinois.

Board of Governors of the Federal Reserve System, March 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6280 Filed 3-15-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83F-0116]

Ciba-Geigy Corp.; Amended Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a filing notice for a food additive petition filed by the Ciba-Geigy Corp. The previous filing notice proposed amending the food additive regulations to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant/stabilizer in various food-contact applications. This previous filing notice is now being amended to specify the section proposed for amendment and to specify polymers in which the additive is to be used.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 26, 1983 (48 FR 18895), FDA announced that a petition (FAP 3B3701) had been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing to

amend the food additive regulations to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant/stabilizer in various food-contact applications.

The petition has been amended to provide for the safe use of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant/stabilizer in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) as follows:

1. In pressure sensitive adhesives complying with § 175.125 *Pressure sensitive adhesives* (21 CFR 175.125);

2. In can-end cement formulations complying with § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300);

3. In petroleum alicyclic hydrocarbon resins complying with § 175.320 *Resinous and polymeric coatings for polyolefin films* (21 CFR 175.320);

4. In petroleum alicyclic hydrocarbon resins or their hydrogenated products complying with § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170);

5. In resins and polymers complying with § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180);

6. In rosin and rosin derivatives complying with § 176.210 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 176.210);

7. In closures with sealing gaskets complying with § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210);

8. In petroleum hydrocarbon resin and rosins complying with § 178.3800 *Preservatives for wood* (21 CFR 178.3800); and

9. In reinforced wax complying with § 178.3850 *Reinforced wax* (21 CFR 178.3850).

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) [proposed December 11, 1979; 44 FR 71742].

Dated: March 7, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-6274 Filed 3-15-85; 8:45 am]

BILLING CODE 4160-01-M

**Review of Commercial Activities;
Fiscal Year 1985**

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that it will review in Fiscal Year 1985 the following commercial activity to determine if this activity should be performed by commercial sources under contract or "in house" by government personnel using government facilities:

Commercial Activity, Location, and Review Start Date: Operation and Maintenance Facilities at the National Center for Toxicological Research, Jefferson, AR 72079, March 1985.

This notice is not an invitation for bids or a request for proposals.

FOR FURTHER INFORMATION CONTACT: Emil L. Posey, Division of Contracts and Grants Management (HFA-505), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2525.

SUPPLEMENTARY INFORMATION: This notice is issued under the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.), the Office of Federal Procurement Policy Act Amendments of 1979 (41 U.S.C. 401 et seq.), and the Office of Management and Budget (OMB) Circular No. A-76 (Revised). OMB Circular A-76 (Revised) requires Federal agencies to complete inventories of their commercial activities. Each commercial activity is then scheduled for review and for cost comparison studies to determine whether the activity should be performed under contract with commercial sources or "in house" using government facilities and personnel.

Dated: March 11, 1985.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-6272 Filed 3-15-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85D-0048]

Submission of Documents in Food and Drug Administration Formal Evidentiary Hearings; Availability of Guideline

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guideline describing requirements which pertain to the submission of exhibits and documents under the agency's administrative practices and procedures regulations for

formal evidentiary hearings. The guideline provides specific information regarding the marking, indexing, tabbing, and binding of the documents that are submitted in these hearings.

ADDRESS: The guideline, entitled "Guidance to Participants in FDA's Formal Hearings: How to Mark and Index Documents Under 21 CFR Part 12," is available for review at, and requests for single copies may be sent to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests should identify the document as "Guidance to Participants in FDA's Formal Hearings."

FOR FURTHER INFORMATION CONTACT: Linda M. Quinones, Dockets Management Branch (HFA-305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1751.

SUPPLEMENTARY INFORMATION: FDA's formal evidentiary hearings involve the submission of many exhibits and documents under 21 CFR Part 12. Unless these documents are properly marked and indexed, it is extremely difficult to locate or cite them during the hearing or in a later review of the hearing record.

Under 21 CFR 12.85, FDA's regulations for formal hearings require participants to file documents containing information relating to the hearing with FDA's Dockets Management Branch. The regulation on receipt of evidence during the hearing (21 CFR 12.94(c)(2)) provides that items of written evidence are to be submitted as separate documents, sequentially numbered, except that a voluminous document may be submitted in the form of a cross-reference to the documents filed under 21 CFR 12.85.

The guideline that is the subject of this notice of availability supplements these regulations by giving specific directions on how to mark and index documents submitted under 21 CFR 12.85 and 12.94(c)(2). The guideline also describes additional requirements imposed by FDA's Administrative Law Judge concerning the marking and indexing of documents submitted in formal hearings. Additionally, the guideline addresses the tabbing, binding, and photocopying of submissions.

Dated: March 11, 1985.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-6273 Filed 3-15-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0109]

Shell Oil Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Shell Oil Co. has filed a petition proposing that the food additive regulations be amended to change the limitations and specifications for styrene block polymers with 2-methyl-1,3-butadiene in food-contact articles.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3853) has been filed by Shell Oil Co., 1025 Connecticut Ave. NW., Suite 200, Washington, DC 20036, proposing that § 177.1810 *Styrene block polymers* (21 CFR 177.1810) be amended under styrene block polymers with 2-methyl-1,3-butadiene: (1) To allow for an increase in the maximum extractable fraction in distilled water and 50 percent ethanol; (2) inclusion of a chloroform-soluble extractives limitation; and (3) elimination of the condition of use limitations.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c) [proposed December 11, 1979; 44 FR 71742].

Dated: March 11, 1985.

Richard J. Ronk,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-6270 Filed 3-15-85; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health**Consensus Development Conference on Anesthesia and Sedation in the Dental Office; Meeting**

Notice is hereby given of the NIH Consensus Development Conference on "Anesthesia and Sedation in the Dental Office" by the National Institute of

Dental Research, the Food and Drug Administration, and the NIH Office of Medical Applications of Research. The conference will be held April 22-24, 1985 in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The use of anesthetic and sedative drugs to control pain and anxiety is an integral part of the practice of dentistry. The safety and effectiveness of these drugs, their indications and contraindications, and the equipment, personnel, and training necessary for their proper use have long been matters of discussion among dental educators, researchers, and practitioners. Of particular concern is the use of anesthesia and sedation in pediatric patients. Participants at the consensus conference will address these and other concerns.

The conference will bring together dental and medical anesthesiologists, oral surgeons, pharmacologists, and dental practitioners and educators. Following two days of presentations by dental and medical experts and discussion by the audience, a Consensus Panel will consider the scientific evidence presented.

The panel members, including members of the dental and medical professions and the lay public, will formulate a draft statement responding to the following key questions:

- What are the differences between general anesthesia, deep sedation, and conscious sedation?
- What are the indications and contraindications for the use of general anesthesia and sedation in children, adults, and the geriatric population?
- What are the appropriate agents and techniques for general anesthesia and sedation?
- What are the risks associated with the use of general anesthesia and sedation?
- What facilities, equipment, personnel, and training are needed for managing and monitoring patients?
- What are the directions for future research?

On the third day, Consensus Panel Chairman Daniel M. Laskin, D.D.S., M.S., Professor and Chairman, Department of Oral and Maxillofacial Surgery, Medical College of Virginia, will read the Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Mr. Peter Murphy, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852, (301) 468-6555.

Dated: March 8, 1985.

Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 85-6298 Filed 3-15-85; 8:45 am]
BILLING CODE 4140-01-M

Division of Research Resources; Biotechnology Resources Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biotechnology Resources Review Committee (BRRC), Division of Research Resources (DRR), March 25, 1985, Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The meeting will be open to the public on March 25 from 9:00 a.m. to approximately 12:00 noon during which time there will be comments by the Director, DRR, a report from the Director, Biomedical Research Technology (BRT) Program, and a presentation and discussion on the role of the BRT Program in activities related to supercomputer applications. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 1:00 p.m. to adjournment on March 25 for the review, discussion, and evaluation of individual research grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm 5B-10, National Institutes of Health, Bethesda, MD 20205, (301) 496-5545, will provide a summary of the meeting and a roster of committee members.

Dr. Charles L. Coulter, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B-41, National Institutes of Health, Bethesda, MD 20205, (301) 496-5411, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health)

Dated: March 1, 1985.

Betty J. Beveridge,
NIH Committee Management Officer.
[FR Doc. 85-6295 Filed 3-15-85; 8:45 am]
BILLING CODE 4140-01-M

Division of Research Resources; Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee, Division of Research Resources, March 28-29, 1985, at the National Institutes of Health. The meeting will be held in Conference Room 2A, Building 31A, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public from 8:30 a.m. to approximately 1:30 p.m. on March 28, 1985, to discuss policy matters relating to the Minority Biomedical Research Support Program. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 28, 1985, from approximately 1:30 p.m. to 5:00 p.m. and on March 29, 1985, from 8:30 a.m. to adjournment for the review, discussion and evaluation of the individual grant applications submitted to the Minority Biomedical Research Support Program. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health (Building 31, Room 5B10, Bethesda, Maryland 20205, telephone (301) 496-5545, will provide summaries of meeting and roster of panel members. Dr. Ethel B. Jackson, Executive Secretary of the General Research Support Review Committee, Building 31 Room 5B11, Bethesda, Maryland 20205, telephone (301) 496-4390, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support Program, National Institutes of Health)

Dated: March 6, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-6296 Filed 3-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Clinical Cancer Program Project Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Cancer Program Project Review Committee, National Cancer Institute, National Institutes of Health, July 25-26, 1985, Building 31/C, Conference Room 10, Bethesda, Maryland 20205. This meeting will be open to the public on July 25, from 8:30 a.m. to 10:00 a.m. for reports by the Director, Division of Extramural Activities; the Chief, Grants Review Branch, Division of Extramural Activities; the Executive Secretary and Chairman of the Committee; and to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 25 from approximately 10:00 a.m. to recess; and on July 26 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. M. Wayne Hurst, Executive Secretary, Clinical Cancer Program Project Review Committee, National Cancer Institute, Westwood Building, Room 848, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7924) will furnish substantive program information.

Dated: March 6, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-6301 Filed 3-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Review of Contract Proposals and Grant Applications; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given for meetings of two committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552(b)(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluations of individual contract proposals, and grant applications. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Cancer Education Review Committee.

Date: April 3-4, 1985.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Time:

Open: April 3, 8:30 a.m.-10:00 a.m.

Agenda: A review of administrative details.

Closed: April 3, 10:00 a.m.-6:00 p.m. April 4, 8:30 a.m.-adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Cynthia L. Sewell, Westwood Building, Room 838, National Institutes of Health, Bethesda, Maryland 20205.

Phone: 301/496-7721.

Name of Committee: Biometry and Epidemiology Contract Review Committee.

Date: May 6-7, 1985.

Place: National Institutes of Health, Building 31C, Conference Room 8, Bethesda, Maryland 20205

Times:

Open: May 6, 8:30 a.m.-9:00 a.m.

Agenda: A review of administrative details.

Closed: May 6, 9:00 a.m.-5:00 p.m.; May 7, 8:30 a.m.-adjournment.

Closure Reason: To review contract proposals.

Executive Secretary: Dr. Wilna A. Woods, Westwood Building, Room 808, National Institutes of Health, Bethesda, Maryland 20205.

Phone: 301/496-7153.

Dated: March 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-6302 Filed 3-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; Vision Research Program Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Vision Research Program Committee, National Eye Institute, April 4 and 5, 1985, Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on April 4 from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9:30 a.m. on April 4 until recess and on April 5 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A-03, National Institutes of Health, Bethesda, Maryland 20205 (301) 496-4903, will provide summaries of the meeting and rosters of committee members.

Dr. Catherine Henley, Review and Special Projects Officer, Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A-06, National Institutes of Health, Bethesda, Maryland 20205 (301) 496-5561, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.667, Retinal and Choroidal Diseases Research; 13.668, Corneal Diseases Research; 13.669, Cataract Research; 13.670, Glaucoma Research; and 13.671, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Dated: March 6, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-6299 Filed 3-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Manpower Subcommittee; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, May 23-24, 1985, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20205.

In addition, the Research Subcommittee and the Manpower Subcommittee of the above Council will meet on May 22, 1985, at 1:00 p.m. and 8:00 p.m. respectively, in Building 31, Conference Room 9.

The Council meeting will be open to the public on May 23 from 9:00 a.m. to approximately 2:00 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and Section 10(d) of Pub. L. 92-463, the Council meeting will be closed to the public from approximately 2:00 p.m. on May 23 to adjournment on May 24 for the review, discussion, and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Manpower Subcommittee of the above Council on May 22 will be closed from 1:00 p.m. and 8:00 p.m. respectively, to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiries Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Jerome G. Green, Executive Secretary of the Council, Westwood Building, Room 7A-17, National

Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-7416, will furnish substantive program information.

[Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health]

Dated: March 6, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-6300 Filed 3-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological and Communicative Disorders and Stroke; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Epilepsy Advisory Committee, National Institute of Neurological and Communicative Disorders and Stroke, March 28 and 29, 1985, in Room B1-19, Federal Building, National Institutes of Health, Bethesda, Maryland 20205.

The meeting will be open to the public from 9:00 a.m. to 2:00 p.m. on March 28, to discuss research progress and research plans related to the Institute's epilepsy program. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Section 552b(c)(4), and 552(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 2:00 p.m. on March 28, to adjournment on March 29, for review of preclinical and clinical compounds of the Antiepileptic Drug Development Program. This review and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. B. G. White, Acting Chief, Epilepsy Branch, Convulsive, Developmental, and Neuromuscular Disorders Program, NINCDS (Federal Building, Room 114), National Institutes of Health, Bethesda, MD 20205; telephone 301/496-6691, will provide summaries of the meeting, rosters of the committee members, and substantive program information.

[Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research]

Dated: March 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-6294 Filed 3-15-85; 8:45 am]

BILLING CODE 4140-01-M

Technology Assessment Meeting on Registries for Bone Marrow Transplantation

Pursuant to section 401(a) of Pub. L. 98-507, notice is hereby given of the NIH Technology Assessment Meeting on Registries for Bone Marrow Transplantation. The meeting will be held May 13-15, in Masur Auditorium, Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The conference is sponsored by the National Institute of Allergy and Infectious Diseases, the National Cancer Institute, the National Heart, Lung, and Blood Institute and the Office of Medical Applications of Research, NIH.

The meeting will assess the feasibility of establishing and the effectiveness of a national registry of voluntary bone marrow donors. Following a day and one-half of presentations, a panel of medical specialists and generalists and public representatives will issue a draft report on the practicality and efficacy of creating a national bone marrow transplantation registry. Those attending this open meeting will be able to comment on the report when it is presented on May 15 in Masur Auditorium.

In preparing its report the panel will address the following questions:

- What is the experience with the possible alternatives to HLA identical siblings as bone marrow donors for transplantation? Are these alternatives comparable?
- What is the optimum function of the registry? Is it ready for general clinical use?
- What are the unique logistic, legal, and ethical issues involved in establishing a registry of unrelated donors? To what risks are donors exposed?
- To what extent could existing registry/blood donor programs be utilized and what would be the impact on these programs?
- Should a national bone marrow registry be established and, if so, how should it operate?

Information on the program may be obtained from Mr. Peter Murphy, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852, (301) 488-8555.

Dated: March 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-6303 Filed 3-15-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Jackpile-Paguate Uranium Mine Reclamation Project; Albuquerque District, New Mexico; Availability and Public Hearings

AGENCIES: Bureau of Land Management and Bureau of Indian Affairs, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement and Public Hearings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management (BLM) and Bureau of Indian Affairs (BIA), U.S. Department of the Interior, have prepared a Draft Environmental Impact Statement (DEIS) on the Jackpile-Paguate uranium mine reclamation project and have made copies of the document available for public review and comment. The Jackpile-Paguate uranium mine is located on three leases of Laguna Indian Tribal land in Cibola County, west-central New Mexico. The mine was operated by Anaconda Minerals Company, a division of Atlantic Richfield Company, from 1953 through early 1982. Out of a total of 7,868 leased acres, 2,656 acres were disturbed by mining. This disturbance includes three open pits, 32 waste dumps, 23 protore (sub-grade ore) stockpiles, four topsoil stockpiles and 66 acres of buildings and roads. The no-reclamation alternative and reclamation proposals developed by Anaconda, the Department of the Interior (with two options) and the Pueblo of Laguna are analyzed in the document. Reclamation components addressed under each proposal include: treatment of open pits (level of backfill and stabilization), highwall and waste dump stability, stream stability, surface facilities/structures, underground modifications (i.e., ventilation holes), revegetation methods and success criteria, monitoring, security and compliance.

Under the no-reclamation alternative, the minesite would remain environmentally unsuitable for any productive land use except for mining. The reclamation proposals would, to varying degrees, restore the minesite to productive land use (primarily livestock grazing), reduce radiological and physical hazards, blend the visual characteristics of the minesite with the surrounding lands, and provide employment. Measures to mitigate environmental impacts have been

incorporated into each reclamation proposal.

Public participation: A copy of the DEIS will be sent to affected parties and those individuals, groups and agencies who have expressed an interest in the reclamation project. In addition, a limited number of copies of the DEIS are available upon request from BLM Albuquerque District Office, Rio Puerco Resource Area, 3550 Pan American Freeway, NE, P.O. Box 6770, Albuquerque, New Mexico 87197-6770. Copies of the DEIS will also be available for inspection at the following locations:

BLM, Public Affairs, Interior Building, 18th & C Streets, NW, Washington, DC 20240, (202) 343-9435;

BLM, Public Affairs, New Mexico State Office, Montoya Federal Building, South Federal Place, Santa Fe, NM 87501, (505) 988-6316;

BLM, Albuquerque District Office, Western Bank Building, 505 Marquette NW, Albuquerque, NM 87102, (505) 766-2455;

BLM, Rio Puerco Resource Area, 3550 Pan American Freeway, NE, Albuquerque, NM 87107, (505) 766-3114;

BIA, Albuquerque Area Office, 5301 Central NE, Albuquerque, NM 87108, (505) 766-3374;

BIA, Laguna Agency, Mesita, NM 87026, (505) 243-4467.

Written comments on the DEIS will be accepted up to and including June 6, 1985. Oral and written comments will also be received at public hearings to be held on:

Tuesday, April 23, 1985, 7:00 pm at the Albuquerque Convention Center (Picuris-Sandia Rooms), Albuquerque, NM; and Wednesday, April 24, 1985, 7:00 pm at the Community Hall, Village of Old Laguna, Laguna, NM.

Written comments on the DEIS should be addressed to: Mike Pool, EIS Team Leader, BLM Rio Puerco Resource Area Office, 3550 Pan American Freeway NE, P.O. Box 6770, Albuquerque, NM 87197-6770. Telephone: (505) 766-3114. All comments received during the review period, whether written or oral, on the adequacy of the DEIS will be considered in preparing the final environmental impact statement.

Dated: March 12, 1985.

Robert F. Burford,
Director, Bureau of Land Management.

Dated: March 6, 1985.

John W. Fritz,
Deputy Assistant Secretary, Indian Affairs.
[FR Doc. 85-6320 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Land Management

[CA 16413, CA-056]

Realty Action; Exchange; Public Lands in Mendocino County CA

The following described public land has been determined to be suitable for disposal under the provisions of Pub. L. 91-476, an Act to provide for the establishment of the King Range National Conservation Area (84 Stat. 1067), and Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756).

Humboldt Meridian

T. 5 S., R. 2 E.,

Sec. 32; Lot 1; Tract 39.

Containing 46.70 acres total.

Marie Mills, Box 33, Whitethorn, California 95489, has applied to acquire the above described lands in exchange for the following described privately owned lands:

Humboldt Meridian

T. 5 S., R. 2 E.,

Sec. 19; Lot 16;

Containing 40 acres total.

A mineral evaluation has been requested on the public land. If any minerals are identified, a reservation of identified minerals will be made to the United States. If no minerals are identified, the mineral estate of the public lands will be conveyed with the surface. The mineral estate of the privately owned lands will be conveyed with the surface.

The publication of this notice in the **Federal Register** shall segregate the applied for public lands from all other forms of appropriation under the public land laws, including the mining laws, for a period of two years. The exchange is expected to be consummated before the end of that period.

There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

The purpose of this exchange is to consolidate Federal and Non-federal lands within the King Range National Conservation Area. This exchange is in conformance with bureau planning and in the public interest.

Detailed information concerning the exchange, including the environmental analysis and the record of non-Federal participation, is available for review at the Arcata Resource Area Office, BLM, 1125 16th St., P.O. Box 11, Arcata, California 95521.

For a period of 45 days from the first publication of this notice interested parties may submit comments to the California State Director, Bureau of Land Management, Rm E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the California State Director, who may vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification this realty action will become the final determination of the Bureau.

John T. Lloyd,

Arcata Area Manager, Bureau of Land Management, Ukiah District

[FR Doc. 85-6421 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-84-M

[5-00254]

Butte District, MT; District Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Butte District Advisory Council will be held Thursday and Friday, April 18 and 19, 1985.

The meeting will begin at 12 noon, April 18 in the conference room of the Butte District Office at 106 North Parkmont, Butte, Montana. The agenda will include (1) A field trip to the Golden Sunlight mine, (2) the wild horse program, (3) the BLM/Forest Service Interchange; and (4) council topics.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make advance arrangements with the District Manager.

Summary minutes of the meeting will be maintained in the district office and be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: March 8, 1985.

Jack A. McIntosh,

District Manager.

[FR Doc. 85-6405 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-DN-M

[5-00254]

Butte District, MT; Grazing Advisory Board Meeting

The Butte District Grazing Advisory Board will meet on Wednesday, April 17, 1985, in the conference room of the Butte District Office at 106 North Parkmont, Butte, Montana. The meeting will begin at 9:00 a.m.

The agenda will include (1) Range improvements for FY85; (2) allotment ranking for the Garnet Resource Area; (3) the wild horse program; and (4) The BLM/Forest Service Interchange.

The meeting is open to the public. Interested persons may make oral statements or file written statements for the board's consideration. Persons wishing to make oral statements should make prior arrangements with the District Manager, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702.

Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction within 30 days following the meeting.

Dated: March 8, 1985.

Jack A. McIntosh,

District Manager.

[FR Doc. 85-6406 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-DN-M

Geological Survey

Advisory Committee on Water Data for Public Use; Meeting

Pursuant to Pub. L. 92-463, effective January 5, 1973, notice is hereby given that an open meeting of the Advisory Committee on Water Data for Public Use (ACWDPU) will be held April 23-24, 1985, at the Hanalei Hotel, 2270 Hotel Circle North, San Diego, California. The Committee consists of individuals and representatives of water-resources oriented groups, including national, State, and regional organizations, professional and technical societies, and the academic community. Its principal responsibility is to represent the interests of the non-Federal community in plans, policies, and procedures related to water-data programs. The Director of the U.S. Geological Survey (USGS) is the Chairman of the Committee.

The meeting will convene at 8:30 a.m. on Tuesday, April 23, 1985. Some specific items on the agenda include: (1) The Nation's surface water-quality data base; (2) the streamflow data base; and (3) the role of the USGS in ground-water protection. The meeting will adjourn at 3:15 p.m. on Wednesday, April 24, 1985.

The meeting will be open to the public, and anyone wishing to attend or desiring more information should contact Porter E. Ward, Chief, Office of Water Data Coordination, U.S. Geological Survey, 417 National Center, Reston, Virginia 22092. His telephone number is (703) 860-6931. Verbatim transcripts of the meeting will be available for inspection at Mr. Ward's

office in Reston, Virginia, approximately 4 weeks after the meeting. A report summarizing the meeting will also be available from Mr. Ward's office subsequent to the meeting.

Dated: March 7, 1985.

Porter E. Ward,

Chief, Office of Water Data Coordination.

[FR Doc. 85-6341 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Development Operations Coordination Document; Exxon Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 1619 and 1620, Blocks 93 and 94, respectively, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on March 8, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and

procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 8, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-6327 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2280, Block 130, 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 an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 8, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 8, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-6328 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement Office

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Budget Information Report

Abstract: This form will be used to report the status of non-construction funds for grants and cooperative agreements for the States.

Bureau Form Number: OSM-47

Frequency: Annual

Description of Respondents: State Governments

Annual Responses: 120

Annual Burden Hours: 960

Bureau clearance officer: Darlene Gross Boyd (202) 343-5447

Dated: February 21, 1985.

Carson W. Culp,

Assistant Director, Budget and Administration.

[FR Doc. 85-6408 Filed 3-15-85; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-242 (Preliminary); 731-TA-252 and 253 (Preliminary)]

Certain Welded Carbon Steel Pipes and Tubes From Thailand and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-242 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Venezuela of certain welded carbon steel pipes and tubes¹ which are alleged to be subsidized by the Government of Venezuela. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in this case by April 15, 1985.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-252 and 253 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Thailand and Venezuela of certain welded carbon steel pipes and tubes,¹ which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by April 15, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International

¹ For purposes of these investigations, the term "certain welded carbon steel pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3208, 610.3209, 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA). Prior to Apr. 1, 1984, these pipes and tubes were provided for in TSUSA items 610.3208, 610.3209, 610.3231, 610.3232, 610.3241, 610.3244, and 610.3247.

Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on February 28, 1985, and amended on March 12, 1985, by counsel for the standard pipe subcommittee and the line pipe subcommittee of the Committee on Pipe and Tube Imports, and for each of the individual manufacturers of standard pipe and line pipe that are members of those subcommittees.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on March 22, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bruce Cates (202-523-0369) not later than March 21, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping and/or countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before March 26, 1985, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: March 13, 1985

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-6314 Filed 3-15-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Nos. 35404; 39380]

General American Transp. Corp. v. Indiana Harbor Belt Railroad Co. and General American Transp. Corp., et al. v. Baltimore and Ohio Terminal Railroad Co., et al.

AGENCY: Interstate Commerce Commission.

ACTION: Request for further comments.

SUMMARY: Upon review of the comments filed pursuant to our October 9, 1984 reopening of these proceedings, we seek further information and comment from interested persons.

DATE: Written comments are due by May 2, 1985. Reply comments are due 30 days thereafter.

ADDRESS: An original and 10 copies of all comments should be submitted to the Secretary, Case Control Branch, Interstate Commerce Commission,

Washington, D.C. 20423, and served upon all parties to this proceeding.

FOR FURTHER INFORMATION CONTACT: Louis Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: On October 9, 1984 (49 FR 39740, October 10, 1984), we reopened these two proceedings to reevaluate the established standards for switching charges on empty movements of privately owned cars, to and from repair facilities. Those standards were set forth in *General American Transp. Corp. v. Indiana Harbor, 357 I.C.C. 102 (1977) (Indiana Harbor)*, and were applied in the decisions in No. 39380.

We have received not only initial comments from a number of parties, but also certain reply comments. In addition, we have received motions to strike portions of the initial comments and motions to strike the reply comments.

Because we seek comment on all issues deemed pertinent by the various participants, we deny the motions to strike. Moreover, we solicit an additional round of comments, in order to afford all parties an opportunity to respond to the comments on file and the concerns we here raise. To indicate the broad range of concerns that we desire to have addressed, we offer the following discussion and pose a number of questions.

In *Indiana Harbor*, the Commission determined that railroads may not charge for movements of empty private cars to and from repair facilities if they derive more than *de minimus* revenue from those cars. The revenue gain could be direct (by way of loaded movements in those cars for which the railroad collected freight rates) or indirect (through the railroad using the cars to meet their common carrier obligation).

The Commission viewed the matter as an industry-wide problem and considered an industry-wide solution necessary. It held that the costs of ordinary repairs (and, thus, the movements to and from repair facilities) could not be attributed to particular carriers, as the need for repairs usually arises as a result of car use by many carriers over time. Accordingly, the Commission found that "the costs of repair movements of privately owned cars must be treated as a common cost which must be shared by all carriers which derive revenue from the national car fleet." *Indiana Harbor* at 127.

As to carriers that participate in loaded movements, the Commission found that the cost of empty repair movements should be included in the freight rate. However, the Commission

noted that the major problem is "providing a method of compensating carriers which experience excess empty over loaded mileage, since these carriers would, absent any adjustment, be subsidizing carriers in the reverse situation." *Indiana Harbor* at 131.

The solution adopted in *Indiana Harbor* was a system of averaged compensation that had been negotiated for tank cars. Tank car owners and lessors were to contribute a fixed amount per mile to a revenue pool for all empty mileage above 105 percent (now 106 percent). The pool would then be divided among participating carriers based on their empty ratios. This was termed the equalization rule. While the Commission intended such a rule to be developed for all cars, its appears this has not occurred.

Particularly noteworthy here is the fact that in *Indiana Harbor* the Commission focussed primarily on the problem of over recovery. As to under recovery, the decision makes two points: (1) That its conclusion "appears to be a workable solution"; and (2) that the remedy for a carrier not made whole by the equalization rule is a complaint "against those carriers which it can identify as having received excess revenues and as being responsible for its under compensation." *Indiana Harbor* at 138. Throughout the decision, it is, however, apparent that the Commission believed existing switch rates "presumably compensate [the carrier] in full." *Ibid.* It also seems clear that the Commission viewed *Indiana Harbor* as an attempt to resolve these problems. It did not and could not know if the effort would be successful.

Indiana Harbor was decided a year after the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) was enacted. Yet the decision fails to consider the overall import and direction of that legislation.¹ Since then, the Staggers Act has become law and compels a more thorough analysis of the consistency of *Indiana Harbor* with Congressional intent generally and specific provisions in particular.

While there have been a number of proceedings involving the *Indiana Harbor* standards since 1980, No. 39380 is the first in which *Indiana Harbor* must be squarely faced, as the

exceptions identified in that case do not seem to apply. Defendants demonstrate considerable losses under the existing method of compensation (switching charges plus the equalization rule)² and it appears that the Commission's direction to seek redress from overcompensated line-haul carriers has not been pursued.

As a result, we think we must reevaluate the efficacy of the existing standards, and their consistency with the Act as amended and we must explore other approaches to remedying such problems as may exist. The Staggers Act demonstrates a clear intent to promote compensatory recovery through adjustments to the rate structure. It also reflects a concern that we regulate only when market forces are inadequate. And, we may not use our general powers to limit rates that carriers are otherwise authorized to establish. 49 U.S.C. 10707a(h). At the same time, however, we agree with much of the *Indiana Harbor* sentiment, i.e., that, in whatever system is used, over recovery of costs for these empty movements must be prevented so that no penalty is imposed on private car owners. According to certain comments, allowing all railroads to impose switching charges on movements to and from repair facilities could produce a windfall for several railroads. We are also not here suggesting that an entire repeal of *Indiana Harbor* is required.

To assist us in resolving these matters, we seek further comment on the questions listed below, as well as any other information the parties believe relevant.

The existing situation

1. Is undercompensation for switching a significant problem? Is it reasonable to presume that line-haul rates on all private car traffic recover empty movement costs?

2. Is undercompensation a problem for all cars or primarily tank cars? Is there a system for recovery of excess empty mileage for cars other than tank cars?

3. Is the *Indiana Harbor* standard consistent with present statutory standards?

a. Does it conflict with the market dominance threshold for Commission jurisdiction to determine maximum

reasonable rate levels or with 49 U.S.C. 10707a(h)?

b. Does the equalization rule result in rates that fail to contribute to going concern value, contrary to 49 U.S.C. 10701a(c)?

c. Is *Indiana Harbor's* distinct service pricing analysis overly broad?

d. Does the "instrumentality of transportation" principle relied on in *Indiana Harbor* continue to have merit? Is it consistent with 49 U.S.C. 10701a(a) and 10707a(h)? Does the fact that railroad-owned cars are subject to tariff charges for empty movements support a conclusion that private cars be treated no differently?

e. Is over recovery of these costs an unreasonable practice for which there is a remedy in the absence of market dominance?

Possible Remedies

If the present standard is inappropriate, what regulatory approach should be adopted? Should undercompensation be corrected on an individual carrier or industry-wide basis? Do the different car types require different approaches? What is the most practical and least disruptive means of correcting the problem?

1. Imposition of switching charges.

a. What criteria of reasonableness should apply? What level of charges should be approved in No. 39380 if market dominance is applicable and exists?

b. If switching charges are approved, should adjustments to other rates or allowances be studied in Ex Parte No. 328?

2. Is the proposal of the Chemical Manufacturers' Association feasible?

3. What is the merit of complainants' suggestion of a separate national pool for recovery of empty repair switching costs?

4. Should switching costs be included in the maintenance cost element used to determine mileage allowances for tank cars, covered hoppers, LU, RB, and RBL cars, as suggested by the Union Pacific?

5. What is the merit of the *Indiana Harbor* suggestion of intercarrier complaints?

This action is taken under authority of 49 U.S.C. 10321, 10327(g)(1), and 10705, and 5 U.S.C. 553.

Decided: March 5, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,
Secretary.

[FR Doc. 85-6335 Filed 3-15-85; 8:45 am]

BILLING CODE 7035-01-M

¹ The decision discusses only two aspects of the 4R Act: distinct service pricing, which it finds inappropriate in this context; and market dominance. The market dominance discussion is confined to a footnote regarding a challenge to a particular rate level. The decision concludes that the market dominance provision does not apply because the rate became effective and the proceeding began before the effective date of the market dominance rules.

² The Union Pacific and Missouri Pacific also argue, based on Rail Form A estimates, that they lose at least \$850,000 per year and, in effect, switch 10,000 cars free to and from repair facilities. They further note that the equalization rule provides no compensation for movements within switching districts unless in conjunction with line-haul movements, and that the 32¢ per mile provided under the rule is itself inadequate to recover their costs on movements that are covered by the rule.

[Docket No. AB-102 (Sub-11X)]

Missouri-Kansas-Texas Railroad Co.; Abandonment and Discontinuance of Operations Exemption in Tulsa County, OK; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 1.08-mile line of railroad between milepost Z-270.60 and milepost Z-271.68 and to discontinue operations over its 6.52-mile line of railroad between milepost Z-271.68 and milepost Z-278.20.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment or discontinuance of operations shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective April 17, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by March 28, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 8, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael E. Roper, 701 Commerce St., Dallas, TX 75202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 8, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-6338 Filed 3-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30607]

Norfolk and Western Railway Co.; Lease Exemption; Chicago and Western Indiana Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Norfolk and Western Railway Company and Chicago and Western Indiana Railroad Company from the requirements of 49 U.S.C. 11343 *et seq.*, in connection with the lease by the former of a 5.5-mile line of railroad of the latter in Chicago, IL, subject to standard employee protective conditions.

DATES: This exemption will be effective on April 17, 1985. Petitions to stay must be filed by March 28, 1985, and petitions for reconsideration must be filed by April 8, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30607 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioners' representatives:
Angelica D. Lloyd, Norfolk Southern Corporation, Law Department, 204 S. Jefferson St., Roanoke, VA 24042-0069

J.H. Park, 428 W. 47th Street, Chicago, IL 60609

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 7, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-6336 Filed 3-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30595]

Soo Line Railroad Co.; Trackage Rights Exemption; Burlington Northern Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the requirements of prior approval under 49 U.S.C. 11343 the acquisition by Soo Line Railroad Company of trackage rights over rail lines of the Burlington Northern Railroad Company (1) between Schley, MN, and Superior, WI, and (2) between McGregor, MN, and Superior, WI, subject to labor protection.

DATES: This exemption was effective on March 15, 1985. Petitions to reopen must be filed by April 8, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30595 to:

- (1) Office of the Secretary Case Control Branch Interstate commerce Commission Washington, DC 20423 and

- (2) Petitioner's representative: C. Harold Peterson, 804 Soo Line Building, Box 530, Minneapolis, MN 55440

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., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: March 5, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-6337 Filed 3-15-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE**Bureau of Justice Assistance****Criminal Justice Discretionary Grant**

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Notice of Proposed Program Priorities.

SUMMARY: The Bureau of Justice Assistance is publishing for public comment a notice of proposed program priorities for criminal justice discretionary grant funding.

DATE: Comments are due on or before May 17, 1985.

ADDRESS: Send comments to Eugene Dzikiewicz, Acting Deputy Director, Bureau of Justice Assistance 633 Indiana Avenue, N.W., D.C. 20531, 202/272-6836.

FOR FURTHER INFORMATION CONTACT:

James C. Swain, Bureau of Justice Assistance, 633 Indiana Avenue, N.W., D.C. 20531, 202/724-5974.

SUPPLEMENTARY INFORMATION: On October 12, 1984, President Reagan signed into law the Justice Assistance Act of 1984. Part E of the Act establishes a program of criminal justice discretionary grants for public and private non-profit agencies. The Act also specifies four purposes for which discretionary grants can be made: (1) Education and training programs for criminal justice personnel; (2) technical assistance to states and local governments; (3) national or multi-state projects; and (4) demonstration programs.

The discretionary grant program is intended to complement and enhance the program of criminal justice block grants authorized under Part D of the Act. Block grants are administered by the states and funds are used to carry out state and local programs with a high probability of improving the criminal justice system, with emphasis on violent crime and serious offenders. Of the total amount of funds appropriated for both block and discretionary grants, 20 percent is reserved for the discretionary grant program. For Fiscal Year 1985, the amount available is \$13.8 million.

Responsibility for administering the discretionary grant program rests with the Bureau of Justice Assistance of the Office of Justice Programs. As required by the Act, the Bureau is announcing its proposed priorities for discretionary grants and inviting public comment. After the 60-day comment period has ended and the Bureau has considered all comments received, it will publish a final notice of its priorities in the *Federal Register*. Subsequently, individual program announcements will be published in the *Federal Register* that detail specific programmatic and application requirements.

The proposed priorities for Fiscal Year 1985 reflect two broad themes: the first is the need to provide support for criminal justice training and technical assistance activities that make the implementation of improvement programs feasible; and the second is the need to continue the emphasis on programs that deal with violent crime, serious offenders, victims and crime prevention.

The Bureau is specifically inviting comment and recommendations regarding candidate programs for demonstration purposes, particularly in the area of violent crimes and serious offenders. The Bureau is seeking to

identify promising strategies that lend themselves to additional field testing.

I. Training and Technical Assistance

A major purpose for the use of discretionary grant funds is to support education and training programs for criminal justice personnel and provide technical assistance for State and local criminal justice agencies. In Fiscal Year 1985 the Bureau will provide training and technical assistance in the following broad areas: Law enforcement, crime prevention, victims services, courts (including prosecution), and corrections. Priority will be given to training and technical assistance that supports the implementation of programs certified as eligible for funding under the block grant program (see Appendix A). Resources will be adjusted over time to reflect the block grant funding decisions of the States. In addition, a portion of the available monies will support training and TA programs not specifically related to these certified programs. One such effort that will be continued in Fiscal Year 1985 is the provision of technical assistance to the private sector/prison industries' certification program.

It is estimated that \$5.5 million will be allocated to training and technical assistance in Fiscal Year 1985 and that a total of 10-20 grants/contracts will be awarded. Individual announcements or solicitations will be issued during the period, April 1, 1985-August 31, 1985.

II. Demonstration

Demonstration programs provide a means for testing in a variety of sites programs that, based on research or experience, are likely to be a success in more than one jurisdiction and are unlikely to be funded with monies from other sources. All demonstration programs will be evaluated and applicants will be required to cooperate with the evaluation effort. Programs that prove successful may be certified by the Bureau as eligible for block grant support in future years.

The Bureau proposes to undertake demonstration programs in the following priority areas:

(a) *Family Violence Intervention*. This program will focus on strategies for implementing recommendations of the Attorney General's Task Force Report on Family Violence.

(b) *Law Enforcement Crime Prevention*. This program will demonstrate the administration and management of crime prevention as an important function of law enforcement agencies comparable in importance and professional status to patrol and

investigation activities in major departments.

(c) *Child Victims of Sexual Abuse*. This program will test strategies for assisting child victims of sexual abuse.

In addition, 1-2 other demonstration programs are planned that focus on violent crime and serious offenders or victims of crime. Recommendations of promising programs that, based on research or experience are likely to prove successful, are invited.

The Bureau anticipates conducting 4-5 demonstration in Fiscal Year 1985, with each program operating at 3-5 sites. It is estimated that \$3.5 million will be allocated for demonstration programs. Individual program announcements will be published in the *Register* on or before June 1, 1985.

III. National Multi-State Programs

National and multi-state programs complement the block grant program. They address one or more of the purposes for which block funds may be used, but provide a national or regional response. In Fiscal Year 1985 three important ongoing initiatives will be continued:

(a) *National Citizens Crime Prevention Campaign*. This highly visible and successful program ("Take a Bite Out of Crime") provides public education through a national mass media program, operates a computerized information center on crime prevention programs and resources, and produces and distributes crime prevention materials for use by state and local groups. The Campaign is operated by the National Crime Prevention Council in cooperation with the Advertising Council, Inc., and the Crime Prevention Coalition.

(b) *Law Enforcement Accreditation*. By continuing the work of the Commission on Accreditation for Law Enforcement Agencies, Inc., this program will assess and recognize agencies which practice law enforcement standards developed and approved by the professional law enforcement community.

(c) *National Victims of Crime Network*. This program continues several projects to develop and expand services to victims and to provide assistance to State and local criminal justice agencies and other service delivery agencies.

In addition, 1-2 new national scope initiatives are planned including one directed at increasing public education and awareness of family violence and its prevention.

It is estimated that \$4.8 million will be allocated for national and multi-state

programs. Announcements for new initiatives will be published in the Federal Register on or before June 1, 1985.

IV. General Requirements

a. *Match Grants* may be awarded for up to 100 percent of program or project costs.

b. *Eligibility* Public agencies and private non-profit organizations are eligible to apply. Specific eligibility requirements will be set forth in individual announcements.

c. *Period of Support* Grants may support projects for up to three years and may be renewed for an additional two years if an evaluation indicates that

the project has been effective and if the grantee agrees to provide at least one-half of the total cost of the project.

d. Financial Requirements.

Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circulars applicable to financial assistance. These Circulars along with additional information and guidance are contained in the "Financial and Administration Guide for Grants" Guideline Manual 7100.1, available from the Office of Justice Programs.

e. *Non-Discrimination.* The Justice Assistance Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to

discrimination under, or denied employment in connection with any activity funded in whole or in part with funds made available under the Act. Applicants for discretionary grants are also subject to the Act. Applicants for discretionary grants are also subject to the provisions of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E and G.

Lois Haight Herrington,
Assistant Attorney General.

Appendix A.—Purposes and Certified Programs Identified in the Regulations

Act purposes	Certified program
(1) Providing community and neighborhood programs that enable citizens and police to undertake initiatives to prevent and control neighborhood crime.	Community Crime Prevention Program.
(2) Disrupting illicit commerce in stolen goods and property.	Property Crime (STING) Program.
(3) Combating arson.	Arson Prevention and Control Program.
(4) Effectively investigating and bringing to trial white-collar crime, organized crime, public corruption crimes, and fraud against the Government.	
(5) Identifying criminal cases involving persons (including juvenile offenders) with a history of serious criminal conduct in order to expedite the processing of such cases and to improve court system management and sentencing practices and procedures in such cases.	Career Criminal Prosecution Program; Court Delay Reduction Program.
(6) Developing and implementing programs which provide assistance to jurors and witness, and assistance (other than compensation) to victims of crimes.	Victim and Witness Assistance Program.
(7) Providing alternatives to pretrial detention, jail, and prison for persons who pose no danger to the community.	Jail Overcrowding/Alternatives to Pretrial Detention Program.
(8) Providing programs which identify and meet the needs of drug-dependent offenders.	Treatment Alternatives to Street Crime Program (TASC).
(9) Providing programs which alleviate prison and jail overcrowding and programs which identify existing State and Federal buildings suitable for prison use.	RESERVED.
(10) Provide training, management, and technical assistance to criminal justice personnel and determining appropriate prosecutorial and judicial personnel needs.	(Program design by State to Support Eligible Program.)
(11) Providing prison industry projects designed to place inmates in a realistic working and training environment in which they will be enabled to acquire marketable skills and to make financial payments for restitution to their victims, for support of their own families, and for support of themselves in the institution.	RESERVED.
(12) Providing for operational information systems which improve the effectiveness of criminal justice agencies.	Prosecution Management Support System.
(13) Providing programs of the same types as programs described in section 501(a)(4) which: (A) the Director establishes, under section 503(a), as discretionary programs for financial assistance under part E; and (B) which are innovative and have been deemed by the Director as likely to prove successful.	RESERVED.
(14) Implement programs that address critical problems of crime, such as drug trafficking, which have been certified by the Director, after consultation with the directors of National Institute of Justice, Bureau of Justice Statistics and the Office of Juvenile Justice and Delinquency Prevention, as having proved successful.	RESERVED.
(15) Providing programs which address the problem of serious offenses committed by juveniles.	Restitution by Juvenile Offenders: Alternative to incarceration.
(16) Addressing the problem of crime committed against the elderly.	RESERVED.
(17) Providing training, technical assistance and programs to assist State and local law enforcement authorities in rural areas in combating crime, with particular emphasis on violent crime, juvenile delinquency and crime prevention; and.	RESERVED.
(18) Improving the operational effectiveness of law enforcement by integrating and maximizing the effectiveness of police field operations and the use of crime analysis techniques.	Integrated Criminal Apprehensive Program (ICAP).

[FR Doc. 85-6343 Filed 3-15-85; 8:45 am]

BILLING CODE 4410-15-M

National Institute of Justice

Correction To Program Announcement; National Institute of Justice Solicited Research Program; Fiscal Year 1985

The National Institute of Justice issued the above program announcement in the Federal Register/

Vol. 50, No. 36 on Friday, February 22, 1985. The announcement is found on page 7407 of that issue.

This related announcement is to notify all interested parties that a correction has been made to the "Solicited Research Programs, Fiscal Year 1985" publication available from the National Institute of Justice. The correction is made to page 20 in section III.

"Additional information". The March 29, 1985 date for submission of proposals is hereby changed to April 30, 1985.

Dated: March 8, 1985.

James K. Steward,
Director.

[FR Doc. 85-6359 Filed 3-15-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR**Employment and Training
Administration****Program Year (PY) 1985 Preliminary
Planning Estimates for State Public
Employment Services Under the
Wagner-Peyser Act, As Amended by
Public Law 97-300****AGENCY:** Employment and Training
Administration, Labor.**ACTION:** Notice.

SUMMARY: This notice announces the preliminary planning estimates for PY 1985 (July 1, 1985-June 30, 1986) for State public employment services under the Wagner-Peyser Act, as amended, and invites comment on three options for distributing the Secretary's 3 percent set-aside authorized under section 6 (b)(4) of the Wagner-Peyser Act, as amended.

DATES: Comments on the funding options must be submitted on or before April 30, 1985.

ADDRESS: Comments should be addressed to the United States Employment Service, Employment and Training Administration, U.S. Department of Labor, 801 D Street, N.W., Room 8100, Washington, D.C. 20213, Attention: Richard C. Gilliland.

FOR FURTHER INFORMATION CONTACT: Richard C. Gilliland, Director, United States Employment Service, Telephone (202) 376-6750.

SUPPLEMENTARY INFORMATION: This notice announces the preliminary planning estimates for PY 1985 for State public employment services and describes three options for distribution of the Secretary's 3 percent reserve authorized by the Act. The amount of

funds currently available for distribution to States for public employment service activities reflect the revised FY 1985 levels as proposed in the President's budget request for FY 1986. By statutory requirement, \$14,000,000 is being withheld to finance postage costs associated with employment service activities. In accordance with the formula criteria in Section 6 of the Wagner-Peyser Act, as amended, \$704,606,060 is distributed to the States as preliminary planning estimates. These estimates are based on each State's relative share of average civilian labor force and unemployment in Calendar Year 1984.

The Wagner-Peyser Amendments under the Job Training Partnership Act of 1982 provides at section 6 (b)(4) that:

The Secretary shall reserve such amount, not to exceed 3 percent of the sums available for allotments under this section for each Fiscal Year, as shall be necessary to assure that each State will have a total allotment under this section sufficient to provide staff and other resources necessary to carry out employment service activities and related administrative and support functions on a statewide basis.

For the transition period and Program Year 1984, the Department distributed the Secretary's 3 percent set-aside utilizing a methodology that had been reviewed by the States in April of 1983. The Department is now providing another opportunity for review of the methodology used earlier by presenting along with the current methodology, two other options. Accordingly, \$21,791,940 has been set aside from the revised PY 1985 availability pending review and comment.

Illustrated in the attached Options A, B, and C are: Option A which reflects the methodology used in PY 1984. In Step 1, States whose relative share of

resources decreased from the previous year to the PY 1985 basic formula amount and whose civilian labor force (CLF) is below 1 million and also below the median CLF density, are held-harmless at 100 percent of their PY 1984 relative share. The remainder of the 3 percent reserve is distributed in Step 2 to the balance of States losing in relative share from PY 1984 to PY 1985 basic formula amount.

Option B which maintains the distribution as in Step 1 above. The remainder is distributed in a pro-rata share to all States based on their "Ultimate Fair Share" of available resources. The "Ultimate Fair Share" represents the amount each State would receive if funds were distributed only on the basis of relative share of CLF and unemployment. The statutory requirements for a 90 percent hold-harmless and a minimum floor level of 0.28 percent (factors incorporated into the formula to provide a smooth transition into the formula approach for distributing Wagner-Peyser funds) are disregarded for purposes of determining a State's fair share.

Option C which distributes funds to States as in Step 1 in Option A above. The remainder is distributed to all States by the same statutory formula used to calculate the basic formula described in section 6 (b)(1) of the Act.

In accordance with Section 6(b)(5) of the Act, as amended, final planning estimates will be published in the **Federal Register** no later than May 15, 1985.

Signed at Washington, D.C., on March 13, 1985.

Frank C. Casillas,
Assistant Secretary for Employment and Training.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
FY 1985 WAGER-FEISER PRELIMINARY PLANNING ESTIMATES TO STATES

2/14/85

2/14/85

ESTIMATE

ALABAMA	11,767,433
ALASKA	6,892,964
ARIZONA	7,307,734
ARKANSAS	7,092,453
CALIFORNIA	71,593,305
COLORADO	8,868,026
CONNECTICUT	8,265,604
DELAWARE	1,967,939
DIST OF COLUMBIA	5,277,017
FLORIDA	27,359,982
GEORGIA	14,608,678
HAWAII	2,923,608
IDaho	5,743,048
ILLINOIS	33,949,456
INDIANA	15,580,131
IOWA	9,041,020
KANSAS	6,111,893
KENTUCKY	10,486,557
LOUISIANA	12,174,982
MAINE	3,415,336
MARYLAND	11,529,369
MASSACHUSETTS	15,193,714
MICHIGAN	28,642,654
MINNESOTA	11,966,172
MISSISSIPPI	1,822,402
MISSOURI	13,302,653
MONTANA	4,693,269
NEBRASKA	5,640,361
NEVADA	4,562,332
NEW HAMPSHIRE	2,522,553
NEW JERSEY	20,402,230
NEW MEXICO	3,266,649
NEW YORK	54,374,035
NORTH CAROLINA	16,606,891
NORTH DAKOTA	4,779,131
OHIO	31,286,439
OKLAHOMA	12,432,211
OREGON	8,702,029
PENNSYLVANIA	33,207,783
RHODE ISLAND	8,535,992
RHODE ISLAND	2,617,485
SOUTH CAROLINA	8,236,253
SOUTH DAKOTA	4,417,046
TENNESSEE	13,153,860
TEXAS	41,398,316
UTAH	9,660,550
VERMONT	2,069,183
VIRGINIA	14,345,006
WASHINGTON	12,608,898
WEST VIRGINIA	5,791,630
WISCONSIN	13,458,527
WYOMING	3,426,535
FORMULA TOTAL	702,835,354
GUAM	339,898
VIRGIN ISLANDS	1,430,808
NATIONAL TOTAL	704,606,060

% DISTRIBUTION

	BASIC FORMULA	STEP 1	STEP 2	TOTAL	TOTAL ALLOTMENT
ALABAMA	11,767,433	1,003,350	0	1,003,350	11,767,433
ALASKA	6,892,964	0	0	0	7,896,294
ARIZONA	7,307,734	0	0	0	7,633,803
ARKANSAS	7,092,453	0	0	0	7,000,564
CALIFORNIA	71,593,305	0	0	0	71,593,305
COLORADO	8,868,026	0	0	0	8,868,026
CONNECTICUT	8,265,604	0	0	0	8,265,604
DELAWARE	1,967,939	0	0	0	1,967,939
DIST OF COLUMBIA	5,277,017	0	0	0	5,277,017
FLORIDA	27,359,982	0	0	0	27,359,982
GEORGIA	14,608,678	0	0	0	14,608,678
HAWAII	2,923,608	0	0	0	2,923,608
IDaho	5,743,048	0	0	0	5,743,048
ILLINOIS	33,949,456	0	0	0	33,949,456
INDIANA	15,580,131	0	0	0	15,580,131
IOWA	9,041,020	0	0	0	9,041,020
KANSAS	6,111,893	0	0	0	6,111,893
KENTUCKY	10,486,557	0	0	0	10,486,557
LOUISIANA	12,174,982	0	0	0	12,174,982
MAINE	3,415,336	0	0	0	3,415,336
MARYLAND	11,529,369	0	0	0	11,529,369
MASSACHUSETTS	15,193,714	0	0	0	15,193,714
MICHIGAN	28,642,654	0	0	0	28,642,654
MINNESOTA	11,966,172	0	0	0	11,966,172
MISSISSIPPI	1,822,402	0	0	0	1,822,402
MISSOURI	13,302,653	0	0	0	13,302,653
MONTANA	4,693,269	0	0	0	4,693,269
NEBRASKA	5,640,361	0	0	0	5,640,361
NEVADA	4,562,332	0	0	0	4,562,332
NEW HAMPSHIRE	2,522,553	0	0	0	2,522,553
NEW JERSEY	20,402,230	0	0	0	20,402,230
NEW MEXICO	3,266,649	0	0	0	3,266,649
NEW YORK	54,374,035	0	0	0	54,374,035
NORTH CAROLINA	16,606,891	0	0	0	16,606,891
NORTH DAKOTA	4,779,131	0	0	0	4,779,131
OHIO	31,286,439	0	0	0	31,286,439
OKLAHOMA	12,432,211	0	0	0	12,432,211
OREGON	8,702,029	0	0	0	8,702,029
PENNSYLVANIA	33,207,783	0	0	0	33,207,783
RHODE ISLAND	8,535,992	0	0	0	8,535,992
RHODE ISLAND	2,617,485	0	0	0	2,617,485
SOUTH CAROLINA	8,236,253	0	0	0	8,236,253
SOUTH DAKOTA	4,417,046	0	0	0	4,417,046
TENNESSEE	13,153,860	0	0	0	13,153,860
TEXAS	41,398,316	0	0	0	41,398,316
UTAH	9,660,550	0	0	0	9,660,550
VERMONT	2,069,183	0	0	0	2,069,183
VIRGINIA	14,345,006	0	0	0	14,345,006
WASHINGTON	12,608,898	0	0	0	12,608,898
WEST VIRGINIA	5,791,630	0	0	0	5,791,630
WISCONSIN	13,458,527	0	0	0	13,458,527
WYOMING	3,426,535	0	0	0	3,426,535
FORMULA TOTAL	702,835,354	8,816,210	12,975,730	21,791,940	724,627,294

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
WAGER-FEISER ANALYSIS - OPTION A

2/14/85

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
ANALYSIS—FISCAL ANALYSIS—OPTION C

BASIC FORMULA	X DISTRIBUTION			TOTAL ALLOTMENT
	STEP 1	STEP 2	TOTAL	
ALABAMA	11,767,433	210,853	210,853	11,978,286
ALASKA	6,892,944	0	0	6,892,944
ARIZONA	7,207,734	129,150	129,150	7,336,884
ARKANSAS	7,092,453	219,907	219,907	7,312,360
CALIFORNIA	71,593,305	1,262,631	1,262,631	72,855,936
COLORADO	8,866,026	158,900	158,900	9,024,926
CONNECTICUT	8,265,604	148,106	148,106	8,413,710
DELAWARE	1,897,939	0	0	1,897,939
DIST. OF COLUMBIA	27,777,017	0	0	27,777,017
FLORIDA	27,559,562	490,264	490,264	28,049,826
GEORGIA	14,004,016	281,031	281,031	14,285,047
HAWAII	2,553,005	835,969	835,969	3,388,974
ILLINOIS	13,969,590	0	0	13,969,590
INDIANA	13,969,590	0	0	13,969,590
IOWA	9,111,000	0	0	9,111,000
KANSAS	10,445,537	0	0	10,445,537
KENTUCKY	10,445,537	0	0	10,445,537
LOUISIANA	10,445,537	0	0	10,445,537
MAINE	10,445,537	0	0	10,445,537
MASSACHUSETTS	10,445,537	0	0	10,445,537
MICHIGAN	10,445,537	0	0	10,445,537
MINNESOTA	10,445,537	0	0	10,445,537
MISSISSIPPI	10,445,537	0	0	10,445,537
MISSOURI	10,445,537	0	0	10,445,537
MONTANA	10,445,537	0	0	10,445,537
NEBRASKA	10,445,537	0	0	10,445,537
NEVADA	10,445,537	0	0	10,445,537
NEW HAMPSHIRE	10,445,537	0	0	10,445,537
NEW JERSEY	10,445,537	0	0	10,445,537
NEW MEXICO	10,445,537	0	0	10,445,537
NEW YORK	10,445,537	0	0	10,445,537
NORTH CAROLINA	10,445,537	0	0	10,445,537
NORTH DAKOTA	10,445,537	0	0	10,445,537
OHIO	10,445,537	0	0	10,445,537
OKLAHOMA	10,445,537	0	0	10,445,537
OREGON	10,445,537	0	0	10,445,537
PENNSYLVANIA	10,445,537	0	0	10,445,537
RHODE ISLAND	10,445,537	0	0	10,445,537
SOUTH CAROLINA	10,445,537	0	0	10,445,537
SOUTH DAKOTA	10,445,537	0	0	10,445,537
TENNESSEE	10,445,537	0	0	10,445,537
TEXAS	10,445,537	0	0	10,445,537
UTAH	10,445,537	0	0	10,445,537
VERMONT	10,445,537	0	0	10,445,537
VIRGINIA	10,445,537	0	0	10,445,537
WASHINGTON	10,445,537	0	0	10,445,537
WEST VIRGINIA	10,445,537	0	0	10,445,537
WISCONSIN	10,445,537	0	0	10,445,537
WYOMING	10,445,537	0	0	10,445,537
FORMULA TOTAL	702,835,354	8,816,210	12,975,730	724,627,294

[FR Doc. 85-0280 Filed 3-15-85; 8:45 am]

BILLING CODE 4510-30-C

2/14/85

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
ANALYSIS—FISCAL ANALYSIS—OPTION B

BASIC FORMULA	X DISTRIBUTION			TOTAL ALLOTMENT
	STEP 1	STEP 2	TOTAL	
ALABAMA	11,767,433	289,894	289,894	12,057,327
ALASKA	6,892,944	0	0	6,892,944
ARIZONA	7,207,734	173,459	173,459	7,381,193
ARKANSAS	7,092,453	0	0	7,092,453
CALIFORNIA	71,593,305	1,744,208	1,744,208	73,337,513
COLORADO	8,866,026	214,804	214,804	9,080,830
CONNECTICUT	8,265,604	158,565	158,565	8,424,169
DELAWARE	1,897,939	0	0	1,897,939
DIST. OF COLUMBIA	27,777,017	0	0	27,777,017
FLORIDA	27,559,562	662,621	662,621	28,222,183
GEORGIA	14,004,016	353,236	353,236	14,357,252
HAWAII	2,553,005	0	0	2,553,005
ILLINOIS	13,969,590	0	0	13,969,590
INDIANA	13,969,590	0	0	13,969,590
IOWA	9,111,000	0	0	9,111,000
KANSAS	10,445,537	0	0	10,445,537
KENTUCKY	10,445,537	0	0	10,445,537
LOUISIANA	10,445,537	0	0	10,445,537
MAINE	10,445,537	0	0	10,445,537
MASSACHUSETTS	10,445,537	0	0	10,445,537
MICHIGAN	10,445,537	0	0	10,445,537
MINNESOTA	10,445,537	0	0	10,445,537
MISSISSIPPI	10,445,537	0	0	10,445,537
MISSOURI	10,445,537	0	0	10,445,537
MONTANA	10,445,537	0	0	10,445,537
NEBRASKA	10,445,537	0	0	10,445,537
NEVADA	10,445,537	0	0	10,445,537
NEW HAMPSHIRE	10,445,537	0	0	10,445,537
NEW JERSEY	10,445,537	0	0	10,445,537
NEW MEXICO	10,445,537	0	0	10,445,537
NEW YORK	10,445,537	0	0	10,445,537
NORTH CAROLINA	10,445,537	0	0	10,445,537
NORTH DAKOTA	10,445,537	0	0	10,445,537
OHIO	10,445,537	0	0	10,445,537
OKLAHOMA	10,445,537	0	0	10,445,537
OREGON	10,445,537	0	0	10,445,537
PENNSYLVANIA	10,445,537	0	0	10,445,537
RHODE ISLAND	10,445,537	0	0	10,445,537
SOUTH CAROLINA	10,445,537	0	0	10,445,537
SOUTH DAKOTA	10,445,537	0	0	10,445,537
TENNESSEE	10,445,537	0	0	10,445,537
TEXAS	10,445,537	0	0	10,445,537
UTAH	10,445,537	0	0	10,445,537
VERMONT	10,445,537	0	0	10,445,537
VIRGINIA	10,445,537	0	0	10,445,537
WASHINGTON	10,445,537	0	0	10,445,537
WEST VIRGINIA	10,445,537	0	0	10,445,537
WISCONSIN	10,445,537	0	0	10,445,537
WYOMING	10,445,537	0	0	10,445,537
FORMULA TOTAL	702,835,354	8,816,210	12,975,730	724,627,294

[TA-W-15,323]

**Republic Steel Corp. (LTV Steel Co.),
Drainage Products Division, Fairhope
Plant Canton, OH.; Affirmation of
Negative Determination**

By an application dated October 4, 1984, the petitioners requested administrative reconsideration of the Department Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at Republic Steel Corporation's Fairhope plant in Canton, Ohio. The negative determination was published in the *Federal Register* on September 25, 1984 (49 FR 37677).

On November 8, 1984 the Department dismissed the October 4, 1984 application for administrative reconsideration because sufficient new evidence was not provided upon which a determination regarding the application could be made pursuant to 29 CFR 90.18(c). The dismissal explained that corrugated drainage pipe and culvert products constituted about 90 percent of the Fairhope plant's 1983 production. Tunnel liners and sectional plates accounted for only six to eight percent of 1983 production and according to the record the workers were not separately identifiable by product. The dismissal notice was published in the *Federal Register* on November 30, 1984 (49 FR 47129).

The Department, in connection with pending litigation, reopened the investigation on its own motion to insure that the "contributed importantly" test results used in the initial decision were adequate. The results of the customer survey are used to substantiate that increased imports of articles like or directly competitive with those produced by the workers at the subject plant contributed importantly to decreased company sales and or production and to worker separations.

The petitioners stated on reconsideration that the reason for their application was the closing of the tunnel liner and sectional plate departments in 1983 at the Fairhope plant. The original denial decision issued on September 11, 1984 was based on primarily on the customer survey which showed that Republic Steel's customers did not purchase imported metal drainage and culvert products. On reopening, the Department expanded the test by conducting a survey of tunnel liner and sectional plate customers to determine the extent to which they shifted purchases to foreign sources.

The results of the second customer survey in which respondents accounting

for virtually the entire 1983 sales decline for tunnel liners and sectional plates showed that none of these customers imported tunnel liners or sectional plates during the period of the investigation.

Conclusion.

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers of Republic Steel Corporation's Fairhope plant in Canton, Ohio.

Signed at Washington, D.C., this 14th day of March 1985.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 85-6580 Filed 3-15-85; 10:22 am]

BILLING CODE 4510-30-M

**NATIONAL COMMUNICATIONS
SYSTEM****Industry Executive Subcommittee of
the National Security
Telecommunications Advisory
Committee; Meeting**

A meeting of the Industry Executive Subcommittee (IES) of the National Security Telecommunications Advisory Committee (NSTAC) will be held on Wednesday, April 3, 1985. The meeting will be held at the MITRE Corporation, 1820 Dolly Madison Boulevard, McLean, VA 22102. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The purpose of the meeting is to review actions within the telecommunications industry and the government regarding mobilization planning. The agenda is as follows:

- A. Opening remarks
- B. Administrative remarks
- C. Briefings on government activities
- D. Briefings on industry activities

Due to the requirement to discuss classified information in conjunction with this issue, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, D.C. 20305-2010.

D. C. Brown,

NCS Joint Secretariat.

[FR Doc. 85-6340 Filed 3-15-85; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL SCIENCE FOUNDATION**Advisory Panel for Integrative Neural
Systems; Meeting**

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Integrative Neural Systems.

Date and time: April 3, 4 & 5, 1985: 9:00 to 5:00 p.m. each day.

Place: Georgetown Hotel at 2121 P Street NW, Washington, DC. Meeting is to be held in the Conference room.

Type of meeting: Closed.

Contact person: Dr. Nathaniel C. Pitta
Program Director for Integrative Neural Systems Program Room 320, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357-7471.

Purpose of meeting: To provide advice and recommendations concerning support for research in Integrative Neural Systems Program.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 13, 1985.

[FR Doc. 85-6362 Filed 3-15-85; 8:45 am]

BILLING CODE 7555-01-M

**NATIONAL TRANSPORTATION
SAFETY BOARD****Recommendation Responses;
Availability****Responses From**

Railroad—Federal Railroad Administration: Feb. 6: R-75-009: Does not plan to issue a regulation requiring the use of a fire detection mechanism on trains carrying Class A explosives. An FRA study, "Safe Transport of Munitions" (STROM), found these devices to be unfeasible and costly. Currently FRA regulations contain sufficiently safe requirements for the

transportation of explosives by rail. *R-80-016*: Conducted a program with the U.S. Army Ballistics Research Laboratory in Aberdeen, Maryland, to study mechanisms involved in the breaching of tank cars. Results are available in report No. BRL-IMR-784. "Physical Response of Flat Steel Plates to Drop Hammer Impacts," August, 1983. *R-78-059* and *R-80-015*: A report on the positioning of freight cars in a train has been prepared by Arthur D. Little, Inc. This report, "An Analysis of the Probability of Derailment within a Train Consist" found that about 25 percent of derailed equipment was located in each quarter of the train, and that the considerable amount of switching which would be required to place cars at a certain position in a train would be costly and could create a safety hazard. Current FRA regulations contain several sections on car positioning in the transportation of hazardous materials. *Feb. 20: R-83-80*: Has conducted inspections of the track in the Louisville District of the Illinois Central Gulf Railroad Company, and found the tracks were brought into compliance with Track Safety Standards after each inspection. Will continue to monitor this track extensively to ensure compliance. *R-83-79*: Illinois Central Gulf Railroad Company has imposed speed reductions on trains carrying hazardous materials in the Louisville District.

Commonwealth of Massachusetts Executive Office of Transportation and Construction: Feb. 28 R-83-44: In accordance with this recommendation, will require that State contracts (specifically, the renewed contract with the Boston and Maine Railroad) specify that adequate supervisory checks be performed by the railroad at those points where commuter traincrews report to duty.

The American Short Line Railroad Association: Mar. 4: R-85-9: Has circulated this recommendation to all members, informing them of the facts and circumstances of the derailment at Woodlawn, Texas, on November 12, 1983, and urging member railroads to join with the Federal Railroad Administration in implementing the recommendations made in the Transportation Systems Center Task Force Report-Rail Failure Evaluation.

Bangor and Aroostook Railroad Company: Feb. 19: R-84-20: Has no high strength alloy rail. An Engineering Department rule prohibits the use of a torch to burn or enlarge an existing hole in a rail.

State of Maryland Executive Department: Feb. 22: R-83-42 and -43: Is negotiating a new operating contract with the Baltimore & Ohio Railroad

Company. SRA has included in the draft contract specific language that addresses the Board's recommendation for adequate supervisory checks of railroad employee's fitness at those points where commuter train crews report to duty. Is requesting the Maryland Department of Licensing and Regulation to increase State inspections of railroad operating practices on State-supported commuter trains.

Association of American Railroads: Feb. 14: R-84-35 and -36: The AAR has no authority to prescribe or dictate highway design or reconstruction for highway projects implemented under a public highway program. This authority belongs to state highway agencies with the assistance of the American Association of State Highway and Transportation Officials.

Aviation—Federal Aviation Administration: Feb. 25: A-84-14 and -15: FAA Notice 8320.301, Required Inspection Item (RII) Requirements and Aircraft Maintenance Logbook Deficiencies, reemphasizes the requirements for air carrier maintenance and inspection functions and the FAA inspector's responsibility during certification and surveillance. Air Carrier Operations Bulletin No. 8-84-1 contains a change instructing operations inspectors in the conduct of en route inspections to thoroughly scrutinize aircraft logs to verify that corrective maintenance actions correlate to mechanical irregularities recorded by flightcrews and that mechanical irregularities discovered during flight are properly recorded by flightcrews. *Feb. 25: A-84-123*: FAA's Aviation Behavioral Technology Plan is a comprehensive, ongoing program which applies behavioral analysis and technology to ensure that research findings regarding degrading of pilot performance as a result of automation will be used to keep regulations current with automation technology. *A-84-124*: The Office of Flight Operations will punish an air carrier operations bulletin directly air carrier principal operations inspectors to review the airspeed callout procedures of assigned air carriers and, where necessary, will require that these procedures specify the actual speed deviations in appropriate increments from computed reference speeds. *Feb. 25: A-83-1*: Is amending Technical Standard Order C100 to permit the use of child/infant restraint devices labeled in conformance to 49 CFR 571.213, § 5.52(e) effective January 1, 1981, and labeled in conformance to 49 CFR 571.213 § 5.5.2(e) and (m) effective February 26, 1985. As of February 26, 1985, child restraint manufacturers will have a single mandatory regulation for

the certification of their child restraint devices for use in motor vehicles and in aircraft. Is proposing that TSO-C100 now be withdrawn in order to ensure comprehension on the proper child restraint approval standard. *Feb. 25: A-84-128*: Will issue an emphasis notice to direct principal airworthiness inspectors to assure that emergency exits are free from interference from adjacent passenger seats and are accessible to passengers. *A-84-129*: FAA's Transport Category Airplane Directorate is reviewing the recommendation to require F-27 airplanes to have installed an FAA-approved means of preventing the hinge pins from coming free of their hinges on the door between the forward cabin and the cargo compartment or to remove that door. *A-84-130*: Will review Air Carrier Operations Bulletin No. 1-76-23 to FAA Order 8430.17 to determine whether passenger safety information cards on air carriers depict usable bracing positions and to delete this bracing position from cards on airplanes equipped with foldover seatbacks. *A-84-131*: Revised Pilgrim Airlines, Flight Attendant Manual on July 1, 1984, and again on October 15, 1984, to incorporate clear, concise, unambiguous operating instructions. Flight attendant training has been and will be monitored to assure consistency with manuals. *A-84-132*: Has issued instructions to Principal Operations Inspectors to increase surveillance of the proper pre-flight and pre-arrival stowage of galley service items. *A-84-133*: Has established a course for Principal Operations Inspectors at their Aeronautical Center in Oklahoma City, Oklahoma to standardize the force and provide indepth knowledge of POI's responsibilities. *Feb. 25: A-74-38 and -39*: NPRM 84-12, Docket Number 24191, published in the Federal Register on Aug. 13, 1984, proposed to amend 14 CFR Part 23 to require standardization of cockpit controls and the location, operation and arrangement of these controls to minimize them as causal factors in airplane accidents. If adopted, this rule is projected to be published as a Final Rule before June 1985. *Mar. 4: A-82-145*: 14 CFR 23.1523 currently requires that the minimum flightcrew be established based on a safe operation considering individual crewmember work load, accessibility and ease of control operations. If the minimum flightcrew is determined to be one pilot, additional requirements must be met prior to conducting single-pilot IFR flights. A review of all air taxi accidents that occurred between 1980 and 1984 revealed no evidence indicating a safety problem that can be directly attributed

to excessive single-pilot work load. *Mar. 4: A-83-67:* An Airworthiness Directive was issued on December 11, 1984 which imposes a 500 hours life limit on time-in-service for paper induction air filters and requires replacement of them within the next 100 hours of time-in-service.

Civil Aviation Administration: Feb. 22: A-84-123 and -124: Scandinavian authorities do not require specific callout procedures; each airline company may choose its own, but the procedure must be detailed in flight and training manuals.

Eastern Air Lines Inc.: Feb. 11: A-84-43: Maintains an ongoing effort to emphasize flight deck/flight attendant coordination in initial and recurrent training through simulations, videotapes and other coordination drills. *A-84-44:* Predeparture overwater briefings include information concerning life vest location, vest inflation and donning instructions, and the plastic containers in which the vests are located have the words "Pull here—Pull here" printed at the opening.

Office of the Secretary of Defense: Feb. 11: A-84-61: Navy and Army regulations are being amended to avoid variation in interpretation of 14 CFR 139.69. Air Force Regulation 55-48 fully covers the intent of CFR 139.69. *A-84-62:* Will distribute to all appropriate DOD airport facilities from which civil aircraft operate the NTSB/SIR 83/02 special study on Large Airplane Operations on Contaminated Runways.

Note.—Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendations number(s) in your request. The photocopies will be billed at a cost of 14 cents per page (\$1 minimum charge).

Catherine T. Kaputa,
Alternate Federal Register Liaison Officer.
March 13, 1985.

[FR Doc. 85-6429 Filed 3-15-85; 8:45 am]
BILLING CODE 7533-01-M

SECURITIES AND EXCHANGE COMMISSION

(File Number 500-1)

Dynapac, Inc.; Order of Trading Suspension

March 13, 1985.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information relating to the securities of Dynapac, Inc. ("Dynapac") and that questions have been raised about the adequacy and accuracy of publicly-disseminated

information concerning, among other things, Dynapac's financial condition, assets, business operations, securities transactions, and other matters, and the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Dynapac.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that over-the-counter trading in the securities of Dynapac is suspended, for the ten-day period commencing at 9:30 a.m. on March 13, 1985, and terminating at midnight (EST) on March 22, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-6323 Filed 3-15-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21741; (SR-CBOE-84-33)]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

February 11, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, the Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle at Van Buren, Chicago, IL 60605, submitted on December 19, 1984, a proposed rule change to amend CBOE's Order Support System ("OSS"), which electronically routes certain options orders to the public limit order book, by eliminating the contract size limit on orders submitted to the system. The Commission solicited comments on the proposed rule change, but received none.¹

Specifically, OSS provides for the electronic routing of certain away-from-the-market public customer options limit orders to CBOE's public limit order book. Currently, OSS eligible orders must be at a limit price that is above or below the current bid or offer price by a specified amount, determined previously by CBOE ("premium parameters"), and must be for 29 or fewer contracts. The proposed rule change would eliminate the contract size ceiling on eligible orders, but would not affect the premium parameters used to determine OSS eligibility. Thus, OSS eligible options orders still must be at a limit price that is above or below the current

bid or ask price by the amount previously specified by CBOE.²

In its filing, CBOE stated that the proposal will facilitate the ability of member firms to transmit certain public-customer orders to the public limit order book. By eliminating the contract size ceiling on those options orders that are otherwise OSS eligible, the Commission believes that the proposal offers the potential for the benefits of automation to be extended to a greater universe of orders. In this connection the Commission believes that by expanding the number of transactions that are eligible for automated processing through OSS, the proposal should enhance the accuracy and efficiency with which OSS eligible public orders are processed and, as a result, should make execution of these orders more timely and cost efficient. In addition, because the reduced physical handling of OSS eligible orders should enable the floor broker to spend more time handling non-OSS orders, the proposal also may enhance the processing of non-OSS orders. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposal is consistent with sections 6 and 11A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-6324 Filed 3-15-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 83-068]

Port Access Routes Study, Unimak Pass, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of Study Results.

SUMMARY: This notice publishes results of the Port Access Route Study announced on February 27, 1984, in the

¹ These premium parameters are described in Commission File No. SR-CBOE-84-12, Securities Exchange Act Release No. 20611 (April 12, 1984), 49 FR 13932 (April 9, 1984).

² Securities Exchange Act Release No. 21621 (January 2, 1985), 50 FR 1153 (January 9, 1985).

Federal Register (49 FR 7180). The Study was conducted in accordance with the Ports and Waterways Safety Act (PWSA) (92 Stat. 1472; 33 U.S.C. 1223) to determine whether a traffic separation scheme is needed in the Unimak Pass area on the coast of Alaska. The Seventeenth Coast Guard District performed the study and concluded that the current and anticipated traffic patterns and density do not indicate a need for a traffic separation scheme in the Unimak Pass at this time. A recommendation to establish a safety fairway in the area of Unimak Pass as announced in 1981 (46 FR 81049) is not affected by this notice.

FOR FURTHER INFORMATION CONTACT:

Mr. Christopher Young, Project Manager, Office of Navigation, Room 1606, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC, 20593, telephone (202) 245-0108.

SUPPLEMENTARY INFORMATION:

Information is also available from LCDR Jack Asbury, at the following address: Commander (mps), Seventeenth Coast Guard District, P.O. Box 3-5000, Juneau, Alaska or telephone (907) 586-7195.

Background

Under the Ports and Waterways Safety Act, the Coast Guard is authorized to designate safety fairways and traffic separation schemes (TSSs) where they are needed. A safety fairway is an area in which no structures are permitted; and a TSS is a routing measure which separates opposing vessel traffic into directional lanes. In order for the rules of a TSS to be uniformly enforceable, a TSS is submitted to the International Maritime Organization (IMO) for approval, and is designed to meet IMO guidelines. Before a new TSS or fairway can be designated, the PWSA requires that the Coast Guard conduct a study of potential vessel traffic and consider the conflicts with other users of the area. Once a designation is made, the paramount right of navigation is recognized within the designated area.

Between 1979 and 1981, the Unimak Pass area was examined as part of a general study of all U.S. port approach areas. The results of that study, as published in the **Federal Register** on December 14, 1981 (46 FR 61079), included a recommendation to designate a safety fairway in the Unimak Pass, within which a TSS could later be implemented if necessary. Rulemaking on this fairway was delayed pending results of a hydrographic survey by the National Ocean Service in the Gulf of Alaska and the approaches to Prince William Sound where a new fairway

was also recommended. Once the results of this survey are available a notice of proposed rulemaking for both the Unimak Pass fairway and the Prince William Sound approach fairway will be published.

After the conclusion of the first port access study in 1981, the Seventeenth Coast Guard District received reports from mariners that traffic density was increasing and the need for a TSS was developing. In response to the reports, the Coast Guard opened a new study within the area of the recommended Unimak Pass safety fairway. Notice of this study was published on February 27, 1984 (49 FR 7180) and the public was invited to submit information and comments by June 30, 1984.

Discussion of Comments

During the study comments were solicited from federal, state and local agencies and all segments of maritime industry who have an interest in navigation through the Unimak Pass area. The offshore drilling and fishing industries and associations were particularly targeted as well as pilot associations. Five comments were received. Two of the commenters had surveyed masters in their employ who regularly transit the Pass and submitted that a traffic separation scheme was not required based on current Pass traffic. One commenter neither endorsed nor opposed a TSS, but made recommendations concerning its geographical configuration. Once commenter was opposed to a TSS due to the difficulties it would create for tug and tows which are forced to alter their approach and transit of the Pass because of tidal currents. Under such circumstances a vessel may be unable to stay within the mandatory traffic lane. One company submitted that a TSS would be beneficial; however, its masters has encountered no difficulties in Pass transits.

No commenters offered data concerning future increases in Pass traffic densities. Coast Guard efforts in this direction were highly speculative due to the numerous variable involved, including the impact of future oil exploration off Alaska's west coast and the worldwide economy's effect on the number of vessels using the great circle route through the Pass.

The problem raised concerning tug and tow operations would warrant further study should traffic densities and congestion mandate the necessity of a TSS at a future time.

Based on comments and data submitted during the study, current traffic density and the geography of the Pass itself, the Seventeenth Coast Guard

District concluded that a TSS is not needed at this time.

Findings

After conducting on-site observation of vessel traffic transiting Unimak Pass, examining recent casualty data, consulting with state and federal agencies, and analyzing comments from shipping interests, the Seventeenth Coast Guard District has determined the following:

a. The estimated current annual Unimak Pass traffic is approximately 3,422 vessel transits.

b. The annual estimate does not indicate a serious traffic congestion condition for a pass which is 10 miles wide at its narrowest point with normal area of transit depths in excess of 26 fathoms. The Pass is currently capable of allowing safe transit for the vessels of every description and size that use it.

c. Vessel casualty data related to collisions and groundings does not substantiate the need to establish a TSS. There were only two collisions in the past four years, neither resulting in loss of life. Both occurred during periods of unlimited visibility and slight seas and winds. There is no data to indicate a trend toward an increase in casualties.

d. The current system of aids to navigation in the pass, which consists of two lights to the northwest (one on Akun Island and one on Unimak Island) and two lights to the east (one on Ugamak Island and one on Unimak Island at Scotch Cap), is considered adequate. These lights, coupled with excellent land mass geography for taking visual and radar ranges and bearings, provide vessels with the ability to fix position during the entire Pass transit.

e. Pass traffic reflects a noticeable increase during the summer months. This is primarily due to the increased number of U.S. and foreign flag fishing vessels in operation, and resupply vessels transiting to the North Slope and the west coast ports during the ice free portion of the year.

f. Vessels currently transit the Pass in a variety of directions depending on point of departure and destination. The crossing traffic caused by this situation is not conducive to all vessels staying to the starboard side of the Pass, or in designated one-way traffic lanes.

g. The Pass weather pattern is affected by periods of dense fog during June through September and periods of heavy weather and severe storms during the winter months.

h. Tidal current effects in the Pass, with average velocities of 2 to 3 knots depending on tidal state, would cause

difficulties for low maneuverability slow speed vessels, i.e., tugboats with tows, should a TSS be established. These vessels normally use the prevailing current to assist their transit and select positions and times of entry to gain maximum benefit and safety margin should an engine or steering casualty occur. It might be difficult for them to remain safely within an established traffic lane.

i. IMO TSS design criteria could probably be met should future developments mandate a TSS in the Pass.

Conclusions

The Coast Guard has reached the following conclusions:

- A traffic separation scheme would not significantly contribute to navigation safety in Unimak Pass at this time.
- Compliance with International Regulations for Preventing Collisions at Sea (72 COLREGS) is a sufficient, passive and effective method of traffic management for the Unimak Pass area.
- The safety fairway recommended in 1981 will ensure that vessel traffic in the Unimak Pass area is not obstructed by fixed structures.

T.J. Wojnar,
Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

March 13, 1985.

[FR Doc. 85-6409 Filed 3-15-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Coconino County, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Coconino County, Arizona.

FOR FURTHER INFORMATION CONTACT: Robert E. Arensdorf, Environmental Planning Engineer, Federal Highway Administration, Central Direct Federal Division, PO Box 25246, Denver, CO 80225, Telephone (303) 236-3468.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the U.S. Forest Service and Arizona Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve Arizona Forest Highway 1 (AZ 67) from Jacob Lake to the boundary of Grand Canyon National Park (North Rim). The proposed 31-mile improvement would entail

reconstruction of the existing two-lane paved road to provide adequate travel lane/shoulder widths and improved road base, pavement structure, and drainage. The existing road is narrow with poor sight-distance and has poor drainage and substructure which cause increasing maintenance problems/costs and seasonal load restrictions.

Alternatives under consideration include (1) no-build, maintain the existing road, (2) reconstruct to the American Association of State Highway and Transportation Officials (AASHTO) standard, (3) reconstruct to an excepted (lower)—AASHTO standard, (4) reconstruct only within the existing road prism, (5) reconstruct only the worst safety/maintenance sections (spot improvements), (6) reconstruct on new alignment or other existing road. Three design alternatives are also being considered to reconstruct the US89A/AZ 67 intersection at Jacob Lake.

The FHWA has conducted engineering and environmental analyses for this proposal since 1983. These analyses and the results of several interagency meetings and two public meetings have been documented in an environmental assessment issued in August 1984. In September 1984, FHWA held two public hearings for the proposal which indicated that some environmental groups objected to the project. Therefore, FHWA has decided to prepare an EIS predicated on the proposed project being controversial. Given the extensive public involvement process pursued to date, no additional public meetings or hearings are planned. However, scoping will continue with additional interagency meetings and coordination with a steering committee made up of representatives of concerned environmental groups.

FHWA will advertise the availability of the EIS, distribute it for review, and solicit/consider comments on the project, scope of alternatives, and impacts of the proposal. Comments or questions on the proposed project or requests for copies of the EIS should be directed to the FHWA at the address provided above.

Issued on: March 6, 1985.

Jerry L. Budwig,

Division Engineer, FHWA-Central Direct Federal Division.

[FR Doc. 85-6363 Filed 3-15-85; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Counties of James City and York, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Counties of James City and York, Virginia.

FOR FURTHER INFORMATION CONTACT: George E. Kirk, Jr., District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240-0045, Telephone: (804) 771-2380.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Highways and Transportation (VDH&T) will prepare an environmental impact statement (EIS) on a proposal to provide a four-lane divided facility from the intersection of existing Routes 5 and 199 to the intersection of existing Route 646 and I-64.

The proposed highway project calls for a four-lane divided facility on new location. Two alternative roadway alignments within the project corridor will be investigated for this study.

The proposed project will allow vehicles that originate or have destinations to the west, northwest and southwest of Williamsburg to bypass the downtown area and avoid congesting the business, institutional and tourist areas.

There are also three alternatives to the proposed project under consideration:

(1) Null or No-Build Condition—which includes all elements of the Regional Transportation Plan with the exception of the proposed project;

(2) Mass Transit—to evaluate the ability of mass transit to accommodate the transportation demands in the study area;

(3) Traffic System Management—to evaluate the ability of non-major construction activities on the existing roadway network to accommodate the transportation demands in the study area.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time. The DEIS will be available for public and agency review and comment. Following publication of the DEIS, a public hearing will be held. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues

identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued on March 6, 1985.

George E. Kirk, Jr.,
District Engineer.

[FR Doc. 85-6364 Filed 3-15-85; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Tire Code Marks Assigned to New Tire Manufacturers

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Publication of tire code marks assigned to new tire manufacturers.

SUMMARY: The agency first published a complete listing of the tire code marks assigned to new tire manufacturers in 1972. The second publication of this listing in June 1983 added an additional 150 code marks. Since that last publication, there have been several additions and changes in names and addresses for the assigned code marks. This publication will inform the public of those additions and changes as reported to the agency.

FOR FURTHER INFORMATION CONTACT: Arturo Y. Casanova, Office of Vehicle Safety Standards, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1715).

SUPPLEMENTARY INFORMATION: Section 574.5 of Title 49, Code of Federal Regulations, requires tire manufacturers to mold a tire identification number into or onto the sidewall of each tire they manufacture. In the case of new tires, the first two digits of the tire identification number are the code mark assigned to the manufacturer. This code mark identifies the tire manufacturer and the plant where the tire was manufactured.

The NHTSA first published a complete listing of the tire codes at 37 FR 342, January 11, 1972. This list enables interested members of the public to identify the manufacturer and

place of manufacture of any new tire. The NHTSA published an updating of the tire codes at 48 FR 27635, June 16, 1983, adding some 150 additional code marks assigned to new tire manufacturers since the 1972 publication.

This update listing of the assigned code marks for new tire manufacturers is being published to bring the public up-to-date with the revisions and new code numbers which have been assigned since the publication of the 1983 list.

(Secs. 103, 113, 119, 201 and 206, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1402, 1407, 1421, and 1426); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 11, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

Additional Tire Codes Assigned New Tire Manufacturers

- M8 Premier Tyres Limited,
Kalamassery, Kerala State, India
Y8 Bombay Tyres International
Limited, Hay Bunder Road, Bombay,
Maharashtra, India 400 033

- C9 Seven Star Rubber Company, Ltd.,
2-1 Chang-Swei Road, Pin-Tou
Hsiang, Chang-Hua, Taiwan, R.O.C.
F9 Dunlop New Zealand, Limited, P.O.
Box 40343, Upper Hutt, New Zealand
H9 Reifen-Berg, 5000 Koln 80
(Mulheim), Clevischer Ring 134, West
Germany
J9 P.T. Intirub, 454 Cililitan, P.O. Box
2626, Besar, Jakarta, Indonesia
K9 Natier Tire & Rubber Co., Ltd., 557,
Shan Chiao Road, Sec. 1, Shetou
Changhua, Taiwan, R.O.C. 511
M9 Uniroyal Tire Corporation,
Uniroyal Research Center,
Middlebury, CT 06749
N9 Cia Pneus Tropical, Km105/BR. 324,
Centro Industrial Desubae 44100,
Feira de Santana, Bahia, Brazil
P9 MRF, Ltd., P.B. No. 1 Ponda, Goa
403401, India
T9 MRF, Ltd., Thiruthani Road,
Ichiputhur 631 060, Arkonam, India
U9 Cooper Tire & Rubber Company,
1689 South Green Street, Tupelo, MS
38801
V9 M & R Tire Co., 309 Main Street,
Watertown, MA 02172

REPORTED NAME CHANGE—NEW TIRE MANUFACTURERS

Code	Old name	New name
AA	General Tire & Rubber Co., One General Street, Akron, Ohio 44329	GenCorp Inc., One General Street, Akron, Ohio 44329
BB	B.F. Goodrich Tire Company, 5400 E. Olympic Blvd., Los Angeles, CA 90022	B.F. Goodrich Tire Company, Department 6517, P.O. Box 31, Miami OK 74354
LK	Uniroyal Croyden, S.A., Carrera 7A, No. 22-1, Cali, Colombia	Productora Nacional de Llanas, S.A., Carrera 7A, No. 22-1, Cali, Colombia
WT	Madras Rubber Factory, Ltd., 175/1 Mount Road, Madras, India	Madras Rubber Factory, Ltd., Tiruvottiyur High Road, Madras-600 019, India
H2	Sam Yang Tire Mfg. Co., Ltd., Song Jung Eup, Junnam, Korea	Kumho & Co., Inc., 555 Sochon-Ri, Songjung Eup, Kwangsan-Kun, Chonnam, Korea

MISCELLANEOUS NEW TIRE MANUFACTURERS TRANSACTIONS AS REPORTED TO NHTSA

Manufacturer	Code	Remark
Armstrong Rubber Company	CE	Plant closed April 3, 1981.
Bridgestone Tire Company	LH	Purchased from UNIROYAL as of June 13, 1982.
Ceat, S.p.A.	HU	Sold to Pirelli Tire Corp. in May 1984.
Cooper Tire & Rubber Company	U9	Purchased from Pennsylvania Tire & Rubber on Jan. 24, 1984.
Dayton Tire & Rubber Company	DC	Purchased from Dunlop on Nov. 1, 1975.
Dunlop Olympic Tyres	DT, DU, WM, W4	Merger of Dunlop and Olympic on Apr. 29, 1981.
Dunlop Tire & Rubber Corp.	DF, DH, DJ, DP, WN	Plants closed.
do	DT, DU, WM, W4	Plants sold to Dunlop Olympic on Apr. 29, 1981.
do	DC	Plant sold to Firestone T&R on Nov. 1, 1975.
Firestone Tire & Rubber	DC	Purchased from Dunlop T&R on Nov. 1, 1975.
do	VV	Plant sold to Viskafors Gummifabrik in April 1980.
General Tire & Rubber Company	LV	Purchased from Mansfield-Denman on Nov. 30, 1978.
B.F. Goodrich Company	BJ	Plant sold December 1979.
do	BK	Plant sold January 1980.
do	BM	Plant sold to Olympic in July 1975.
do	BN	Plant sold August 1981.
do	BP	Plant sold May 1978.
Nitto Tire Company, Ltd.	N3	Plant sold to Ryoto Tire Co., Ltd. on Jan. 23, 1980.
Olympic Tire & Rubber Co., Pty. Ltd.	WM, W4	Sold to Dunlop Olympic on Apr. 29, 1981.
do	WN	Plant closed in 1978.
Pennsylvania Tire & Rubber of Mississippi	WK	Plant sold to Cooper T&R on Jan. 24, 1984.
Pirelli Tire Corporation	HU	Plant purchased from Ceat, S.p.A. in May 1984.
Ryoto Tire Company	N3	Plant purchased from Nitto Tire Company on Jan. 23, 1980.
SAMYAND Tire, Inc.	XU	Plant closed in 1976.

MISCELLANEOUS NEW TIRE MANUFACTURERS TRANSACTIONS AS REPORTED TO NHTSA—
Continued

Manufacturer	Code	Remark
UNIROYAL, Inc.	LH	Plant sold to Bridgestone Tire Company on June 13, 1982.
Viskafors Gummifabrik AB	VV	Plant purchased from Firestone T&R in April 1980.

[FR Doc. 85-6306 Filed 3-15-85; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP84-11; Notice 2]

**Western Star Truck Inc; Grant of
Petition for Determination of
Inconsequential Noncompliance**

This notice grants the petition by Western Star Trucks Inc. of Kelowna, British Columbia, Canada, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.206, Motor Vehicle Safety Standard No. 206, Door Latches and Door Hinge Systems, on the basis that it is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on August 24, 1984, and an opportunity afforded for comment (49 FR 33771).

Paragraph section 4.1.1.3 of Standard No. 206, *Inertia Load* requires that: "The door latch shall not disengage from the fully latched position when a longitudinal or transverse inertia load of 30g is applied to the door latch system (including the latch and its actuating mechanism with the locking mechanism disengaged)." Pursuant to paragraph section 5.1.1.2 inertia load compliance "shall be demonstrated by approved tests or in accordance with paragraph 5 of SAE Recommended Practice 0839b, May 1985." According to the petitioner, "a design change to the interior control handle resulted in a component exceeding the specifications necessary to insure conformance."

Western Star believes that its system met all requirements "... except the rear impact as determined by 0893b calculations." The suspect systems calculate to 32.3% less than the standard's requirements. Without frictional forces the system shows mathematical compliance at a 20.2g rearward loading. Western Star believed the system's capability exceeded 20.2g but was unsuccessful in obtaining test facilities. The noncompliance exists in 2679 trucks manufactured between June 15, 1979, and October 1, 1982, with Gross Vehicle Weight Ratings in excess of 33,000 pounds.

Petitioner states that the 30g inertial load appeared realistic and achievable for passenger cars, but that if its trucks, in unladen condition at 18,000 pounds, were subject to the same force as a 3000 pound car at 30g, the truck would only experience 5g. Expressed differently, a 30g load on an unladen truck is the equivalent of a 180g load on a 3000 pound passenger car. With respect to the 20.2g load that its system appears to withstand, Western Star stated that this is the equivalent of a force of 363,000 pounds or, alternatively, the load that a passenger car would withstand at 121.2g. In petitioner's view, this showed that the forces necessary to theoretically unlatch the mechanism were unrealistically high.

Finally, petitioner argued that the system does not degrade in use and that most of the nonconforming trucks have been operated between 150,000 and 600,000 miles; a fleet total of over a billion miles without deaths, injuries, accidental door openings, or complaints.

No comments were received in response to the notice.

The agency has reviewed the petitioner's arguments and calculations, and concurs in their accuracy. With respect to the petitioner's trucks, it appears unlikely that they would ever be involved in a collision producing forces in excess of 20.2g rearward loading, the minimum level at which Western Star estimates its system attains. Though a noncompliance may exist on paper, the forces necessary to bring it into actual existence remain in the realm of theory on the open road.

Even if a truck were to experience such a force, data suggest that 20.2g is beyond the limit of practical occupant protection for occupants of heavy trucks. Analysis of accidents and limited crash testing involving heavy trucks indicate that a deceleration of 9g is the point above which catastrophic failure of truck components begin to occur. Thus, the likelihood of the vehicle remaining intact long enough for the latch mechanism to experience even 20.2g's is remote. See Mergel, *Heavy Truck Occupant Protection*, Transportation Research Center, DOT-HS-8063600, December 1982.

Accordingly, it is hereby found that the petitioner has met its burden of

persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

[Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); Delegations of authority at 49 CFR 1.50 and 49 CFR 501.8]

Barry Flerice,

Associate Administrator for Rulemaking.

March 11, 1985.

[FR Doc. 85-6305 Filed 3-15-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Amdt. to Dept. Circ., Public Debt Series—No. 34-84]

Treasury Notes; Series C-1994

March 6, 1985.

Department of the Treasury Circular, Public Debt Series—No. 34-84, dated November 1, 1984, as supplemented, descriptive of 11% Treasury Notes of Series C-1994, hereafter referred to as Notes, is hereby amended effective March 15, 1985.

The following Section and Subsections in the original circular dated November 1, 1984, are hereby redesignated:

from 2.5 to 2.6.

from 6. to 7.

from 6.1. to 7.1.

from 6.2. to 7.2.

In addition, the following Sections and Subsections are now included. The other terms and conditions remain unchanged.

2. Description of Securities

2.5. A book-entry Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Note may be divided into its separate components and maintained as

such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future semiannual interest payment (hereafter referred to as an Interest Component) and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Note to be separated into the components described in Subsection 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of \$1,000 or a multiple of \$1,000. The minimum and multiple par amount required to obtain the separate components for this offering is \$1,600,000.

6.3. Only Notes in book-entry form may be separated into their components. Such separation may be effected at any time from the effective date of the amendment to this circular until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on November 15, 1994.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next succeeding business day.

6.7. Once a book-entry Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of \$1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of

such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of \$1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachment A is incorporated as part of this circular.

The foregoing amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Carole Jones Dineen,
Fiscal Assistant Secretary.

Attachment A.—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of November 15, 1994, Series C-1994, CUSIP No. 912827 RM 6

The Principal Component is designated 11% Treasury Principal (TPRN) Series C-1994 due November 15, 1994, CUSIP No. 912820 AB 3.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) C-1994 due	
May 15, 1985	DJ 8
Nov. 15, 1985	DK 3
May 15, 1986	DL 1
Nov. 15, 1986	DM 9
May 15, 1987	DN 7
Nov. 15, 1987	DP 2
May 15, 1988	DQ 0
Nov. 15, 1988	DR 8
May 15, 1989	DS 6
Nov. 15, 1989	DT 4
Treasury Interest (TINT) C-1994 due	
May 15, 1990	DU 1
Nov. 15, 1990	DV 9
May 15, 1991	DW 7
Nov. 15, 1991	DX 5
May 15, 1992	DY 3
Nov. 15, 1992	DZ 0
May 15, 1993	EA 4
Nov. 15, 1993	EB 2
May 15, 1994	EC 0

INTEREST COMPONENTS—Continued

Designation	CUSIP No. 912833
Nov. 15, 1994	ED 8

[FR Doc. 85-6268 File 3-15-85; 8:45 am]

BILLING CODE 4810-10-M

[Amdt. to Dept. Circ. Public Debt Series—No. 35-84]

Treasury Bonds; 2009-2014 Series

March 8, 1985.

Department of the Treasury Circular, Public Debt Series—No. 35-84, dated November 1, 1984, as supplemented, descriptive of 11¼% Treasury Bonds of 2009-2014, hereafter referred to as Bonds, is hereby amended effective March 15, 1985.

The following Section, and Subsections in the original circular dated November 1, 1984, are hereby redesignated:

from 2.5. to 2.6.

from 6. to 7.

from 6.1. to 7.1.

from 6.2. to 7.2.

In addition, the following Sections and Subsections are now included. The other terms and conditions remain unchanged.

2. Description of Securities

2.5. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future semiannual interest payment through November 15, 2009 (hereafter referred to as an Interest Component) and the

callable principal payment combined with the semiannual interest payments due after November 15, 2009 (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Subsection 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of \$1,000 or a multiple of \$1,000. The minimum and multiple par amount required to obtain the separate components for this offering is \$800,000.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be effected at any time from the effective date of the amendment to this circular until the date on which the Bond becomes eligible for redemption as specified below. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.2. In order for a book-entry Bond to be separated into the components described in Subsection 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of \$1,000 or a multiple of \$1,000. The minimum and multiple par amount required to obtain the separate components for this offering is \$800,000.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be effected at any time from the effective date of the amendment of this circular until the date on which the Bond becomes eligible for redemption as specified below. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. Each Principal Component will bear interest at a rate of 11¾% per annum from November 15, 2009, through the date that the principal becomes payable. Such interest is payable semiannually on May 15, 2010, and each subsequent 6 months on November 15 and May 15. The Principal Component of the Bonds will mature on November 15,

2014, but may be redeemed at the option of the United States on or after November 15, 2009, at par and accrued interest on any interest payment date. Notice of call shall be given 4 months in advance in such manner as the Secretary of the Treasury shall prescribe. Interest on such Principal Component called for redemption shall cease on the date of redemption specified in the notice of call.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next succeeding business day.

6.7. Once a book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of \$1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of \$1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

General Provisions

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this circular.

The foregoing amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Carole Jones Dineen,

Fiscal Assistant Secretary.

Attachment A.—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of November 15, 2009–2014, CUSIP No. 912810 DN 5

The Principal Component is designated 11¾% Treasury Callable Principal (TCAL) 09–14 due November 15, 2014, CUSIP No. 912800 AA 7.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) 09–14 due	
May 15, 1985	EE 6
Nov. 15, 1985	EF 3
May 15, 1986	EG 1
Nov. 15, 1986	EH 9
May 15, 1987	EJ 5
Nov. 15, 1987	EK 2
May 15, 1988	EL 0
Nov. 15, 1988	EM 8
May 15, 1989	EN 6
Nov. 15, 1989	EP 1
May 15, 1990	EQ 9
Nov. 15, 1990	ER 7
May 15, 1991	ES 5
Nov. 15, 1991	ET 3
May 15, 1992	EU 0
Nov. 15, 1992	EV 8
May 15, 1993	EW 6
Nov. 15, 1993	EX 4
May 15, 1994	EY 2
Nov. 15, 1994	EZ 9
May 15, 1995	FA 3
Nov. 15, 1995	FB 1
May 15, 1996	FC 9
Nov. 15, 1996	FD 7
May 15, 1997	FE 5
Nov. 15, 1997	FF 2
May 15, 1998	FG 0
Nov. 15, 1998	FH 8
May 15, 1999	FJ 4
Nov. 15, 1999	FK 1
May 15, 2000	FL 9
Nov. 15, 2000	FM 7
May 15, 2001	FN 5
Nov. 15, 2001	FO 3
May 15, 2002	FO 8
Nov. 15, 2002	FR 6
May 15, 2003	FS 4
Nov. 15, 2003	FT 2
May 15, 2004	FU 9
Nov. 15, 2004	FV 7
May 15, 2005	FW 5
Nov. 15, 2005	FX 3
May 15, 2006	FY 1
Nov. 15, 2006	FZ 8
May 15, 2007	GA 2
Nov. 15, 2007	GB 0
May 15, 2008	GC 8
Nov. 15, 2008	GD 6
May 15, 2009	GE 4
Nov. 15, 2009	GF 1

[FR Doc. 85-6269 Filed 3-15-85; 8:45 am]

BILLING CODE 4810-10-M

UNITED STATES INFORMATION AGENCY

Performance of Commercial Activities Under OMB Circular A-76; Productivity Review List and Schedule

The United States Information Agency has scheduled the following operations for in-house management studies in accordance with OMB Circular A-76:

Audiovisual—Radio Production—
Language Services—January 1, 1985
ADP—Computer Systems Analysis and Programming—October 1, 1985
Warehousing—October 1, 1985
Audiovisual—Radio Production—
Language Services—January 1, 1986
ADP—Computer Operations—April 1, 1986

Library Operations—June 1, 1986
Audiovisual—Radio Production—
Language Services—January 1, 1987
Audiovisual—Visual Information Specialists—August 1, 1987
Audiovisual—Radio Production—
Language Services—January 1, 1988

The United States Information Agency has scheduled the following operations for full cost comparison studies in accordance with OMB Circular A-76:

Security Guards—October 1, 1985
Audiovisual—Television and Film Service:
Office of International Marketing—
March 1, 1987
Office of News and Current Events—
April 1, 1987
Office of Facilities—June 1, 1987

Dated: March 13, 1985.

Charles N. Canestro,
Federal Register Liaison.

[FR Doc. 85-6315 Filed 3-15-85; 8:45 am]
BILLING CODE 8230-01-M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held March 20, 1985, in Room 600, 301 4th Street, SW., Washington, D.C. at 10:00 a.m.

The Commission will review public diplomacy programs in East Asia with Mr. Robert L.M. Nevitt, Director of USIA's Office of East Asia and Pacific Affairs. The Commission will also discuss aspects of USIA's legal authority with attorney Charles D. Ablard.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: March 13, 1985.

Charles N. Canestro,
Management Analyst, Federal Register Liaison.

[FR Doc. 85-6313 Filed 3-15-85; 8:45 am]
BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center, Marion, IN; 240-Bed Nursing Home Care Unit; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of construction of the nursing home and has determined that the potential environmental impacts will be minimal from the development of this project.

This project is the construction of a 240-Bed Nursing Home Care Unit (NHCU). It is desired to have the NHCU in close proximity to the main hospital building and connected to it if possible. In order to accomplish this and create a central entrance/drop off area, the NHCU will be built east of the intermediate care wards (buildings 15, 16, and 17). This will create a central drop off for the NHCU, the Administration Building (No. 124) and the hospital (No. 138). There is potential for a connecting corridor to the intermediate care ward buildings which are already connected to building Nos. 124 and 138.

This site is not a VA owned property. The land desired for construction formerly belonged to the VA and was given to the City of Marion for development as a park. Presently, there are some play structures and part of a ballfield on the desired land. The City of Marion has expressed willingness to return the required acreage to the VA. It is estimated the project will require 3.16 acres to be conveyed back to the VA.

Short-term impacts associated with construction are the generation of particulates and exhaust gasses, the potential for minor erosion and sedimentation to water courses, and the impact of construction noise on the patients and staff of the hospital.

Long-term impacts are the intrusions of a new structure on a historic medical center and the change of 3.16 acres from public recreation space to VA Medical Center use.

Short-term impacts will be mitigated by enforcement of the Construction Specifications which will include the Environmental Protection Section of the VA Standard Specifications (Section EP).

The long-term impacts to the historic structures will be mitigated to the fullest extent achievable through compliance with the Historic Preservation Act of 1966 and coordination with the State Historic Preservation Officer and the Advisory Council on Historic Preservation in accordance with the Advisory Council's Regulations, 36 CFR, Part 800. The change in property ownership cannot be mitigated.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Director, Office of Environmental Affairs (089C), Room 423, Veterans Administration, 811 Vermont Avenue NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: March 7, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85-6310 Filed 3-15-85; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Medical Center, North Chicago, IL; Environmental Improvements, Patient Care and Nursing Home Care Unit; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the environmental impacts that may occur as a result of the "Environmental Improvements, Patient Care and Nursing Home Care Unit" project at the Veterans Administration Medical Center (VAMC), North Chicago, Illinois, and has determined that the potential environmental impacts will be minimal from the development of this project.

The scope of the project includes a major entrance/driveway on Green Bay

Road, realignment and extension of the station loop road, visitor and staff parking areas, an outpatient clinical addition on the main hospital building (building No. 133), air conditioning and interior renovations to several medical and psychiatric buildings, demolition of seven outdated structures, and provisions for 500 nursing home care beds (located in new and renovated buildings). A boiler plant was to have been included in the original project scope. It was recently dropped from the project scope because of cost considerations.

The project is to be constructed in phases. The first construction phase of the project will include only the Green Bay Road entrance/driveway and a 120-bed nursing home addition onto building No. 135.

Temporary impacts created by construction activities will occur. These impacts are anticipated to be: raised noise levels, air quality degradation, soil erosion, sedimentation, and operational inconveniences. These impacts are significant but will not exert long-term effects on hospital patients, visitors, staff, or the environment.

Permanent impacts will be caused by the alteration of views from adjoining streets and properties. The major addition to building No. 133 will alter the existing image of the main hospital building. Aesthetic impacts will be unavoidable. Similar impacts will occur because of the proposed addition onto building No. 135; however, the recessed location of this building will effectively eliminate all views from offsite areas.

A loss of open space will be caused by the building additions, the expansion of patient/visitor/staff parking areas, the realignment of the station loop road and the proposed entrance/driveway on Green Bay Road.

Projected increases in staff and patient levels will create proportionately minor increases in traffic levels and congestion.

Building Nos. 5, 7, 8, 9, 11, 65 and 66 are slated for demolition. These buildings are eligible for listing on the National Register of Historic Places but retain little historic value because of multiple renovations. The State Historic Preservation Office concurs in the VA's assessment that the buildings retain minimal historical significance.

Temporary impacts caused by construction noise will be mitigated by using mufflers on all equipment. Noisy activities will be scheduled to create the least amount of disturbance to patients and staff. Air quality degradation, erosion, sedimentation, and other impacts associated with construction activities will be mitigated through the

enforcement of Section 01568 (Environmental Protection) of the VA Construction Specifications. Furthermore, impacts will be minimized by responding to the regulations or control measures of all applicable Federal, State, and local regulatory agencies (i.e., OSHA, USDA/SCS, EPA, etc.).

Permanent impacts associated with the alteration of views into the site from adjacent properties and roadways will be mitigated by designing building additions in a manner which respects the scale and architectural intent of the original structures. The installation of landscape plantings and berms will further mitigate views. Losses in open space (particularly along Buckley Road and Green Bay Road) will be compensated by additional landscaping and the dedication of "green areas" throughout the peripheral zones of the project site.

Minimal increases in medical center generated traffic will be offset by improved onsite traffic flow and the directional distribution of traffic created by the opening of the Green Bay Road entrance, the realignment of the station loop road, and the redesigning of existing parking lots.

The VA will adhere to all applicable Federal, State, and local environmental regulations during the construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment was performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A "Finding of No Significant Impact" was reached on November 20, 1984, based upon the information presented in the assessment.

The assessment is available for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: March 7, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85-6311 Filed 3-15-85; 8:45 am]

BILLING CODE 8320-01-M

Agency Forms Under OMB Review

AGENCY: Veterans' Administration.

ACTION: Notice.

The Veterans' Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and revisions and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESS: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans' Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: March 12, 1985.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extensions

1. Department of Veterans Benefits
2. Application for Educational Assistance Test Program Benefits
3. VA Form 22-8889
4. On occasion
5. Individuals or households
6. 800 responses
7. 400 hours
8. Not applicable

1. Department of Veterans Benefits
2. Application for Reinstatement (Medical) Government Life Insurance

and/or Total Disability Income Provision

3. VA Form 29-352
4. On occasion
5. Individuals or households
6. 1,251 responses
7. 1,877 hours
8. Not applicable
1. Department of Veterans Benefits
2. Financial Statement
3. VA Form 26-6807
4. On occasion
5. Individuals or households
6. 40,000 responses
7. 30,000 hours
8. Not applicable
1. Department of Veterans Benefits
2. Veterans Mortgage Life Insurance Statement
3. VA Form 29-8636
4. On occasion
5. Individuals or households
6. 1,000 responses
7. 250 hours
8. Not applicable
1. Department of Veterans Benefits
2. Annual Status Report—Insured Loans
3. VA Form 26-1872
4. Annually
5. Businesses or other for-profit
6. 15 responses
7. 4 hours
8. Not applicable
1. Department of Medicine and Surgery
2. Application for Furnishing Nursing Home Care to Beneficiaries of the Veterans' Administration
3. VA Form 10-1170
4. Once
5. Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
6. 400 responses
7. 133 hours
8. Not applicable

Revisions

1. Department of Veterans Benefits
2. Application for Dependency and Indemnity Compensation or Death Pension
3. VA Form 21-4182
4. On occasion
5. Individuals or households
6. 28,200 responses
7. 4,700 hours
8. Not applicable
1. Department of Medicine and Surgery
2. Application for Adaptive Equipment—Motor Vehicle
3. VA Form 10-1394
4. On occasion
5. Individuals or households
6. 7,900 responses
7. 1,975 hours
8. Not applicable

[FR Doc. 85-6419 Filed 3-15-85; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Change Other Than Routine Use Statements

AGENCY: Veterans Administration.

ACTION: Amendment of systems notice.

SUMMARY: Notice is hereby given that the Veterans Administration is revising the paragraph pertaining to categories of individuals covered by the system, in the system of records entitled: Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22/28) as set forth on pages 52799 and 52800 of the **Federal Register** of November 22, 1983. As a result of Pub. L. 98-525, the Department of Defense Authorization Act of 1985, claimants will begin programs of education under the newly created Chapter 30 of title 38, United States Code. Pub. L. 98-525 also makes available certain education benefits for members of the Selected Reserve. Category numbers 16 and 17 are being added to notify the public that records are maintained in this system on such individuals.

The Privacy Act of 1974, 5 U.S.C. 552a(e), requires agencies to inform the public of any changes to their system of records. However, since these changes do not alter the uses of the information in the system of records, public comment is not required. The changes are effective March 6, 1985.

Dated: March 6, 1985

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of System of Records

In the system identified as 58 VA 21/22/28, "Compensation, Pension, Education and Rehabilitation Records—VA," appearing at pages 52799 and 52800 of the **Federal Register** of November 22, 1983, the paragraph pertaining to categories of individuals covered by the system is revised as follows:

58 VA 21/22/28

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by this system:

1. Veterans who have applied for compensation for service-connected disability under 38 U.S.C. Chapter 11.
2. Veterans who have applied for nonservice-connected disability under 38 U.S.C. Chapter 23.

3. Veterans entitled to burial benefits under 38 U.S.C. Chapter 15.

4. Surviving spouses and children who have claimed pension based on nonservice-connected death of a veteran under 38 U.S.C. Chapter 15.

5. Surviving spouses and children who have claimed pension based on service-connected death of a veteran under 38 U.S.C. Chapter 11.

6. Surviving spouses and children who have claimed dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. Chapter 13.

7. Parents who have applied for death compensation based on service-connected death of a veteran under 38 U.S.C. Chapter 11.

8. Parents who have applied for dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. Chapter 13.

9. Veterans who have applied for VA educational benefits under 38 U.S.C. Chapters 31, 32, or 34.

10. Spouses, surviving spouses and children of veterans who have applied for VA educational benefits under 38 U.S.C. Chapter 35.

11. Service members who have applied for educational benefits under 38 U.S.C. Chapters 34 and 35.

12. Service members who have contributed money from their military pay to the Post-Vietnam Era Veterans Education Account under 38 U.S.C. Chapter 32.

13. Individuals who have applied for title 38 benefits but who do not meet the requirements under title 38 to receive such benefits.

14. Veterans, service members, spouses, surviving spouses and dependent children who have applied for benefits under the Educational Assistance Test program under sections 901 and 903 of Pub. L. 96-342.

15. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Emergency Veterans' Job Training Act of 1983, Pub. L. 98-77.

16. Veterans, service members and eligible reservists who apply for benefits under 38 U.S.C. Chapter 30.

17. Eligible members of the Selected Reserve who apply for benefits under 10 U.S.C. Chapter 106.

* * * * *

[FR Doc. 85-6423 Filed 3-15-85; 8:45 am]

BILLING CODE 8320-01-M

**Career Development Committee;
Meeting**

The Veterans Administration gives notice under the provisions of Pub. L. 92-463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in Room 331 of the Hotel Washington, 15th and Pennsylvania NW., Washington, D.C. 20004, April 3 through 5, 1985 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, Senior Medical Investigators and William S. Middleton Award Nominees.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202-389-2317) prior to March 27, 1985.

The meeting will be closed from 9 a.m. to 5 p.m. on April 3 through 5 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a

clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (Phone 202-389-2317).

Dated: March 12, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-6418 Filed 3-15-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 50, No. 52

Monday, March 18, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, March 22, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, 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. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 14, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-6535 Filed 3-14-85; 3:46 pm]

BILLING CODE 6210-01-M

2

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 11:00 a.m. Monday, April 15, 1985.

PLACE: Board Room, 712 Jackson Place, NW., Washington, D.C. 20006.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Portions open to the Public:

1. Call meeting to order. Check quorum.
2. Adoption of proposed agenda.
3. Approval of minutes of September 7, 1984 meeting.
4. Report of the Chairman.
5. Report of the Executive Secretary.
6. Selection of Truman Scholars, 1985-86 Academic Year.
7. Report of the General Counsel.
8. New business.
9. Set date for Fall meeting of the Board in September, 1985.
10. Adjournment.

CONTACT PERSON FOR MORE

INFORMATION: Malcolm C. McCormack, Executive Secretary, Telephone 202/395-4831.

Malcolm C. McCormack,

Executive Secretary.

[FR Doc. 85-6468 Filed 3-14-85; 10:47 am]

BILLING CODE 9500-01-M

Federal Register

Monday
March 18, 1985

Part II

Federal Reserve System

12 CFR Part 202

Equal Credit Opportunity; Revision of
Regulation B; Official Staff Commentary;
Proposed Rule and Proposed Official
Staff Interpretation

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R-0541]

Equal Credit Opportunity; Revision of Regulation B; Official Staff Commentary**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Proposed rule and proposed official staff interpretation.

SUMMARY: The Board is publishing a proposal to revise Regulation B, its regulation implementing the Equal Credit Opportunity Act (ECOA). This proposal stems from the Board's review of Regulation B, pursuant to its policy of reviewing periodically all of its regulations. The Board's review considered ways the regulation could be simplified to ease the burdens imposed on creditors, consistent with the Board's responsibility for implementing the ECOA, and whether the regulation could more effectively carry out the purposes of the act. The Board proposes some changes in the data collection requirements applicable to dwelling-related mortgage loan application, and a change in the definition of "applicant" to give guarantors (who already have certain protections under Regulation B) legal standing in the courts when there is an alleged violation of the regulation. The Board also proposes to update some provisions and revise others to facilitate creditor compliance. The revisions proposed include streamlined procedures for dealing with incomplete applications and a broader selection of sample forms for informing applicants of the reasons for credit denials.

The major portions of the existing regulatory provisions, however, remain virtually unchanged. This result is in keeping with the Board's analysis and with comments from creditors, enforcement agencies, and consumer and civil rights representatives, who generally believe that the regulation is achieving its intended goals and should be maintained substantially in its present form.

The Board is also publishing for public comment an official staff commentary that incorporates existing Board interpretations and that addresses questions about regulatory matters on which creditors and enforcement agencies have sought guidance over the years.

DATE: Comments must be received by June 14, 1985.**ADDRESS:** Comments may be mailed to William W. Wiles, Secretary, Board of

Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to the C Street entrance, 20th and C Streets, NW., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. All material submitted should refer to Docket No. R-0541.

FOR FURTHER INFORMATION CONTACT:

Regarding the proposed regulatory amendments and staff commentary, Lucy H. Griffin or John C. Wood (Senior Attorneys), Adrienne D. Hurt (Staff Attorney), or James K. Baebel (Senior Review Examiner), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412); regarding the economic impact analysis, Glenn Canner (Director, Micro-Consumer Projects) or Robert D. Kurtz (Staff Economist), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2910).

SUPPLEMENTAL INFORMATION: (1)

General. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), signed into law in 1974, made it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex or marital status. Under amendments enacted by Congress in 1976, the act also bars discrimination on the basis of race, color, religion, national origin, age, receipt of public assistance, and the good-faith exercise of rights under the Consumer Credit Protection Act. The Federal Reserve Board was given rule-writing authority to issue implementing regulations, and issued Regulation B (12 CFR Part 202) in October 1975, amending it in December 1976 to incorporate the act's expanded coverage.

The Board's policy under its Regulatory Improvement Project calls for the periodic review of each Board regulation. In keeping with that policy, the Board has made a detailed review to consider whether Regulation B could be simplified to ease the burdens imposed on creditors, consistent with the Board's responsibility for implementing the ECOA, and to consider also whether the regulation could more effectively carry out the purposes of the ECOA. The Board published a notice of intent to review the regulation in June 1983 (48 FR 28285), in order to ensure the participation of interested parties early in the review.

The initial phase of the review has now been completed. The Board believes, on the basis of public comments and other available

information, that the other regulation is achieving its intended goals. The Federal Reserve Banks and the other federal enforcement agencies report no major compliance problem. As a rule, creditors appear to consider the Regulation B requirements to be manageable, and review the regulations as providing certainty about how to comply with the ECOA. Civil rights and consumer advocates continue to view the regulation as providing important protections. To the extent that consumers' views can be discerned from board-sponsored surveys, consumers appear satisfied with the treatment they are receiving in the credit market.

Based on its review, the Board is now proposing a number of revisions to regulation B. One proposed revision would modify the coverage of the data collection requirements for certain dwelling-related loans. The modification would establish greater uniformity among financial regulatory agencies, as discussed under section 202.13, below. Another proposed change would expand the definition of "applicant" to cover guarantors, in order to give legal standing to persons who have certain rights under Regulation B but who do not currently have a legal remedy when there is a violation of those rights. (Refer to the discussion under section 202.2(e), below.)

The Board also is proposing technical changes to the regulation to make compliance easier for creditors without diminishing consumer protections. The revised regulation would, for example, provide creditors with a streamlined notification procedure for dealing with incomplete applications, and would give creditors a broader selection of sample forms for notifying an applicant of a credit denial and of the reasons for the denial. (For a detailed discussion of these proposals, see section 202.9 and Appendix C, below.)

The proposed regulation is shorter than current Regulation B by about one-sixth—a reduction largely attributable to the deletion of obsolete provisions and to the transfer of explanatory material to a proposed staff commentary. The regulation also has been improved by the rewriting of some sections and the editing of others to state the requirements more clearly. All but two of the 19 footnotes contained in the current regulations have been moved to the proposed staff commentary, making the regulation itself less cumbersome to use.

In light of the indications that major revisions are not needed, the proposal leaves most of the regulatory provisions unchanged. This is in contrast to the

extensive changes made when the Board engaged in a similar review of Regulation Z (Truth in Lending) and Regulation C (Home Mortgage Disclosure). The more limited nature of the revisions to Regulation B comes from the different circumstances that have surrounded the review of the regulation:

- The Board's review of the Truth in Lending and Home Mortgage Disclosure regulations implemented statutory amendments that, particularly in the case of Truth in Lending, made significant reductions in the disclosure requirements. In contrast, there are no statutory amendments of any kind to be implemented under the ECOA.

- The volume of litigation under the ECOA and Regulation B has been quite limited, and by and large the court decisions that have been reported do not reflect the need for simplification of requirements that was evident in the case of Truth in Lending.

- It came apparent, in the course of the review, that creditors consider Regulation B's current requirements to be manageable. Many creditors may find burdensome the notification requirements for adverse action, but they also generally recognize that these provisions are drawn directly from the statute. Some creditors encourage the Board to provide clarification on some points; others believe that the regulation is working and express a preference for leaving the regulation substantially unchanged.

- Civil rights and consumer advocates have opposed any diminution of ECOA protections. Because the ECOA is civil rights legislation, and not strictly a consumer protection law, there is particular concern that the Board not cut back on any protections currently provided.

- When issued in 1976, Regulation B was written in nontechnical language, and the regulation is for the most part already easy to understand.

- Consequently, the following general principles have been applied in the review and revision of the regulation:

- Make changes to the regulation that will facilitate compliance, provide clearer guidance about the Board's intent, clarify the standards to be used by the regulatory agencies, or enhance the act's protections.

- Minimize changes that would provide only marginal (or no) benefit to the industry; or that, similarly, would not significantly clarify the regulation or enhance protections.

In the review of the regulation, it was frequently found that no substantive change in regulatory provisions was required—that elaborating on a given

point in a staff commentary could more effectively facilitate creditor compliance. Accordingly, an official staff commentary has been prepared and is being proposed for comment. It provides needed guidance in a less formal manner than the regulation. The proposed commentary is discussed further in section (4) of this notice.

An economic impact analysis of the proposed regulatory revisions has been prepared as required by section 603 of the Regulatory Flexibility Act (5 U.S.C. 603). The analysis appears in section (3) below.

In accordance with section 3507 of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, and 5 CFR 1320.13, the proposed revisions to Regulation B that pertain to third party disclosures will be submitted to the Board for review under Office of Management and Budget delegated authority after consideration of the comments received during the 90-day public comment period.

(2) *Proposed changes to regulation.* The following discussion covers the proposed revisions to Regulation B section by section. In a number of sections, changes are being proposed for the purpose of simplification or clarification of the text, with no substantive change in the regulatory requirements; where these changes are self-evident from reading the proposed text itself, they are not covered in the discussion.

Section 202.1 Authority, Scope and Purpose.

Proposed section 202.1 differs from the existing section in that certain provisions now appear elsewhere in the proposed regulation. Existing paragraphs (b), concerning administrative enforcement, and (c), on penalties and liabilities, appear in a new section 202.14; existing paragraph (d), regarding procedures for the issuance of staff interpretations, is in new Appendix D.

Paragraph (a), on authority and scope, remains unchanged except for the addition of a reference to the control number assigned to Regulation B by the Office of Management and Budget as required by the Paperwork Reduction Act; other minor changes include the deletion of footnote 1 as unnecessary. A new paragraph (b) is being added to outline the purpose of Regulation B, consistent with the format followed in other board regulations.

Section 202.2 Definitions.

In this section, the Board proposes a substantive change to the definition of "applicant" and a change to the

definition of "empirically derived, demonstrably and statistically sound credit system" that will broaden its applicability. Other changes are structural or editorial, without substantive effect. Material deleted from the regulation, for example, is being incorporated into the proposed staff commentary, as noted below.

The Board proposes to revise the definition of "applicant" in paragraph (e) to include guarantors, sureties, endorsers, and similar parties. The existing definition excludes them. The principal effect of this change would be to give guarantors and similar parties standing under the act to seek legal remedies when a violation occurs. The existing regulation prohibits creditors, in certain situations, from requiring an applicant to obtain a guarantor, surety, cosigner, or similar party. If a creditor violates this provision, however, a guarantor whose signature has been illegally required currently has no legal remedy because section 706 of the act confers standing to sue only upon an "aggrieved applicant." Including guarantors and similar parties within the definition of "applicant" would resolve the question of standing.

The Board believes that no operational problems would be created by the proposed change. Guarantors and similar parties are already excepted from the coverage of various sections of the regulation. For example, under section 202.9, a creditor need give a notification only to a "primary applicant," which would exclude a guarantor; under section 202.10, a creditor is required to follow certain procedures for reporting credit history only as to persons who are contractually liable "other than as a guarantor, surety, endorser, or similar party." The Board requests comment, however, on whether specific exclusion of guarantors from coverage under other sections is appropriate.

Under paragraph (f), which defines "application" and "completed application," material dealing with notice of incompleteness is being deleted. It is being incorporated into revised section 202.9(c), a new provision dealing with incomplete applications.

The Board proposes to broaden the definition in paragraph (p) of an "empirically derived, demonstrably and statistically sound credit system." Credit scoring systems that meet the standards as stated in existing paragraph (p) will continue to qualify under the proposed definition. The existing language appears to limit the applicability of the definition to systems that use the allocation of points or the assigning of

weights. The revised language makes clear that a system will meet the definition so long as the system is developed using acceptable statistical principles and methodology. Thus, decision-tree and other types of credit systems that meet these standards also qualify. Other conforming technical revisions result in no substantive change.

Structural changes include the proposed deletion of the following: footnote 2 to the introductory material in section 202.2; footnote 3 to paragraph (z), the definition of "prohibited basis"; paragraph (aa), the definition of "public assistance program"; and the rules of construction in paragraph (cc) and (dd). Comparable material appears in the proposed staff commentary. In paragraph (c), the definition of "adverse action," the cross reference to notification of action taken, statement of reasons for denial, and record retention is being deleted as unnecessary.

Section 202.3 Limited Exceptions for Certain Classes of Transactions.

The Board proposes to restructure this section for easier reference. In the proposed restructuring, the definition of each type of credit is immediately followed by the list of exceptions applicable to it. There is no substantive change to any of the existing provisions.

The definition of public utilities credit, proposed paragraph (a), is slightly revised and corresponds more closely to the one in Regulation Z (Truth in Lending). The list of exceptions applicable to governmental credit, proposed paragraph (e), is being simplified without substantive change.

In paragraph (d) on business credit, the provisions relating to notification of credit denial and to record retention are being placed in paragraph (d)(3), labeled "modified requirements," to emphasize that they essentially modify the procedures ordinarily required by Regulation B, rather than provide total exceptions. Paragraph (d)(3)(i) incorporates official staff interpretation EC-0009 to make clear that a creditor that denies a business credit application or takes other adverse action is required to notify the applicant of the action taken. The provision concerning record retention has been edited to make clear that the time period for requesting record retention runs from the notification of action taken.

Section 202.5 Rules Concerning Taking of Applications.

The Board proposes to formalize the taking of written applications for the types of credit subject to the data collection requirements of section 202.13

(i.e., certain types of dwelling-related loans); the requirement for written applications appears in revised paragraph (e). In all other types of credit transactions, written applications continue to be optional. A creditor may comply with the requirement by writing down the information that it normally considers in making a credit decision; use of a form is not required. Further discussion of written applications is presented in the material relating to section 202.13, below.

Other changes to this section are merely structural. Catchlines are being added to facilitate use of the regulation. Some of the material contained in existing paragraph (e) concerning the use of the model application forms contained in Appendix B is being moved to the introductory section of Appendix B.

In addition, existing footnote 4 is being renumbered footnote 1; the part of the footnote that is deleted from the regulation appears in the commentary. Footnote 5 and portions of existing paragraphs (b)(3) and (d)(2) are also being deleted; comparable material appears in the proposed staff commentary. Footnote 6 is being deleted as obsolete.

Section 202.6 Rules Concerning Evaluation of Applications.

The few changes proposed in this section are strictly structural. Catchlines are being added to facilitate use of the regulation. Existing footnote 7 is being renumbered footnote 2. The last sentence of the footnote, which currently cites portions of the legislative history of the act dealing with the "effects test," is being deleted from the regulation. No substantive change results; comparable material appears in the proposed staff commentary. Existing footnotes 8 and 9, as well as the material in existing paragraph (b)(5) regarding the factors that a creditor may consider in determining the likelihood of consistent payments, are also being deleted from the regulation, with comparable material appearing in the proposed staff commentary.

One of the topics on which the Board sought comment in the June 1983 Federal Register notice concerned paragraph (b)(6) of this section, which requires creditors to consider information pertaining to credit history shared with a spouse. The Board asked whether the regulation should be revised to more specifically identify under what circumstances and to what extent information offered by the applicant should be considered by the creditor. Most of the comments on this issue argued against any change in the

regulation. No change is being proposed in the regulation. The proposed staff commentary addresses some of the issues raised.

Section 202.7 Rules Concerning Extensions of Credit.

Except for minor revisions to the rules governing treatment of open-end accounts, proposed revisions to this section are structural or editorial, without substantive effect, and include the addition of catchlines for the reader's convenience.

The provisions of paragraph (c) on existing open-end accounts are being revised in minor ways. New language in paragraph (c)(2) makes clear that the provision applies only in the case of an applicant who is contractually liable. The term "earned by" is being deleted to clarify that the provision applies to any situation where the income of the applicant's spouse was relied upon in granting the credit. "Information available to the creditor" replaces existing language because it is believed to be a more appropriate basis for determining whether a creditor may require reapplication. "Current credit limit" is substituted for existing language because the credit limit is a more appropriate test for determining the applicant's overall ability to repay than the "amount of credit currently extended."

In the June 1983 Federal Register notice, the Board solicited comment on two specific areas regarding existing open-end accounts. First, the Board asked whether specific procedures should be provided for reapplications. The majority of commenters were opposed to having procedures established by the regulation. They believed creditors should have the same latitude to determine reapplication procedures as for initial applications. They also believed that a specific rule would be counterproductive and particularly burdensome because application procedures vary widely among creditors. In the absence of any indication that there is a problem under the procedures that creditors now use, the Board proposes to leave the regulatory provision unchanged. (See the proposed staff commentary to section 202.7(c).)

The Board also solicited comment as to whether the terms "contractually liable" and "authorized user" need clarification or change. On the basis of the comments, the Board believes that the current use of the term "contractually liable" as defined by the regulation is sufficiently understood by the industry, and is proposing no

change. The Board has similarly decided not to define "authorized user," in order to allow creditors continued flexibility in defining the rights and obligations of such parties.

There are some proposed editorial revisions in the signature rules, but no substantive change. Paragraph (d)(2) is being revised to make clear that, in applications for unsecured credit, if the applicant relies on jointly owned property, the creditor may require the signature of the co-owner only to assure access to the property but not to impose personal liability. The material concerning factors that the creditor may consider regarding property owned by the applicant has been deleted in the proposed version, but comparable material is in the proposed staff commentary.

Existing footnote 10 to paragraph (d)(5) concerning guarantors and similar parties is being deleted, but comparable material appears in the proposed staff commentary. Also, the last sentence of existing paragraph (d)(5) now appears as paragraph (d)(6), to better emphasize that all of the signature rules (i.e., paragraphs (d)(1) through (d)(5)) apply to guarantors.

The provisions regarding credit-related insurance, paragraph (e), prohibit a refusal to grant credit because certain types of credit-related insurance are not available due to the applicant's age. The coverage of this provision is being broadened to include "other credit-related insurance" as well as the specific types (credit life, health, etc.) already listed. The Board requests comment on the effect of this change, if any. The other provisions in existing paragraph (e) regarding differentiation in rates and the like are being deleted; comparable material appears in the proposed staff commentary.

Section 202.8 Special Purpose Credit Programs.

The wording of this section is edited in various places for clarity, without substantive change.

Section 202.9 Notifications.

The Board proposes to add a new paragraph (c) to provide a streamlined procedure for dealing with incomplete applications. Other proposed revisions to this section are strictly structural or editorial, without substantive change.

In the June 1983 Federal Register notice concerning the review of Regulation B, the Board solicited comment regarding incomplete and withdrawn applications. Some of the commenters criticized what they believed to be a double notice burden in the case of incomplete applications:

notifying an applicant that the application is incomplete, and later notifying the applicant that credit has been denied because the application remains incomplete.

In response to these comments, the Board proposes to streamline procedures for dealing with incomplete applications. Paragraph (c) provides that if a creditor receives an application that is incomplete regarding matters that the applicant can complete, the creditor shall either notify the applicant of its decision within 30 days, in accordance with section 202.9(a), or notify the applicant within that time that additional information is needed. The latter notification would specify the information needed, designate a time period for the applicant to submit the information, and inform the applicant that unless the information is provided there can be no further consideration of the application. If the applicant failed to respond within the designed time period, the creditor would have no obligation to provide further notification of any kind. If the applicant provided the requested information in a timely manner, the creditor would then take action on the application and give appropriate notice in accordance with section 202.9 (a) and (b). Paragraph (a)(1)(ii), dealing with the denial of an incomplete application, is being revised to include conforming language. Forms C-9 and C-10 in Appendix C are sample forms for notice of incompleteness under paragraph (c).

In response to public comment, the Board proposes to make changes to section 202.9 with respect to use of the term "adverse action." The words "denying" or "denial" of credit are being substituted for the words "adverse action." The Board believes that use of the term "adverse action" raises unnecessarily negative connotations, and has also led creditors to believe that they must use that term in communicating with applicants who have been denied credit. The Board believes that the provisions of paragraphs (a) and (b) remain sufficiently clear as to the creditor's obligation to notify an application when, in instances other than the denial of an application, the creditor takes action that warrants the sending of a notice under paragraph (b).

Other changes to this section are primarily editorial. The Board proposes to delete material that appears in existing paragraph (a)(1)(i), permitting notification of approval to be either express or implied; material in existing paragraph (b)(1), allowing the model ECOA notice to include references to similar state law and a state enforcement agency; existing paragraph

(b)(3), permitting inclusion of other required disclosures or other information generally; and existing paragraph (f), which provides a presumption of delivery. Comparable material appears in the proposed staff commentary. In existing paragraph (b)(2), the model notice of reasons for adverse action is being deleted. It is being replaced by a number of model notices in a new Appendix C, as discussed below.

Existing paragraph (d) provides a special rule on withdrawn applications that the Board believes is not needed; it is being deleted. There has also been some restructuring of the section. Existing paragraphs (c), (a)(3), (a)(4), and (e) are renumbered (d) through (g), respectively. That portion of existing paragraph (a)(4) dealing with liability for acts of third parties is being deleted; comparable material appears in the proposed staff commentary.

Section 202.10 Furnishing of Credit Information

This section is being totally rewritten and restructured for clarity and to delete obsolete material, but there is no substantive change from the existing rules. Footnote 11 to existing paragraph (a)(1) and footnote 12 to existing paragraph (a)(3) are being deleted; comparable material appears in the proposed staff commentary. Material in existing paragraph (c), dealing with the effect of signatures on liability and on the names in which an account is maintained, is being deleted, with comparable material appearing in the proposed staff commentary.

Section 202.11 Relation to State law

Existing footnote 16 is being deleted as unnecessary.

Section 202.12 Record Retention

The Board proposed to make minor revisions to this section, as discussed below.

Paragraph (a) permits the retention in files, under certain circumstances, of information that is generally prohibited. Existing paragraph (a)(2) applies this permission to information obtained from credit bureaus, and existing paragraph (a)(3) to information obtained from credit bureaus, and existing paragraph (a)(3) to information obtained from an applicant or others without the specific request of the creditor. These two paragraphs are being merged into a single paragraph (a)(2), so that the rule of "without specific request" will also apply to information from credit bureaus. There appears to be no justification for giving special

protection, as the current rule seems to do, if prohibited information is obtained from a credit bureau at the specific request of the creditor. There would be no violation under the proposed revision, however, if a creditor requested a credit report which happened to contain prohibited information. The words "at any time" are being deleted as unnecessary. Existing footnote 17 to paragraph (a) is being deleted as obsolete.

Paragraph (b)(1) requires retention of records for 25 months after a creditor notifies an applicant of action taken on an application. The proposal revises this provision to require the same record retention after a notification of incompleteness because, as discussed under section 202.9 above, a notification of incompleteness under section 202.9(c) may substitute for notification of action taken in certain instances. In addition, existing footnote 18 to paragraph (b)(1) is being deleted; comparable material appears in the proposed staff commentary.

A reference to the United States Attorney General is being added to paragraph (b)(3), to require retention of records until final disposition of an enforcement proceeding or investigation conducted by the Attorney General.

Under existing paragraph (b)(4), record retention is required in situations where, because the application is "shopped" among multiple creditors and another creditor has granted credit, a creditor does not have to notify the applicant of action taken. As revised, the record retention provision is somewhat broader. It applies whenever a creditor receives an application but is not required to comply with notification requirements, e.g., when an applicant submits an application for credit but then withdraws it prior to notification of the creditor's decision. This change would ensure more complete records of applications in order to better allow regulatory agencies to assess creditors' compliance.

Section 202.13 Information for Monitoring Purposes

The Board proposes to revise this section in several respects. In general, the revisions relate to types of loans covered and to the method of collecting data on the applicant's sex and race/national origin.

Section 202.13 currently requires a creditor that takes a written application for a loan to purchase residential real property, with a lien on that property as security, to ask the applicant to note certain personal characteristics: race/national origin, sex, marital status, and age. Applicants themselves may provide

the requested information if they choose; however, they are not required to do so. The data are requested to assist the enforcement agencies in determining if a creditor is approving or denying credit in a prohibited manner. The regulation permits other enforcement agencies to adopt more extensive data collection programs; the Federal Deposit Insurance Corporation (FDIC), the Federal Home Loan Bank Board (FHLBB), and the Office of the Comptroller of the Currency (OCC) have done so.

The Board's Consumer Advisory Council issued a report in July 1983 on the Federal Reserve's implementation of its responsibilities under the Community Reinvestment Act (CRA). The Council recommended a number of enhancements to the Board's efforts in carrying out the mandate of CRA and the antidiscrimination goals embraced by the ECOA and the Fair Housing Act. One recommendation was that the Board seek out and use improved methods for collecting and analyzing data on personal characteristics of applicants, so that examiners would be better able to detect prohibited

discrimination. The Council also suggested that the Board consider requiring creditors to use written applications to collect the data on applicants' personal characteristics.

When it considered the Council's recommendations, the Board also considered public comment it had received regarding the problems of bank holding companies whose subsidiary banks are subject to the jurisdiction of different financial regulators. Depending on which federal agency supervises the particular banks, there are different data collection rules. (The attached table briefly outlines the types of credit currently covered by the various agency rules and also describes coverage under the proposed rule, with emphasis added.)

Believing that a single rule applicable to all institutions would both reduce compliance burdens and enable the agencies to collect the data necessary to monitor compliance with the ECOA and the Fair Housing Act, the Board wrote to the other financial supervisory agencies and invited their participation in developing uniform requirements on data collection.

Comparison of Present and Proposed Coverage by Type of Loan

OCC Special Rule (national banks).....	• Any loan for the purpose of purchasing, construction-permanent financing, or refinancing of a house to be occupied as a principal residence and which will secure the loan.
FDIC Special Rule (state-chartered non-member banks).....	• Any loan for the purpose of purchasing, constructing, refinancing, improving, or maintaining a dwelling to be occupied as a principal residence and which will secure the loan.
FHLBB Special Rule (S&Ls).....	• Any loan related to a dwelling.
Present Reg. B (member banks and all other creditors).....	• Any written application for consumer credit for the purpose of purchasing residential real property (including construction-permanent financing) where the loan will be secured by the property.
Proposed Rule.....	• Any application for credit primarily for the purchase (including construction-permanent financing), refinancing, repair, or improvement of a dwelling occupied, or to be occupied, by the borrower as a principal residence, where the extension of credit will be secured by the dwelling.

Staff members of the FDIC, the FHLBB, the OCC, the Board, and the National Credit Union Administration (NCUA) have met to review their existing regulations and to consider a uniform approach. The Board proposal being published for public comment incorporates many of the observations made by this interagency staff group, though none of the other agencies has formally endorsed the proposal. The proposal would decrease the compliance burden for some creditors but increase the burden for others.

Types of Covered Transaction

The Board proposes to modify section 202.13, which currently covers only applications for residential purchase

money loans, to also cover refinancing, repair, or improvement of a dwelling that is or will be occupied by the borrower as a principal residence, when the credit will be secured by the dwelling. The proposal would increase the types of credit covered for state member banks, credit unions, mortgage bankers, and certain other lenders.

The focus of the proposal on credit related to dwelling reflects the longstanding national concern about discrimination in housing-related credit. The proposal would cover most of the areas of credit that are subject to the Fair Housing Act, representing a significant portion of the housing related credit extended in the country. Limiting the proposal to credit related to

dwelling makes it less likely to impose a substantial burden on creditors. If it were expanded to cover types of credit other than dwellings, as some persons have suggested, the economic burden of redesigning and purchasing new forms would be severely increased.

Coverage of secured home improvement loans is included because they appear to be an important element throughout the country in revitalizing many older neighborhoods. Home improvement lending is considered essential to helping meet the housing needs of many people in today's housing market.

Mobile home loans also would be covered. In the U.S. Department of Commerce's 1981 Annual Housing Survey, mobile homes accounted for 4.7 percent of the total number of homes in the United States, yet they accounted for 10.3 percent of all owner-occupied homes where the annual household income was less than \$12,500. A significant portion of the lower-priced housing market consists of mobile homes purchased to be placed on lots that are owned or rented by the purchasers. Regulation B presently excludes dwellings from coverage if they are not considered real property under state law. To exclude these dwellings from coverage merely because they are not defined by some state laws as real property (since they are not permanently attached to the ground) appears to be unwarranted.

Rule for Obtaining of Data

The creditor would be required, under the Board's proposal, to request the race/national origin, sex, marital status, and age of the applicant, as in the existing regulation. Unlike the present rule, however, if the applicant did not voluntarily provide the requested information, the creditor would have to note the sex and race/national origin of the applicant on the basis of visual observation or surname. This is the rule currently used by the FDIC, the FHLBB, and the OCC. Thus, the proposal would represent a change for state member banks, credit unions, and mortgage bankers, all of which are currently collecting the information only on a voluntary basis. Requiring that creditors note the race/national origin and sex of applicants who choose not to do so would provide better data by which to determine a creditor's compliance with the ECOA and the Fair Housing Act. The requirement would also serve to remind creditors that these factors may not enter into determinations of creditworthiness.

Written Applications

The Board also proposes to formalize the taking of written applications for the types of credit covered by section 202.13. (This requirement for written applications appears in revised section 202.5(e)). A creditor may satisfy the requirement by writing down the information that it normally considers in making a credit decision. Enforcement of civil rights would be enhanced because enforcement agencies could make more informed determinations about a creditor's compliance with the ECOA and the Fair Housing Act if application files contained better documentation. Written credit applications and other supporting information that creditors generally use, such as appraisals and credit histories, would also assist in determining why a particular course of action was taken on an application.

Requiring written applications for such loans does not appear to impose any significant additional burden on creditors, since virtually all creditors already take written applications for these types of credit. Most banks and thrift institutions already are required to take written applications or to maintain equivalent records for most loans covered by the data collection provisions, under rules established by the FDIC, OCC, FHLBB, and NCUA. In addition, most mortgage bankers use standardized loan documents, including credit application forms, because of the growth of the secondary market for dwelling-related loans. FHLBB/FNMA forms are readily available that would meet the proposed requirements on data collection.

Substitute Monitoring Programs

Existing section 202.13(d) authorizes other enforcement agencies to adopt substitute monitoring programs. If the proposed rule were implemented, the vast majority of the types of credit presently covered by other financial regulatory agencies' special rules on collection of monitoring data would also be covered by Regulation B. To the extent that these agencies continue to engage in substitute monitoring, there would be greater but not total uniformity. The Board requests specific comment on whether paragraph (d) should be deleted.

Section 202.14 Enforcement, Penalties, and Liabilities.

This is a proposed new section, consisting of material from current section 202.1 (b) and (c). The material has been edited for purposes of simplification, but there is no

substantive change. Paragraph (a) reflects the transfer of the enforcement functions of the Civil Aeronautics Board to the Secretary of Transportation (49 FR 50994, December 31, 1984).

Appendix A—Federal Enforcement Agencies

Appendix A, which lists the federal enforcement agencies, is not being republished at this time. Changes will be made, when the Board publishes revised Regulation B in final form, to reflect the substitution of the Secretary of Transportation for the Civil Aeronautics Board.

Appendix B—Model Application Forms

The introductory material to Appendix B incorporates material from existing section 202.5(e), so that all directions for the proper use of the model forms will appear in one place. The existing portion of the introductory material that permits creditors to add three specific items to the model forms is deleted, because creditors may add any item not prohibited by section 202.5 (not merely these three). The discussion of the FHLBB 65/ FNMA 1003 form is deleted; comparable material appears in the staff commentary. The Board is also publishing a sample disclosure and information request that would comply with revised section 202.13. If the proposal regarding monitoring data discussed above is ultimately adopted, this disclosure and request form would become part of the model application form for dwelling-related loans. The model application forms themselves are not being republished at this time because no other change is proposed. Comment is requested, however, on what changes (if any) may be necessary or appropriate in any of the model forms.

Appendix C—Sample Notification Forms

In the June 1983 Federal Register notice, the Board requested comment concerning the sample adverse action notice, including what changes should be made to the notice and whether more than one form should be provided. Based on the comments, the Board proposes to replace the single existing sample notice, which appears at section 202.9(b), with a number of sample notices. This proposed new appendix to the regulation contains ten sample notification forms. Forms C-1 through C-4 are sample statements of reasons for credit denial or other adverse action. Forms C-5 and C-6 combine the statement of reasons with notice of a counteroffer. Form C-7 is a sample

notice for use with a credit scoring system; form C-8 is a disclosure of the right to request a statement of reasons, as provided for in section 202.9(a)(2)(ii). Forms C-9 and C-10 are requests for additional information, as provided for in proposed section 202.9(c).

As presented below, only forms C-4, C-6, and C-7 include the notice of rights under ECOA required by section 202.9(b)(1). In all of the other forms, the creditor would add it as indicated by the notation. Forms C-9 and C-10, the sample notices requesting additional information, do not require the ECOA notice because those forms do not relate to a credit denial.

Forms C-5 and C-6 as presented do not include the Fair Credit Reporting Act notice; it would need to be added if applicable.

As stated in the introductory material to proposed Appendix C, the sample forms are illustrative. In developing its own forms, a creditor would of course have to list the factors on which it based a credit denial.

Although ten sample forms are being published for comment, it may be that fewer than ten forms are needed. The Board requests comment on which of the proposed forms would be most useful to creditors and most informative to consumers.

The sample notices would be entirely optional for creditors, as is true of the existing notice. Accordingly, if any or all of the proposed forms are ultimately adopted in place of the existing sample form, creditors may continue to use the existing sample form (or any other notice form), provided that it sets forth accurately the factors the creditor considers and is completed properly.

Appendix D—Issuance of Staff Interpretations

This proposed new appendix would replace section 202.1(d) of the existing regulation, which deals with requests for and issuance of staff interpretations of Regulation B. Because of changes in the procedures for staff interpretations (particularly the introduction of the official staff commentary as the vehicle for such interpretations), this appendix differs from existing sections 202.1(d); it is modeled primarily on Appendix C to Regulation Z, which deals with staff interpretations under that regulation.

Appendix E—State Exemptions

Proposed Appendix E would replace Supplement I to the existing regulation, which sets forth procedures relating to exemptions on the basis of similar state law. The revised version is modeled on Appendix B to Regulation Z, which also provides state exemption procedures;

consequently it is shorter and simpler than existing Supplement I, but the substance is largely unchanged.

(3) *Economic impact analysis—Introduction.* The Board's review suggests that (1) the definition of applicant be expanded to cover guarantors in order to give guarantors legal standing to sue when they believe a violation of their rights has occurred, (2) the effectiveness of compliance enforcement can be enhanced if creditors are required to take written applications for housing-related loans and to collect certain data regarding personal characteristics of these loan applicants, and (3) clarification and modification of the regulation are needed in the areas of incomplete and withdrawn applications.

The potential benefits and costs of the proposed revisions to Regulation B are discussed in this initial economic impact analysis. Two appendices are attached. Appendix A contains a summary of a Board study of economies of scale in the cost of complying with the Truth in Lending Act and Equal Credit Opportunity Act (ECOA). Appendix B contains a summary of a Board study of consumer perceptions regarding the benefits of ECOA protections. These studies were examined for their implications regarding the Regulation B review.

Redefinition of "Applicant" to Include Guarantors.

An applicant has standing to sue under Regulation B but a guarantor does not. The proposed rule would redefine "applicant" in section 202.2 to include guarantors. This modification of the rule would allow guarantors, who believe they have been injured by an ECOA violation, to bring suit, thereby enhancing consumer protections.

The new provisions may increase creditor's costs by increasing their exposure to litigation. Litigation would increase to the extent guarantors sue regarding alleged Regulation B violations, and the alleged violations would not have been litigated by applicants themselves. Initial analysis by the Division of Consumer and Community Affairs suggests that this situation would arise infrequently. Applicants would normally bring suit in their own right; and guarantors (if they had standing to sue) would merely join in the lawsuit. (Guarantors are often the spouse or business associate of the applicant.) If it becomes a matter of course in legal actions involving defaulted loans that both the applicant and the guarantor claim injury from the same alleged violation, litigation expense could be increased; the

increase probably would be small since the same alleged violation is involved.

Written Applications and Collection of Monitoring Data

Provisions in section 202.5 of the proposed rule will for the first time require covered creditors to take written applications for certain housing-related loans.¹ In addition, creditors would be required by section 202.13 to collect monitoring data on the race and other personal characteristics of applicants for these housing-related loans.² Regulation B presently requires creditors to request information from applicants regarding their race, sex, age and marital status only on written applications for a home purchase loan to be secured by the property. The current regulation does not require written applications for mortgage loans, nor does it require loan officers to note information on the personal characteristics (race/national origin, sex) of loan applicants if the customer does not volunteer such information upon request.

The proposed rule changes, to require written applications and to collect monitoring data, are expected to enhance consumer protection through more effective enforcement. They would also provide greater uniformity. Currently, banks and savings and loans regulated by the FDIC, the OCC, and the FHLBB are required by rules established by these agencies to take written applications and to collect monitoring data on most housing-related loans.³ Commercial banks regulated by the Federal Reserve System (FRS) are not presently required to take written applications nor record monitoring data if not provided voluntarily by the applicant. Federally chartered credit unions are required by the National Credit Union Administration to take written applications but are not required to collect monitoring data. Mortgage bankers are not currently required to take written applications. However, since these firms generally sell loans they originate in the secondary market, they typically use standardized written

¹ Section 202.5 provisions would require written applications for credit requests covering loans primarily for the purchase, construction/permanent financing, repair or improvement of a dwelling occupied or to be occupied by the borrower as a principal residence. Only applications where the extension of credit will be secured by the dwelling are covered in the proposed rule.

² Data to be collected include race/national origin, sex, marital status and age of all applicants.

³ Regulation B currently allows agencies charged with ECOA enforcement responsibilities to establish their own rules regarding the collection of monitoring data.

application forms as a matter of course. Consequently, the proposed rules are unlikely to have a significant impact on these firms.

Current ECOA enforcement techniques call for the consumer compliance examiners to use all available data to test for the presence or absence of discrimination on a prohibited basis, such as race, sex, marital status or national origin. The primary data for examiners are creditor loan files. In the case of the banks supervised by the Federal Reserve System, the absence of written applications and information on personal characteristics of loan applicants in many cases substantially reduces the examiners' ability to perform tests for possible discrimination.⁴ Adoption of the proposed rules would therefore enhance consumer protection by facilitating more effective enforcement.

The extent to which the proposed rule would enhance consumer protection is uncertain. For example, the FDIC, OCC and FHLBB have cited a very small number of creditors for discrimination on the basis of race or national origin even though these agencies have access to written applications and monitoring data. The inability to detect ECOA violations may reflect widespread creditor compliance with ECOA provisions. To some extent the low number of violations may indicate that discrimination is effectively deterred by creditors' knowledge that examiners have access to written applications and monitoring data. Under these circumstances, the number of cases of actual discrimination detected by examiners would likely be small. To the extent the deterrent effect is important, adoption of the proposed rule would enhance consumer protection.

A further benefit of the proposed rule changes would be greater uniformity among the regulatory agencies. As a consequence, companies subject to monitoring requirements of more than one regulatory agency would benefit to the extent they would be able to use uniform application forms and employee training procedures for all banks in their company.

Since most creditors are currently covered by rules that require written housing-related loan applications and the collection of monitoring data, the proposed rule changes are unlikely to impose significant costs on covered institutions. The creditors most likely to

be affected by the proposed rule changes are banks supervised by the Federal Reserve System and credit unions. According to information available to the Board, most state member banks currently use written applications for housing-related loans. It is estimated that about 10 percent of the FRS supervised banks do not take written applications on such loans; most of these are small banks. Mortgage and home improvement loan application forms available from the Federal Home Loan Mortgage Corporation or from the Federal National Mortgage Association cost about 20 cents per form.⁵ Using data collected pursuant to the Home Mortgage Disclosure Act, it is estimated that state member banks received about 80,000 mortgage and home improvement loan applications in 1983. Therefore, the estimated total cost of forms for written applications for these types of loans for all member banks is approximately \$16,000 a year. The actual cost to obtain forms because of the proposed rule would be less to the extent member banks already take written applications.⁶

The proposal to require collection of monitoring data also imposes costs on creditors. Costs include employee training expenses and costs to modify existing written application forms if the monitoring data is to be included on the loan application form, or costs to print and store for record retention a separate form with the required monitoring data.

A final cost associated with a requirement to collect monitoring data involves the loss of personal privacy some loan applicants may feel if creditors note their personal characteristics even though they choose not to voluntarily supply such information. Such costs are difficult to quantify. However, information available to the Board indicates that in 1980 at least 10 percent of the applicants for housing-related loans at state member banks refused to voluntarily provide monitoring data when asked to do so. Presumably, these individuals are the most likely to be offended by the proposed rule change.

Incomplete Applications

The current rule requires that adverse action notification be given when

reasonable efforts by creditors to obtain missing information regarding an application fail to elicit a response from the applicant. Under the proposal, creditors would not be required to provide adverse action notification if the applicant does not supply the information needed to complete the application within a reasonable period. As a consequence, creditors would need to provide one less notice in these circumstances, reduced since applicants who do not respond in a reasonable time period to a creditor's request for additional information probably are no longer interested in the loan from that creditor, or expect to be denied credit based on the lender's evaluation of that additional information.

Record Retention of Withdrawn Applications

Under the current rule, there are no record retention requirements with respect to applications expressly withdrawn by the applicant. As a result, consumer compliance examiners are unable to determine whether some creditors are misclassifying denied applications as withdrawn. The absence of records on withdrawn applications hampers an examiner's investigation of an unusually low application denial rate which the creditor claims reflects a high rate of withdrawn applications. Therefore, the proposal to require record retention of applications withdrawn by the applicant may increase the effectiveness of enforcement.

If the proposal were adopted, most creditors would incur costs to expand record storage space for applications expressly withdrawn by the applicant. The cost per record of additional storage space will vary among creditors depending on record storage technology (mechanical versus electronic) and current storage capacity utilization. If examiners are correct in their belief that in general there are few nonbusiness applications expressly withdrawn by applicants relative to denials, then compliance costs of the proposal would be small for most creditors. Business applications expressly withdrawn would not have to be retained under the proposal because of the business credit provisions in section 202.3.

Small Entities

Recent research on compliance costs for consumer protection regulations suggests that the smallest commercial banks have incurred the greatest compliance costs per account (see appendix A). Similarly, the potential compliance costs associated with some of the proposed revisions to the

⁴ Survey results indicate that in 1980 about 25 percent of applications for housing-related loans from banks examined by the Federal Reserve did not contain monitoring data.

⁵ The proposed regulation would not require creditors to use these specific application forms; however, use of these forms would satisfy the requirement to use written application forms.

⁶ Available evidence indicates that many small banks do not currently use written applications. Consequently, the proposed rule requiring creditors to take written applications will have a disproportionate (although small) effect on smaller creditors.

regulation would tend to fall disproportionately on the smallest banks. In particular, the proposed requirement that creditors take written applications for dwelling-related credit would create additional costs for creditors who currently do not do so. According to the Board's consumer compliance examiners, about 10 percent of the FRS supervised banks would need to start using written application procedures, and most of these banks are relatively small. Although this proposal rule will have a somewhat harsher effect on small banks, the marginal costs of this new requirement are not likely to be large for any creditor.

Overall, the proposed revisions to Regulation B are unlikely to have a significant impact on small creditors' compliance costs.

A Summary of an FRB Study of Economies of Scale in the Cost of Complying With the TILA and ECOA (Appendix A)

This appendix summarizes the implications for the Regulation B review of a recent study of economies of scale in the cost of complying with the Truth in Lending and Equal Credit Opportunity law.⁷

The data for the study are from a 1981 survey of financial institutions conducted by the Federal Reserve Board to determine compliance costs associated with selected consumer protection laws. Compliance costs in the survey are reported for eight functional areas of banks' operations: (1) Administration; (2) labor; (3) training of officers and nonofficers; (4) legal services; (5) printing or notices; (6) postage; (7) premises, furniture, supplies, and equipment; and (8) other costs.⁸ Compliance costs were not estimated for the specific Regulation B provisions under review. Nonetheless, by considering the impact of specific provisions on activities in these functional areas, some general conclusions on the effect of the Regulation B proposals can be obtained.

The study examines economies of scale in compliance costs for Regulations Z and B combined. Only about one-third of the respondents reported compliance costs for Regulations Z and B separately.

Consequently, the number of cases was too small to permit statistical analysis of each regulation separately. The major finding of the study is that there are economies of scale in compliance costs for these regulations for commercial banks at levels of output up to 375,000 consumer credit accounts, beyond which there are small diseconomies of scale. At the lowest output levels, there are large unexploited scale economies. This suggests that the regulations impose a competitive disadvantage on banks with small consumer credit portfolios. The implication for the Regulation B review is that there is a need to evaluate changes to regulatory requirements in terms of the relative burden on creditors with different consumer credit portfolio size.

The survey results indicate that labor and administration expenses account for about 50 to 70 percent of total compliance costs at all levels of output and that compliance costs increase about proportionately with wage rates, suggesting that compliance activities for Regulations Z and B are labor intensive. However, administrative costs account for smaller shares of compliance costs at moderate and higher output levels. This result suggests that scale economies may arise from a more efficient use of high cost administrative personnel at banks with larger consumer credit portfolios. The implication for the Regulation B review is that the disproportionate impact of the regulation can be reduced by designing requirements that can be performed routinely by nonadministrative personnel and that do not require a high level of supervision or monitoring.

Respondents to the survey were asked for their perception of the most costly regulatory requirement in Regulation B. They reported the most costly requirement in Regulation B to be adverse action notification. The implication for the Regulation B review is that compliance costs might be reduced if unnecessary adverse action notices could be eliminated or requirements modified to allow creditors to provide notices at lower cost.

A Summary of FRB Studies of Consumer Perceptions of Discrimination and Effectiveness of the ECOA (Appendix B)

Since passage of the ECOA, a number of researchers have attempted to examine credit market conditions before passage of the antidiscrimination law. Unfortunately, their efforts have been hampered by a lack of adequate data.⁹

The unavailability of adequate data for testing for the existence of discrimination has led researchers to use survey data to study consumers' perceptions of discrimination. Perceptions of discriminatory treatment cannot be regarded as proof that discrimination exists or does not exist, but perceptions may reflect consumers' experience and provide some information on the extent of any problems.

In 1981-82, the Federal Reserve Board sponsored survey questions to update and expand on information on perceptions of discrimination from the 1977 Consumer Credit Survey. First, respondents were asked to identify variables that they thought were important to creditors in deciding to grant credit. Applicants' credit and financial characteristics were mentioned most frequently as important variables in both 1981-82 and 1977, while personal characteristics such as age, race, sex, and marital status were mentioned relatively infrequently (less than 10 percent of mentions). Although respondents belonging to ECOA-protected groups were more likely than nonprotected respondents to believe that personal characteristics were important to creditors, most ECOA-protected respondents did not believe that personal characteristics were very important to creditors in deciding whether to grant credit. In both surveys, ECOA-protected respondents generally believed that credit would be more difficult to obtain than other groups of consumers. However, ECOA-protected groups were less likely to believe credit would be difficult to obtain in 1981 than in 1977.

A second series of questions asked respondents about credit turndowns and limitations. Responses to the 1981-82 and 1977 surveys are virtually identical. Only a few respondents reported that personal characteristics were given as reasons for credit turndowns and

⁷ G. Elliehausen and R. Kurtz, "Economies of Scale in the Cost of Complying with the Truth in Lending and Equal Credit Opportunity Laws," Working Paper, Board of Governors of the Federal Reserve System, March 1984.

⁸ The survey does not attempt to measure opportunity costs such as changes on loan losses due to information restrictions in credit evaluations or signature restrictions that affect contractual liability or availability of collateral.

⁹ The following statistical studies provide information on discrimination in consumer credit

markets: J. Marshall, "Discrimination in Consumer Credit," in A.A. Heggstad and J.J. Mingo, eds., *The Costs and Benefits of Public Regulation of Consumer Financial Services* (Abt Associates 1979); R.L. Peterson, "An Investigation of Sex Discrimination in Commercial Banks' Direct Consumer Lending," *Bell Journal of Economics*, vol. 12 (Autumn 1981), pp. 547-561; R.B. Avery, "Discrimination in Consumer Credit Markets," *Research Papers in Banking and Financial Economics* (Board of Governors of the Federal Reserve System, Division of Research and Statistics, Financial Studies Section, 1982); and W.K. Brandt and R.P. Shay, "Consumer Perceptions of Discriminatory Treatment and Credit Availability and Access to Consumer Credit Markets," in *Federal Reserve Bank of Boston, The Regulation of Financial Institutions*, Conference Series No. 21, 1979.

limitations. When asked directly whether their age, race, nationality, sex, or marital status may have been a factor, over three-fourths of the respondents who were turned down or limited indicated that they did not believe that these characteristics were factors in the creditors' decision.

In order to obtain information about possible creditor screening, respondents to the 1981-82 surveys were asked whether they thought about using credit but did not apply because they expected that they might be turned down. About 10 percent of respondents reported that they thought about applying for credit. In most cases, the reasons respondents thought they would be turned down were related to their credit history or financial characteristics. Personal characteristics were seldom involved. In about a quarter of the cases, respondents indicated that the creditor suggested that a turnaround might occur.

Respondent to the 1981-82 surveys were also asked about the usefulness of disclosure of reasons for adverse action. Although approximately half of the respondents who had been turned down or limited reported that they had thought a turnaround or limitation might happen, for the reasons given, nearly three-fourths of those who had been turned down or limited indicated that knowledge of the reasons for adverse action had been useful to them. Respondents indicated that the reasons given were helpful because they wanted to know why they were turned down and to understand the credit granting process. But respondents also reported that the reasons given were often not specific enough or did not tell them anything they did not know already.

Respondents were also asked about the usefulness of the written disclosure statement. Receipt of a written statement apparently was not as important to consumers as knowledge of reasons for adverse action. Respondents who reported that they did not receive a written statement were just as likely as those who received written statements to say that knowledge of reasons for adverse action had been useful. However, about half of those receiving a written statement indicated that the written statement was not useful, and a third reported that verbal information was just as good as a written statement.

(4) *Discussion of proposed official staff commentary.* The Board is publishing a proposed commentary on the regulation. The final commentary will be issued as an official staff interpretation providing creditors with protection under section 706(e) of the Equal Credit Opportunity Act. Under that section, creditors acting in

conformity with an official staff interpretation are protected from liability for violations arising from those actions.

The commentary format follows that already used for other Board regulations such as Regulation Z (Truth in Lending), and Regulation M (Consumer Leasing). The commentary will replace all existing staff interpretations, both official and unofficial, and official Board interpretations, that have been issued in response to individual inquiries or fact situations. Thus the commentary will replace six existing Board interpretations, thirteen official staff interpretations, and fifteen informal staff letters. The commentary will be the sole vehicle for interpreting the regulation.

As is the case with other staff commentaries, this commentary will give more general guidance, rather than the specific guidance given in letters. It is designed, however, to assist creditors in applying the regulation to specific fact situations. Further, the commentary uses material of general application to be useful to the widest possible audience.

Following the format used in the commentary to Regulation Z, each paragraph in the commentary is identified by the relevant section, and in some cases by subsection, of the regulation. For example, commentary to § 202.4 is labeled 4-1 while commentary to § 202.7 is further broken down and designated according to the particular subsection addressed, such as comments 7(c)-1 and 7(d)(2)-1. Unlike the commentary to Regulation Z, the commentary to Regulation

The Board has previously determined that several state laws are not preempted by the ECOA and Regulation B. These nonpreemption determinations relate to laws that deal with the age of majority, notices to unmarried cosigners, and Spanish language translations of credit documents. Following the rule in Regulation Z, the Board proposes to include in the commentary only those determinations that result in the preemption of a state law or regulation. Consequently, the nonpreemption determinations are being omitted from the proposed staff commentary.

Three other Board interpretations—202.601, 202.801, and 202.901—have been integrated into the proposed staff commentary.

Official staff interpretation EC-0009 has been incorporated into the text of section 202.3(d) of the regulation, which now makes clear that a creditor that denies a business credit application must give the applicant notice of that denial within a reasonable time.

Certain official staff interpretations have been omitted for various reasons. Interpretation EC-0001, which addressed the requirements for sending credit history notices by June 1977, is obsolete. Interpretation EC-0004 is being omitted because the subject matter—the application of state laws governing graduated rates, maximum loan ceilings, and rate splitting—does not appear to warrant the amount of detailed treatment provided in that letter.

Others have been omitted because they appear to have limited applicability: EC-0011, which concluded that Regulation B generally does not apply to a lending operation carried on by a foreign corporation making loans solely outside the United States; and EC-0010, which dealt with the permissibility of inquiries about a potential customer's religion by a seller of religious books.

Interpretations that approved certain creditor forms—EC-0012 and EC-0015—are being incorporated into the commentary to Appendix B, which will become the vehicle for approving credit application forms used or distributed by federal or state agencies or federally chartered operations. EC-0013 related to a form no longer in use, and is omitted.

The answers provided in the other official staff interpretations have served as the basis for the sections of the proposed staff commentary to which they relate. Material from some of the 15 staff opinion letters originally published as public information letters also has been used.

Comment is welcomed on the substance of the material contained in the proposed commentary and on any material which creditors believe should also be included. Commenters are encouraged to focus on material of particular interest to them, and need not address every provision.

List of Subjects in 12 CFR Part 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Religious discrimination, Sex discrimination, Women.

(5) *Regulatory text.* Certain conventions have been used to highlight the proposed revisions (except in sections that have been revised in their entirety). New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

PART 202—[AMENDED]

Pursuant to the authority granted under section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board proposes to amend 12 CFR Part 202 as follows:

1. 12 CFR Part 202 would be amended by removing the word "Part" every place it appears and inserting in its place the word "regulation"; by removing the word "subsection" every place it appears and inserting in its place the word "paragraph"; and by removing footnotes 1, 2, 3, 5, 6, and 8 through 19 and redesignating footnotes 4 and 7 as footnotes 1 and 2, respectively.

2. Section 202.1 would be revised to read as follows:

► § 202.1 Authority, scope and purpose.

(a) *Authority and scope.* This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to Title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). Except as otherwise provided herein, it applies to all persons who are creditors, as defined in § 202.2(l). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100-0192.

(b) *Purpose.* The purpose of this regulation is to require creditors to make credit equally available to all creditworthy customers without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits certain creditor practices that would discriminate on the basis of one of these factors. The regulation also requires creditors to notify applicants of action taken on their applications, to report credit history in the names of both spouses on an account, and to retain records of credit applications. To assist enforcement efforts, the regulation requires creditors to collect monitoring information for certain loans in which the creditor takes a security interest in the applicant's principal dwelling. ◀

3. Section 202.2 would be amended by revising the title and paragraphs (e), (f), and (p); removing existing paragraphs (aa), (cc), and (dd); and redesignating paragraph (bb) as paragraph (aa), to read as follows:

§ 202.2 Definitions [and rules of construction].

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may [be] ► become ◀ contractually liable regarding an extension of credit [other than a guarantor, surety, endorser, or similar party]. ► The term includes guarantors, sureties, endorsers and similar parties. ◀

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that does not exceed a previously established credit limit. A *completed application for credit* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral) ►. ◀ [; provided, however, that the creditor has exercised] ► The creditor shall exercise ◀ reasonable diligence in obtaining such information. [Where an application is incomplete respecting matters that the applicant can complete, a creditor shall make a reasonable effort to notify the applicant of the incompleteness and shall allow the applicant a reasonable opportunity to complete the application.]

(p) *Empirically derived* ► and other ◀ credit system ►s ◀. (1) [The term means a] ► A ◀ credit scoring system ► is any system ◀ that evaluates an applicant's creditworthiness [primarily by allocating points (or by using a comparable basis for assigning weights) to] ► mechanically, based on ◀ key attributes describing the applicant and other aspects of the transaction [In such a system, the points (or weights) assigned to each attribute, and hence the entire score:

(i) Are derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time; and

(ii) Determine] ►, and that determines ◀, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy.

(2) A ► an empirically derived, ◀ demonstrably and statistically sound [empirically derived] credit system is a system:

(i) ◀ In which the data are derived from an empirical comparison of sample groups or the population of credit worthy and noncreditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time; and ► [in which the data used to develop the system, if not the complete population consisting of all applicants, are obtained from the applicant file by using appropriate sampling principles;]

(ii) Which is developed for the purpose of [predicting] ◀ evaluating ► the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system, including, but not limited to, minimizing bad debt losses and operating expenses in accordance with the creditor's business judgment;

(iii) Which [upon validation using appropriate statistical principles, separates creditworthy and non-creditworthy applicants at a statistically significant rate;] ◀ is developed using acceptable statistical principles and methodology; ► and

(iv) Which is periodically revalidated as to its predictive ability by the use of appropriate statistical principles ◀ and methodology ► and is adjusted as necessary to maintain its predictive ability.

(3) A creditor may use [a] ◀ an empirically derived, ► demonstrably and statistically sound [empirically derived] credit system obtained from another person or may obtain credit experience from which such a system may be developed. Any such system must satisfy the tests set forth in [subsection (1) and] ◀ paragraph (p) ► (2); provided that, if a creditor is unable during the development process to validate the system based on its own credit experience [in accordance with subsection (2)(iii), then] the system must be validated when sufficient credit experience becomes available. A system that fails this validity test shall [henceforth be deemed not to be a] ◀ no longer be an empirically derived, ► demonstrably and statistically sound [empirically derived] credit system for that creditor.

[aa] *Public assistance program* means any Federal, State, or local

governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need. The term includes, but is not limited to, Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation.]

[(bb)] (aa) State means any state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

[(cc) Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the substance of any provision of this Part may be drawn from them.

[(dd) Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.]

4. Section 202.3 is amended as follows:

A. Paragraph (a) introductory text, (a)(1) and (a)(2) would be removed, new (a)(2) introductory text would be added.

B. Paragraph (b) introductory text would be revised and redesignated as paragraph (a)(1), paragraph (b) (1), (2) and (3) would be redesignated as paragraphs (a)(2) (i), (ii) and (iii), new paragraph (b)(2) introductory text would be added.

C. Paragraph (c) introductory text would be revised and redesignated as paragraph (b)(1), paragraph (c)(1)-(8) would be redesignated as (b)(2)(i)-(viii), new paragraph (c)(2) introductory text would be added.

D. Paragraph (d) introductory text would be revised and redesignated as paragraph (c)(1), paragraph (d)(1)-(8) would be redesignated as paragraph (c)(2)(i)-(viii).

E. New paragraph (d) would be added, paragraph (e) would be revised and paragraph (f) would be removed.

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public utilities credit.*—(1) *Definition.* For purposes of this section, public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by any government unit.

(2) *Exceptions.* The following provisions of this regulation shall not apply to public utilities credit: * * *

► (b) *Securities credit.*—(1) *Definition.* For purposes of this section, securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions.* The following provisions of this regulation shall not apply to securities credit: * * *

► (c) *Incidental Credit.*—(1) *Definition.* For purposes of this section, incidental credit refers to extensions of consumer credit, other than of the types described in paragraphs (a) and (b) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) On which no finance charge as defined in § 226.4 of this Title (Regulation Z, 12 CFR 226.4) is or may be imposed; and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions.* The following provisions of this regulation shall not apply to incidental credit: * * *

► (d) *Business credit.*—(1) *Definition.* For purposes of this section, business credit refers to extensions of credit primarily for business or commercial purposes, including extensions of credit primarily for agricultural purposes, but excluding extensions of credit of the types described in paragraph (a) and (b).

(2) *Exceptions.* The following provisions of this regulation shall not apply to business credit:

(i) Section 202.5(d)(1) concerning information about marital status; and

(ii) Section 202.10 relating to furnishing of credit information.

(3) *Modified requirements.* The following provisions of this regulation apply to business credit as specified below:

(i) Section 202.9 (a) and (b) relating to notifications: the creditor shall notify the applicant, orally or in writing, when credit is denied or when other adverse actions have been taken; the creditor need provide a written statement of the reasons and the ECOA notice specified in section 202.9(b) only if the applicant makes a written request for the reasons within 30 days of that notification;

(ii) Section 202.12(b) relating to record retention: the creditor shall retain records as provided in § 202.12(b) if the applicant, within 90 days after notification that adverse action has been taken, requests in writing that records be retained.

(e) *Governmental credit.*—(1) *Definition.* For purposes of this section, governmental credit refers to extensions

of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability of regulation.* Except for § 202.4, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to governmental credit. ◀

5. Section 202.5 would be amended by revising paragraphs (b)(2), (b)(3), (d)(2), and (e); revising footnote 1 to paragraph (b)(1); revising the headings for the section and for paragraphs (b), (d), and (e); and adding headings to paragraphs (b)(2), (b)(3), (c)(2), (c)(3), and (d)(1) through (d)(5), to read as follows:

§ 202.5 Rules concerning ► taking of ◀ applications.

(b) *General rules.* Rules concerning requests for information. (1) Except as otherwise provided in this section, a creditor may request any information in connection with an application.¹

(2) ► *Exception for required collection of information.* ◀ Notwithstanding [any other provision of] ► the limitations imposed by ◀ this section, a creditor shall request ► information about ◀ an applicant's race/national origin, sex, and marital status ► for monitoring purposes ◀ as required in § 202.13

[(information for monitoring purposes)] ► for credit related to certain loans secured by the applicant's dwelling ◀. In addition, a creditor may obtain such information as may be required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the ► U.S. ◀ Attorney General or a similar state official) to monitor or enforce compliance with the act, this regulation, or other federal or state statute or regulation.

(3) [The provisions of this section limiting permissible information requests, are subject to the provisions of § 202.7(e) regarding insurance and § 202.8 (c) and (d) regarding special purpose credit programs.] ► *Exception for special purpose credit.* A creditor may also obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in § 202.8. ◀

(c) *Information about a spouse or former spouse.* * * *

(2) ► *Permissible inquiries.* ◀. * * *

¹ This [subsection is not intended to] ► does not ◀ limit or abrogate any federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information. [Furthermore, permission to request information should not be confused with how it may be utilized, which is governed by § 202.6 (rules concerning evaluation of applications).]

(3) ▶ *Other accounts of the applicant.* ◀

(d) [Information a creditor may not request] ▶ *Other limitations on information requests.* ◀ — (1) ▶ *Marital status.* ◀

(2) ▶ *Disclosure about income from alimony, child support, separate maintenance.* ◀ A creditor shall not inquire whether any income stated in an application is derived from alimony, child support, or separate maintenance payments, unless the creditor appropriately discloses to the applicant that such income need not be revealed if the applicant does not desire the creditor to consider such income in determining the applicant's creditworthiness. Since a general inquiry about income, without further specification, may lead an applicant to list alimony, child support, or separate maintenance payments, a creditor shall provide an appropriate notice to an applicant before [inquiring] ▶ making such an inquiry ◀ about the source of an applicant's income [.] ▶ ◀ [unless the terms of the inquiry (such as an inquiry about salary, wages, investment income, or similarly specified income) tend to preclude the unintentional disclosure of alimony, child support, or separate maintenance payment.]

(3) ▶ *Sex.* ◀

(4) ▶ *Childbearing, childrearing.* ◀

(5) ▶ *Race, color, religion, national origin.* ◀

(e) [Application forms.] ▶ *Written applications.* A creditor shall take written applications for the types of credit covered by section 202.13(a). ◀ A creditor need not [use] ▶ take ◀ written applications ▶ for other types of credit ◀. If a creditor [chooses to use] ▶ uses ◀ [written] ▶ application ◀ forms, it may design its own ▶ forms ◀, use forms prepared by another person, or use the appropriate model application forms contained in Appendix B. [If a creditor chooses to use an Appendix B form, it may change the form:

(1) By asking for additional information not prohibited by this section;

(2) By deleting any information request; or

(3) By rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. If a creditor uses an appropriate

Appendix B model form or to the extent that it modifies such a form in accordance with the provisions of clauses (2) or (3) of the preceding sentence or the instructions to Appendix B, that creditor shall be deemed to be acting in compliance with the provisions of subsections (c) and (d)].

6. Section 202.6 would be amended by revising paragraph (b)(5); revising footnote 2 to paragraph (a); and adding headings to paragraphs (b)(2) through (b)(7), to read as follows:

§ 202.6 Rules concerning evaluation of applications.

(a) *General rule concerning use of information.*

(b) *Specific rules concerning use of information.*

(2) ▶ *Age, receipt of public assistance.* ◀

(3) ▶ *Childbearing, childrearing.* ◀

(4) ▶ *Telephone listing.* ◀

(5) ▶ *Income.* ◀ [Factors that a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.]

(6) ▶ *Credit history.* ◀

(7) ▶ *Immigration status.* ◀

7. Section 202.7 would be amended by revising paragraphs (c)(2), (d)(2), (d)(5), and (e); adding a new paragraph (d)(6); and adding headings to paragraphs (c)(1), (d)(1), (d)(3), and (d)(4) to read as follows:

§ 202.7 Rules concerning extensions of credit.

(c) *Action concerning existing open end accounts.*

(1) ▶ *Limitations.* ◀

(2) ▶ *Requiring reapplication.* ◀ A creditor may require a reapplication regarding an open end account on the basis of a change in [an applicant's] ▶ the ◀ marital status [where] ▶ of an

² The legislative history of the act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness. [See Senate Report to accompany H.R. 6516, No. 94-589, pp. 4-5; House Report to accompany H.R. 6516, No. 94-210, p. 5.]

applicant who is contractually liable if ◀ the credit granted was based ▶ in whole or in part ◀ on income [earned by] ▶ of ◀ the applicant's spouse ▶ and ◀ if ▶ information available to the creditor indicates that ◀ the applicant's income [alone at the time of the original application would] ▶ may ◀ not support the [amount of] ▶ current ◀ credit [currently extended.] ▶ limit. ◀

(d) *Signature of spouse or other person.* — (1) ▶ *Rule for qualified applicant.* ◀

(2) ▶ *Unsecured credit.* ◀ If an applicant requests unsecured credit and relies in part upon property [to establish creditworthiness, a creditor may consider state law; the form of ownership of the property; its susceptibility to attachment, execution, severance, and partition; and other factors that may affect the value to the creditor of the applicant's interest in the property. If necessary] ▶ that the applicant owns jointly with another person ◀ to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the [applicant's spouse or] other person ▶ only ◀ on [any instrument] ▶ the instrument(s) ◀ [necessary, or reasonably believed by the creditor to be necessary, under applicable State law to make the property relied upon available to satisfy the debt in the event of default.] ▶ that, under the law of the state in which the property is located, would enable the creditor to reach the property being relied upon in the event of the death or default of the applicant. ◀

(3) ▶ *Unsecured credit—community property state.* ◀

(4) ▶ *Secured credit.* ◀

(5) ▶ *Guarantors, co-signers.* ◀ [For the purposes of subsection (d), a creditor shall not impose requirements upon an additional party that the creditor may not impose upon an applicant.]

▶ (6) *Rights of guarantors, co-signers.* For the purposes of this paragraph, a creditor shall not impose requirements upon a guarantor, co-signer, or similar additional party that the creditor is prohibited from imposing upon an applicant. ◀

(e) *Insurance.* ▶ Differentiation in the availability, rates, and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant shall not constitute a violation of the Act of this Part; but a] ▶ A ◀ creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, [or] disability ▶, or other credit-

related insurance is not available on the basis of the applicant's age. [Notwithstanding any other provision of this Part, information about the age, sex, or marital status of an applicant may be requested in an application for insurance.]

8. Section 202.8 would be amended by revising paragraphs (a) introductory, text (b), and (c), to read as follows:

§ 202.8 Special Purpose Credit Programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b), the act and this [part are not violated if] regulation permit a creditor [refuses] to extend special purpose credit to [an] applicant [solely because the applicant does not qualify under the special] who meet eligibility requirements [that define eligibility for] under the following types of [special purpose] credit programs:

(b) *Applicability of other rules.*

Rules in other sections. (1)

General applicability. All of the provisions of this regulation shall apply to each of the special purpose credit programs described in paragraph (a) [to the extent that those provisions are not inconsistent with] except as modified by the provisions of this section.

(2) *Common characteristics.* A program described in paragraphs (a)(2) or (a)(3) shall qualify as a special purpose credit program [under subsection (a)] only if it was established and is administered so as not to discriminate against an applicant on [the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), income derived from a public assistance program, or good faith exercise of any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted therefrom by the Board; except that] any prohibited basis; however, all program participants may be required to share one or more [of those] common characteristics [for example, race, national origin, or sex] so long as the program was not established and is not administered with the purpose of evading the requirements of the act or this regulation.

(c) *Special rule concerning requests and use of information.* If all participants in special purpose credit program described in paragraph (a) are or will be required to possess one or more common characteristics [relating to race, color, religion, national origin, sex, marital status, age, or receipt of income from a public assistance program] [for example, race, national

origin, or sex] and if the [special purpose credit] program otherwise satisfies the requirements of paragraph (a), then, notwithstanding the prohibitions of §§ 202.5 and 202.6, the creditor may request of an applicant and may consider, in determining eligibility for such program, information regarding the common characteristic(s). [required for eligibility. In such circumstances, the solicitation and consideration of that information shall not constitute unlawful discrimination for the purposes of the Act or this Part.]

9. Section 202.9 is amended as follows:
A. Paragraphs (a)(1) and (a)(2) are revised,

B. Paragraph (b)(1) introductory text, the flush paragraph at the end of (b)(1) and (b)(2) are revised. (The sample ECOA notice which follows (b)(1) remains unchanged.)

C. Paragraphs (b)(3), (d) and (f) are removed.

D. Paragraph (c) is redesignated as new paragraph (d), and the heading for newly designated paragraph (d) is revised, a new paragraph (c) is added.

E. Paragraph (e) is redesignated as paragraph (g).

F. Paragraph (a)(3) is redesignated as new paragraph (e), and (a)(4) would be revised and redesignated as new paragraph (f).

The amended and revised portions of § 202.9 read as follows:

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons.*

(1) *Notification of action taken.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval [of, or adverse action regarding,] or denial of the application [notification of approval may be express or by implication, where, for example, the applicant receives a credit card, money, property, or services in accordance with the application];

(ii) 30 days after [taking adverse action on] denying an [uncompleted] application that is incomplete, unless notice is provided in accordance with § 202.9(c)(2);

(iii) 30 days after [taking adverse action regarding] terminating or changing adversely the terms of an existing account; and

(iv) 90 days after [the creditor has notified] notifying the applicant of an offer to grant credit other than in substantially the amount or on substantially the terms requested by the

applicant if the applicant during those 90 days has not expressly, accepted or used the credit offered.

(2) *Content of notification when credit is denied or terminated.* Any notification given to an applicant [against whom] when credit is denied or when other adverse action is taken shall be in writing and shall contain: a statement of the action taken; a statement of the provisions of section 701(a) of the act; the name and address of the federal agency that administers compliance concerning the creditor giving the notification; and

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of reasons within 30 days [after receipt by the creditor of a request made], if it is requested within 60 days of [such] the creditor's notification; the disclosure [to] shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the [statement of] reasons orally, the [notification shall also include a disclosure of] creditor shall also disclose the applicant's right to [have any oral statement of reasons] having them confirmed in writing within 30 days [after a written] of the applicant's request [for confirmation is received by the creditor].

(b) *Form of ECOA notice and statement of specific reasons.*—(1) *ECOA notice.* [A creditor satisfies] To satisfy the requirements of paragraph (a)(2) regarding [a statement of] the provisions of section 701(a) of the act [and the name and address of the appropriate federal enforcement agency if it provides], the creditor shall provide the following notice or one that is substantially similar:

[The sample notice printed above may be modified immediately following the required references to the federal act and enforcement agency to include references to any similar state statute or regulation and to a state enforcement agency.]

(2) *Statement of specific reasons.* [A] The statement of reasons for adverse action [shall] be required by paragraph (a)(2)(i) must be [sufficient if it is] specific and indicate [s] the principal reason(s) for the adverse action. [A creditor may formulate its own statement of reasons in checklist or letter form or may use all or a portion of the sample form printed below, which, if properly completed, satisfies the requirements of subsection (a)(2)(i).]

Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient. ▶ A creditor may formulate its own statement of reasons in checklist or letter form; sample forms and clauses are provided in Appendix C. ◀

[(3) Other information. The notification required by section (a)(1) may include other information so long as it does not detract from the required content. This notification also may be combined with any disclosures required under other titles of the Consumer Credit Protection Act or any other law, provided that all requirements for clarity and placement are satisfied; and it may appear on either or both sides of the paper if there is a clear reference on the front to any information on the back.]

▶(c) Incomplete applications. (1) Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant (unless the applicant has expressly withdrawn the application) either:

(i) Of action taken, in accordance with § 202.9(a); or

(ii) Of the incompleteness, in accordance with paragraph (c)(2).

(2) A creditor shall send a written notice to the applicant (a sample of which is provided in Appendix C) stating that additional information is needed from the applicant and specifying the information that is needed; designating a reasonable period of time for the applicant to provide the information; and informing the applicant that the failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated period of time. Should the applicant supply the requested information within the designated period of time, the creditor shall take action on the application in accordance with paragraph (a).

(3) At its option, a creditor may inform the applicant orally that additional information is needed, but if the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1). ◀

[(d) Withdrawn applications. Where an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, then the creditor may treat the application as

withdrawn and need not comply with subsection (a)(1).]

[(c)] ▶(d) ◀ Oral notifications ▶ by small-business creditors ◀. . . .

[(a)(3)] ▶(e) ◀ Multiple applicants. . . .

[(f) Notification. A creditor notifies an applicant when a writing addressed to the applicant is delivered or mailed to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.]

[(a)(4)] ▶(f) ◀ Multiple creditors.

[If a transaction involves more than one creditor and the applicant expressly accepts or uses the credit offered, this section does not require notification of adverse action by any creditor. If a transaction involves more than one creditor and either no credit is offered or the applicant does not expressly accept or use any credit offered, then each creditor taking adverse action must comply with this section. The required notification may be provided indirectly through a third party, which may be one of the creditors, provided that the identity of each creditor taking adverse action is disclosed. Whenever the notification is to be provided through a third party, a creditor shall not be liable for any act or omission of the third party that constitutes a violation of this section if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and was maintaining procedures reasonably adapted to avoid any such violation.] ▶ When an application on behalf of the applicant is made to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. In the case of notification by a third party, the identity of each creditor taking adverse action shall be disclosed. ◀

[(e)] ▶(g) ◀ Failure of compliance. . . .

10. Section 202.10 would be revised to read as follows:

§ 202.10 Furnishing of credit information.

▶(a) Designation of account.—(1) New account. Upon establishing an account, a creditor that furnishes credit information shall designate the account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a

guarantor, surety, endorser, or similar party).

(2) Existing account. Within 90 days after receipt of a written request, a creditor shall designate an account to reflect the participation of both spouses.

(b) Routine reports to consumer reporting agency. If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) Reporting in response to request. If a creditor furnishes credit information in response to an inquiry concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

(d) Failure of compliance. A failure to comply with this section shall not constitute a violation when caused by an inadvertent error; provided that, on discovering the error, the creditor corrects it as soon as possible and commences compliance with the requirements of this section. ◀

11. Section 202.12 would be amended by revising paragraph (a) and (b)(1) introductory text and (b)(1)(i) (3) and (4), to read as follows:

§ 202.12 Record retention.

(a) Retention of prohibited information. Retention in a creditor's files of any information, the use of which in evaluating applications is prohibited by the act or this regulation, shall not constitute a violation [of the act or this part where] ▶ if ◀ such information was obtained:

(1) From any source prior to March 23, 1977; or

(2) [At any time] from consumer reporting agencies [; or (3) at any time from] ▶ ◀ an applicant ▶ ◀ or others without the specific request of the creditor; or

[(4)] ▶(3) ◀ [At any time] as required to monitor compliance with the act and this regulation or other federal or state statutes or regulations.

(b) Preservation of records.—(1) For 25 months after the date that a creditor notifies an applicant of action taken on an application ▶ [or of incompleteness, under § 202.9(c)] ◀, the creditor shall retain as to that application in original form or a copy thereof:

(i) Any application [form] that it receives, any information required to be obtained concerning characteristics of an applicant to monitor compliance with

the act and this regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request:

- (ii) * * *
- (iii) * * *

(3) In addition to the requirements of paragraphs (b)(1) and (2), [any] ▶ a creditor [that] ▶ shall retain information as required by those paragraphs if it ◀ has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the act or this regulation ▶, by the U.S. Attorney General or ◀ by an enforcement agency charged with monitoring that creditor's compliance with the act and this regulation, or [that] ▶ if it ◀ has been served with notice of an action filed pursuant to section 706 of the act and [§ 202.1(b) or (c)] ▶ § 20.14 ◀ of this regulations [.,], ▶. The creditor ◀ shall retain the information [required in subsection (b)(1) and (2)] until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

(4) [In any transaction involving more than one creditor any] ▶ When a ◀ creditor ▶ receives an application but is ◀ not required to comply with ▶ the notification requirements of ◀ § 202.9 ▶, ◀ [notifications] ▶ the creditor ◀ shall retain for [the time period specified in subsection (b)] ▶ 25 months ◀ all written or recorded information in its possession concerning the applicant, including [a] ▶ any ◀ notation of action taken [in connection with any adverse action].

12. Section 202.13 would be revised, to read as follows:

§ 202.13 Information for monitoring purposes.

▶ (a) *Information to be requested.*—

(1) Any creditor that receives an application for credit primarily for the purchase, refinancing, repair or improvement of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of any application for such credit the following information regarding the applicant(s):

- (i) Race/national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);
- (ii) Sex;
- (iii) Marital status, using the categories married, unmarried, and separated; and
- (iv) Age.

(2) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium unit, cooperative unit and manufactured (mobile) home.

(b) *Obtaining of information.*

Questions regarding race/national origin, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any of it, that fact shall be noted on the form. The creditor must then also note on the form, to the extent possible, the race of national origin and sex of the applicant(s) on the basis of visual observation or surname.

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) in writing that the information regarding race/national origin, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against applicants on those bases. The written disclosure shall also inform the applicant(s) that the creditor is required to note the race/national origin and sex of the applicant(s) on the basis of visual observation or surname if the applicant(s) chooses not to provide the information. Sample disclosures are contained in Appendix B.

(d) *Substitute monitoring program.*

Any monitoring program required by an agency charged with administrative enforcement under section 704 of the act may be substituted for the requirements contained in paragraphs (a), (b), and (c). ◀

13. Section 202.14 would be added, to read as follows:

§ 202.14 Enforcement, penalties and liabilities.

(a) *Administrative enforcement.* (1) As set forth more fully in section 704 of the act, administrative enforcement of the act and this regulation regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), National Credit Union Administration, Interstate Commerce Commission, Secretary of Agriculture, Farm Credit Administration, Securities and

Exchange Commission, Small Business Administration, and Secretary of Transportation.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the act and this regulation will be enforced by the Federal Trade Commission.

(b) *Penalties and liabilities.* (1) Sections 706(a) and (b) and 702(g) of the act provide that any creditor who fails to comply with any requirement imposed under the act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Liability for punitive damages is restricted to nongovernmental entities and is limited to \$10,000 in individual actions and the lesser of \$500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief, and section 706(d) authorization for the awarding of costs and reasonable attorney's fees to an aggrieved applicant in a successful action.

(2) Sections 706(g) and (h) provide that, if the agencies responsible for administrative enforcement are unable to obtain compliance with the act or this regulation, they may refer the matter to the Attorney General. On such referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the act or this regulation, the Attorney General may bring a civil action. ◀

14. Appendix B would be amended by revising the introductory material, by removing the "Voluntary Information For Government Monitoring Purposes" portion from the "Residential Loan Application", and by inserting in its place "Information For Government Monitoring Purposes", to read as set forth below:

Appendix B—Model Application Forms

This appendix contains five model credit application forms, each designed for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form (which should be removed prior to reproduction). The first sample form is intended for use in open end, unsecured transactions; the second for closed end, secured transactions; the third for closed end transactions, whether unsecured or secured; the fourth for use in transactions involving community property or occurring in community property states; and the fifth for use in secured residential real estate transactions. [The real estate form should be used only when a lender's representative is available to assist an applicant in completing the form.] ▶ The appendix also contains a

model disclosure for use in complying with the disclosure requirements of § 202.13 for certain dwelling-related loans. ◀

The forms contained in this appendix are models; their use by creditors is optional. In all instances, the use or modification of these forms is governed by [202.5(e) of this Part and] the directions contained in this appendix.

▶ If a creditor chooses to use the forms contained in this appendix it may change the forms:

- (1) By asking for additional information not prohibited by § 202.5;
- (2) By deleting any information request; or
- (3) By rearranging the format without modifying the substance of the inquiries; provided that in each of these three instances the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries are included in the appropriate places if the items to which they relate appear on the creditor's form. ◀

[In addition to deleting any information request printed on the forms or rearranging their format, as specified in section 202.5(e), a creditor is expressly permitted to modify any of the model forms contained in this Appendix by adding any of the following three items:

- (1) an inquiry about the names in which the applicant has previously received credit as authorized in § 202.5(c)(3);
- (2) A request to designate a courtesy title as authorized in § 202.5(d)(3); or
- (3) an inquiry about an applicant's permanent residence and United States immigration status as authorized by § 202.5(d)(5).]

▶ If a creditor uses an appropriate Appendix B model form or to the extent that it modifies such a form in accordance with the provisions and instructions contained in this appendix, that creditor shall be deemed to be acting in compliance with the provisions of paragraph (c) and (d) of § 202.5 of this regulation. ◀

[The fifth form contained in this appendix, the model residential real estate mortgage loan application, was prepared in conjunction with the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. It is substantially identical to the joint FHLMC 65/FNMA 1003 Rev. 3/77 form, except for type face and the inclusion of the FHLMC/FNMA form of certain items required by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association. If a creditor wishes to participate in the secondary mortgage market involving the Federal Home Loan Mortgage Corporation, Federal National

Mortgage Association, or Government National Mortgage Association, it should either modify the model form as specified by the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association or use form FHLMC 65/FNMA

1003 (Rev. 3/77) with supporting schedule FHLMC 65A/FNMA 1003A. Use of the FHLMC 65/FNMA 1003 (Rev. 3/77) form constitutes full compliance with paragraphs (c) and (d) of § 202.5 of this Part.]

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government for a loan related to a dwelling in order to monitor the lender's compliance with equal credit opportunity and fair housing laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish the information, under federal regulations this lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the information, please initial below.

BORROWER: I do not wish to furnish this information (initials) _____

RACE/ ☐ American Indian, Alaskan Native ☐ Asian, Pacific Islander

NATIONAL ☐ Black ☐ Hispanic ☐ White

ORIGIN ☐ Other (specify) _____ SEX ☐ FEMALE ☐ MALE

CO-BORROWER: I do not wish to furnish this information (initials) _____

RACE/ ☐ American Indian, Alaskan Native, ☐ Asian, Pacific Islander

NATIONAL ☐ Black ☐ Hispanic ☐ White

ORIGIN ☐ Other (specify) _____ SEX ☐ FEMALE ☐ MALE

15. Appendices C and D would be added, to read as follows:

▶ Appendix C—Sample Notification Forms

This appendix contains ten sample notification forms. The sample forms in C-1 through C-8 are intended for use in notifying an applicant that credit has been denied. The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider.

If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed.

For example, some creditors consider only bank references (and disregard finance company references altogether); their statement of reasons should disclose "insufficient bank references" (not "insufficient credit references"). Similarly, a creditor that considers bank references and other credit references as separate factors should treat the two factors separately and disclose them as appropriate. The creditor should either add those other factors to the form or check "other" and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say "length of

residence" rather than "too short a period of residence."

The sample forms in C-9 and C-10 are designed for use in notifying an applicant that their application is incomplete and is subject to denial or no further consideration if not completed. Use of these forms constitutes full compliance with paragraph (c) of § 202.9.

Appendix C

Form C-1—Notification of Action Taken

Statement of Credit Denial, Termination, or Change

Date _____
Applicant's Name: _____
Applicant's Address: _____
Description of Account, Transaction, or Requested Credit: _____

Description of Action Taken: _____

Part I—Principal Reason(s) for Credit Denial, Termination, or Other Action Taken Concerning Credit. This section must be completed in all instances.

- Credit application incomplete
- Provided too few credit references
- Credit references are insufficient
- Unable to verify credit references
- Temporary or irregular employment
- Unable to verify employment
- Length of employment
- Amount of credit requested excessive for income
- Excessive obligations in relation to income
- Unable to verify income
- Length of residence
- Temporary residence
- Unable to verify residence
- No credit history
- Insufficient credit history
- Poor past credit performance with us
- Delinquent past or present credit obligations with others
- Garnishment, attachment, foreclosure, repossession, collection action, or judgment
- Bankruptcy
- Value of type of collateral not sufficient
- Other, specify: _____

Part II—Disclosure of Use of Information Obtained From an Outside Source. This section need only be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. The reporting agency that provided information played on part in the creditor's decision and is unable to supply specific reasons why credit was denied. You do, however, have a right to inspect and receive a copy of the information in your credit file at the consumer reporting agency, upon making a request.

Name: _____
Address: _____

Telephone number: _____

Our credit decision was based in whole or in part on information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of the adverse information obtained from an outside source other than a consumer reporting agency.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____
Creditor's address: _____
Creditor's telephone number: _____

You should know that: [ADD ECOA NOTICE]

Form C-2—Notification of Action Taken

Statement of Credit Denial, Termination, or Change

Date _____
Applicant's Name: _____
Applicant's Address: _____
Description of Account, Transaction, or Requested Credit: _____

Description of Action Taken: _____

Part I—Principal Reason(s) For Action Taken Concerning Credit. This section must be completed in all instances.

- Offered down payment insufficient
- Provided us with insufficient bank references
- Appraised value of property insufficient
- Other, specify: _____

Part II—Disclosure of Use of Information Obtained From Outside Source. This section need only be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

In evaluating your application, we contacted the credit reporting agency listed below, and the information they provided affected our decision. You have a right to know the information they provided to us. To learn about this information, please contact:

Name: _____
Address: _____

In evaluating your application, we obtained information about you from a person or business, and the information they provided affected our decision. You have a right to know the information provided to us by that person or business if you write to us and request it within 60 days. Please write to us at our office address.

[ADD ECOA NOTICE]

Form C-3—Notification of Action Taken

Date _____
Applicant's Name and Address _____

Dear Applicant: Thank you for recent application. Your request for [a loan/a credit card/ an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income: _____

- is below our minimum guidelines.
- is insufficient to sustain payments on the amount of credit requested.
- reveals that current obligations are excessive in relation to income.
- could not be verified.

Your employment: _____

- length of employment is not sufficient to qualify at this time.
- could not be verified.

Your Credit history: _____

- history of making payments when due
- was not satisfactory.
- could not be verified.

Your Application: _____

- lacks sufficient credit references.

Other: _____

The consumer credit reporting agency contacted that provided information which influenced our decision in whole or in part was [name, address and telephone number of the credit bureau]. Any questions regarding information contained on your consumer credit report should be directed to [credit bureau].

If you have any questions regarding this letter you should contact us at [creditor's name address and telephone number].

You should know that: [ADD ECOA NOTICE]

Form C-4—Statement of Denial

Date _____
Dear Applicant: Thank you for your request of June 14, 19XX for a loan in the amount of \$9,500 to purchase a new automobile.

I regret that we cannot grant you the funds you requested. We require that loan customers have a satisfactory history of repaying previous debts in a timely fashion. Your credit report showed that you have not paid previous borrowings on time.

In considering your application we obtained a credit report from the XYZ Credit Bureau located at XXX Main Street, Anytown, Anystate, which affected our decision. Their telephone number is XXX-XXXX.

You should know that the federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions), because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in Appendix A].

I regret that we could not be of service to you at this time.

Sincerely,

Credit Officer

Form C-5—Statement of Denial and Counteroffer

Date _____

Dear Applicant: We have received your application for credit. We are unable to offer you credit on the terms that you requested for the following reason(s):
We can, however, offer you credit on the following terms:

If this offer is acceptable to you, please notify us within [amount of time].

[Add FCRA disclosure, if applicable]

[ADD ECOA NOTICE]

Form C-6—Statement of Denial and Counteroffer

Date _____

Dear Applicant: Thank you for your application for a home improvement loan in the amount of \$45,000.

I regret that we are unable to grant you the amount of credit you have requested. It is the policy of our firm to grant home improvement loans for a maximum term of 15 years and you have requested the loan for 20 years.

We would be pleased to make you the loan in the amount you requested for a term of 15 years at a rate of _____% which would require monthly payments of \$_____ for 180 months. If you would like to accept this offer please notify us no later than _____.

You should know that the federal government prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, sex, marital status, age or because they receive income from a public assistance program or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name of agency], XXX Street, Anytown, Anystate XXXXX, (XXX) XXX-XXXX.

We look forward to hearing from you by _____.

Sincerely,

Credit Officer

Form C-7—Statement of Reasons for Denial (Credit Scoring)

Date _____

Dear Applicant: Thank you for your recent application for _____.

We regret that we are unable to approve your request.

Your application was processed by a credit scoring system which assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The areas in which you did not score well compared to other applicants were:

- * Bank references
- * Occupation
- * Credit rating

In evaluating your application we obtained information from a credit reporting agency that in whole or in part influenced our decision. The credit reporting agency played no part in our decision other than providing us with credit information about you. You have a right to know the information

provided to us. It can be obtained by contacting:

Name: _____

Address: _____

City: _____

Telephone: _____

Sincerely,

Notice: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in Appendix A].

Form C-8—Disclosure of Right To request Specific Reasons for Credit Denial

Date _____

Dear Applicant: Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open account/grant loan/increase credit limit] to you at this time.

If you would like a statement of specific reasons why your application was denied, please contact us within 60 days of the date of this letter. We will provide you with the reasons within 30 days after your request. Please contact us at:

Creditor's name _____

Creditor's address _____

Creditor's telephone number _____

If a consumer reporting agency was used in connection with your application, its name, address, and telephone number is shown below. You can find out about the information contained in your file (if one was used) by contacting:

Credit Bureau: _____

Phone: _____

Sincerely,

[ADD ECOA NOTICE]

Form C-9—Notice Regarding Incompleteness of Application and Request for Additional Information

Date _____

Dear Applicant: We have received your application for credit. The following information is needed to make a decision on your application:

We need to receive this information by (date). If we do not receive it by that date, we will regrettably be unable to grant you the credit requested.

Sincerely,

Credit Officer

Form C-10—Notice Regarding Incomplete Application and Request for Additional Information

Date _____

Dear Applicant: Thank you for your application for a loan in the amount of \$8,500 to purchase a new car.

In order to make a decision on whether we can grant you the amount you have requested we need some additional information about your income. Since you are self employed we would like to have copies of your tax returns for the past two years. As soon as we receive this information we will resume consideration of your request.

If we do not receive the information from you by _____, I regret we will be unable to grant you the loan on the basis of the current application.

Sincerely,

Credit Officer

Appendix D—Issuance of Staff Interpretations

Official Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulations. These interpretations provide the protection afforded under section 706(e) of the act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

Requests for Issuance of Official Staff Interpretations

A request for an official staff interpretation should be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No staff interpretations will be issued approving creditors' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

16. Supplement I is revised and redesignated as Appendix E, to read as follows:

Appendix E—State Exemption

Application

Any state may apply to the Board for a determination that a class of transactions subject to state law is exempt from the requirements of the act and this regulation. An application must be in writing and signed by the appropriate state official. It should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Supporting Documents

An application should be accompanied by: (1) The text of the state statute or regulation that is the subject of the application, and any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies it.

(2) A comparison of the state law with the corresponding provisions of the federal law.

(3) The text of the state statute or regulation that provides for civil and criminal liability and administrative enforcement of the state law.

(4) A statement of the provisions for enforcement, including an identification of the state office that administers the relevant law, information on the funding and the number and qualifications of personnel engaged in enforcement, and a description of the enforcement procedures to be followed, including information on examination procedures, practices, and policies. If an exemption application extends to federally chartered institutions, the applicant must furnish evidence that arrangements have been made with the appropriate federal agencies to ensure adequate enforcement of state law in regard to such creditors.

(5) A statement of reason to support the applicant's claim that an exemption should be granted.

Public Notice of Application

Notice of an application will be published, with an opportunity for public comment, in the *Federal Register*, unless the Board finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision.

Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), all applications made, including any documents and other material submitted in support of the application, will be made available for public inspection and copying. A copy of the application also will be made available at the Federal Reserve Bank of each District in which the applicant is situated.

Favorable Determination

If the Board determines on the basis of the information before it that an exemption should be granted, notice of the exemption will be published in the *Federal Register*, and a copy furnished to the applicant and to each federal official responsible for administrative enforcement.

The appropriate state official shall inform the Board within 30 days of any change in its relevant law or regulations. The official shall file with the Board such periodic reports as the Board may require.

The Board will inform the appropriate state official of any subsequent amendments to the federal law, regulation, interpretations, or enforcement policies that might require an amendment to state law, regulation, interpretations, or enforcement procedures.

Adverse Determination

If the Board makes an initial determination that an exemption should not be granted, the Board will afford the applicant a reasonable opportunity to demonstrate further that an exemption is proper. If the Board ultimately finds that an exemption should not be granted, notice of an adverse determination will be published in the *Federal Register* and a copy furnished to the applicant.

Revocation of Exemption

The Board reserves the right to revoke an exemption if at any time it determines that

the standards required for an exemption are not met.

Before taking such action, the Board will notify the appropriate state official of its intent, and will afford the official such opportunity as it deems appropriate in the circumstances to demonstrate that revocation is improper. If the Board ultimately finds that revocation is proper, notice of the Board's intention to revoke such exemption will be published in the *Federal Register* with a reasonable period of time for interested persons to comment.

Notice of revocation of an exemption will be published in the *Federal Register*. A copy of such notice will be furnished to the appropriate state official and to the federal officials responsible for enforcement. Upon revocation of an exemption, creditors in that state shall then be subject to the requirements of the federal law.

(6) *Text of proposed official staff commentary.* The proposed Official Staff Commentary on Regulation B (ECO-1, Supp. I to 12 CFR Part 202) reads as follows:

OFFICIAL STAFF COMMENTARY—ECO-1

Introduction

1. *Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Federal Reserve System. This commentary is the vehicle by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation B. Good faith compliance with this commentary affords protection under section 706(e).

2. *Issuance of interpretations.* Any person may request an official staff interpretation. Interpretations will be issued at the staff's discretion and incorporated in this commentary following publication for comment in the *Federal Register*. Official staff interpretations will be issued only by means of this commentary.

3. *Status of previous interpretations.* Interpretations of Regulation B previously issued by the Federal Reserve Board and its staff have been incorporated into this commentary as appropriate. All other previous Board and staff interpretations, official and unofficial, are superseded by this commentary, effective —.

4. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to § 202.7(d) are further divided by subparagraph, such as comment 7(d)(3)-1 and 7(d)(3)-2.

Section 202.1 Authority, Scope, and purpose.

1(a) Authority and scope.

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply broadly to all credit—commercial as well as personal—without regard to the nature or type of the credit or creditor. If a transaction provides for the deferral of the payment of a debt, it is credit

covered by Regulation B even though it may not be a credit transaction covered by Truth in Lending (Regulation Z). Further, the definition of creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Truth in Lending. Moreover, the act, and regulation apply to all methods of credit evaluations, whether performed judgmentally or by use of a credit scoring system.

1(b) Purpose.

1. *Footnotes.* Footnotes shall have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

Section 202.2 Definitions.

2(c) Adverse action.

Paragraph 2(c)(1)(ii).

1. *Termination.* When a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is "adverse action" for purposes of the regulation unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases where termination is adverse action, notification is required under § 202.9.

2. *Classification of accounts.* Under the "classification of accounts" exception, a creditor that terminates an entire category of credit plans, such as all overdraft checking lines or an open-end credit card program, has not taken adverse action on the accounts terminated. But a creditor must give adverse action notices when the classification terminated is only a narrow group or subgroup of accounts. For example, if a creditor terminates revolving credit accounts that have low credit limits (e.g., under \$400) but keeps open other accounts with higher credit limits, the creditor must comply with the adverse action notification provisions as to the accounts terminated.

Paragraph 2(c)(2)(ii).

1. *Exercise of due-on-sale clauses.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat both the mortgagor and the transferee as being in default. It does not have to give an adverse action notice to either party. (See commentary to § 202.2(e) for treatment of a purchaser who request to assume the loan.)

Paragraph 2(c)(2)(iii).

1. *Point-of-sale transactions.* Denial of credit at the point of sale does not constitute adverse action except for circumstances that are specified in the regulation. For example, denial at point of sale is not adverse action in the following situations:

- A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.
- The amount of a transaction exceeds a cash advance or credit limit.
- The circumstances (such as excessive use of a credit card in a short period of time) suggest that fraud is involved.
- The card issuer's authorization facilities are not functioning.

• Billing statements have been returned to the creditor for lack of a forwarding address. Paragraph 2(c)(2)(v).

1. *Type of credit for credit plan.* Denial of credit is not adverse action if the credit terms requested differ so much from a creditor's normal credit programs as to represent a type of credit or credit plan not offered by the creditor. For example:

• An applicant requests an open-end line of credit secured by equity in the applicant's home. The creditor makes equity loans but does not offer any open-end credit plan.

However, if the applicant requests a type of credit offered by the creditor but on terms that the creditor does not offer, the creditor's denial of the application is adverse action. For example:

• An applicant requests mortgage credit and requests a loan guarantee under a particular government program. Although the creditor does not participate in that particular guarantee program, it does make mortgage loans.

• An applicant requests an unsecured loan to buy a boat. Although the creditor requires that it receive a security interest in the boat, it does make boat loans.

The creditor's rejection of these applications requires notification under § 202.9(a)(1) and (2).

2(e) Applicant.

1. *Request to assume loan.* If a mortgagor sells or transfers the property securing a mortgage loan and buyer/transferee makes an application to the creditor to assume the mortgage loan, the creditor must treat the buyer/transferee as a new applicant.

2(f) Application.

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *"Procedures established."* The term refers to the actual practices followed by a creditor for making credit decisions—not just its formally stated application procedures. For example, if a creditor has a stated policy requiring all applications to be in writing on the creditor's application form, but does make credit decisions based on oral requests, that creditor takes both oral and written applications, and must act in accordance with § 202.9 for both types of applications.

3. *When an inquiry becomes an application.* A creditor is encouraged to provide consumers with information about loan terms. If, however, when giving information to the consumer the creditor also evaluates information about the applicant, determines to decline the request and communicates this to the applicant, it has treated the inquiry as an application and must then provide the applicant with the reasons for denial. Thus, whether the inquiry becomes an application depends on how the creditor responds to the applicant, not on what the applicant says or asks, as illustrated below:

• If a consumer calls to ask about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan to value ratio, and debt to income ratio, no application has occurred. The employee has only given out information about the creditor's policies.

• If a consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sales price of the car and amount of the downpayment, then gives the consumer the rate, no application has occurred. The loan officer asked and used information about the transaction only to give the correct interest rate.

• If a consumer asks about terms for a loan to purchase a home and tells the loan officer her income and intended downpayment, but the loan officer only explains the creditor's loan to value ratio policy and other basic lending policies, no application has occurred. The loan officer has provided the consumer with information but has not told the consumer whether or not she qualifies for the loan.

• If a consumer calls to ask terms for a loan to purchase vacant land and states his income, the sale price of the property to be financed, and asks whether he qualifies for a loan, and the employee responds by describing the general lending policies, explains that he would need to look at all of the applicant's qualifications before making a decision and offers to send an application form to the consumer, no application has occurred. However, should the employee instead explain to the caller that his stated income is not sufficient to qualify for the loan amount he is requesting, an application has occurred. The employee has made a credit decision and communicated it to the consumer. The employee should then explain to the consumer that the loan cannot be approved because of the debt to income ratio and offer to send the consumer a written notice of denial if the consumer wishes to receive it.

4. *Completed application—diligence requirement.* The regulation defines completed application in terms that give a creditor the latitude to establish its own information requirements, but the creditor must act with diligence to collect any information needed to complete the application. For example, the creditor should request information from third parties, such as credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or telephone number needed to verify employment, the creditor should contact the applicant promptly.

2(j) Credit.

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z because the definition of credit is broader than the definition of credit in Regulation Z (Truth in Lending). For purposes of Regulation B a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge. There is no numerical test as in the case of Regulation Z.

2(l) Creditor.

1. *Officers and employees.* The term "creditor" includes employees or officers of the creditor who regularly participate in deciding whether to extend credit. Such individuals can be held personally liable for violations of the act or regulation.

2. *Assignees.* The term "creditor" includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether it will purchase the obligation if the transaction is consummated. The term also includes a purchaser who makes its credit criteria known to the credit originator.

3. *Referrals to creditors.* For certain purposes, the term "creditor" includes persons such as real estate brokers who do not participate in credit decisions but who regularly refer applicants to creditors, or who select or offer to select creditors to whom credit requests can be made. These persons need comply only with § 202.4, the general rule prohibiting discrimination, and with § 202.5(a) on discouraging applications.

2(p) Empirically derived and other credit systems.

1. *Purpose of definition.* The definition under § 202.2(p)(2) sets forth the criteria that a credit system must meet in order to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems, and may consider age only for the purpose of determining a "pertinent element of creditworthiness." Either system may favor an elderly applicant. (See § 202.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. To meet the requirements for statistical soundness, the credit scoring system should be revalidated frequently enough to assure that it continues to meet recognized professional statistical standards.

2(z) Prohibited basis.

1. *Persons related to applicant.* "Prohibited basis" as used in this regulation refers to the race, color, religion, national origin, sex, marital status, or age of an applicant (or officers of an applicant in the case of a corporation). The term also refers to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in § 202.4, a creditor may not discriminate against an applicant because of that person's business dealings with members of a certain religion, because of the national origin of persons to whom the extension of credit relates (e.g., the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country, but may take the applicant's immigration status into account. (See the commentary to § 202.6(b)(7).) A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or governments) of certain countries, or imposing limitations regarding credit extended for their use. Regulation B does not directly address whether a creditor could deny credit on the grounds that the applicant is not a United States citizen, but such a policy could violate 42 U.S.C. 1991 (Civil Rights Act of 1968).

3. *Public assistance program.* Any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is "public assistance" for purposes of the regulation. The term includes (but is not limited to) Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Supplemental Security Income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable must consider Medicare and Medicaid as public assistance income.

Section 202.3 Limited exceptions for certain classes of transactions.

1. *Scope.* The reduction in requirements provided in this section relieves burdens on several types of credit for which full application of the procedural requirements would be inappropriate. All classes of transactions remain subject to the general rule against discrimination on a prohibited basis, and any other provision not specifically excepted.

3(a) *Public utilities credit.*

1. *Definition.* This definition applies only to credit for the purchase of the utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—for financing the purchase of durable goods, such as a gas dryer or telephone equipment, or for home improvements such as insulation—is not exempt.

2. *Security deposits.* A utility company is a creditor if it supplies utility service and bills the user after the service has been provided. Hence a requirement for a security deposit, for example, is a credit term subject to the regulation.

3(c) *Incidental credit.*

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer or small retailer) allows the client or customer to defer the payment of a bill, this deferral of a debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are exempt from compliance with many of the procedural requirements of the regulation.

3(d) *Business credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. If it is not clear that a transaction is primarily for business, commercial, or agricultural purposes, then the transaction does not qualify under this section. For example, credit for the purchase or improvement of rental property may not be business credit unless it is clear that the applicant is in the business of dealing in rental property. Similarly, an open-end credit account used for both personal and business purposes should not be treated as business credit unless the predominant purpose of the account is business-related.

Paragraph 3(d)(3).

1. *Notification.* A creditor must in all cases notify the business credit applicant of a credit denial or other adverse action. This

notification may be written or oral, but it must be given within a reasonable time after the decision is made.

3(e) *Governmental credit.*

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended by a creditor in the private sector to a local government is covered by this exception, but credit extended by a federal or state housing agency to consumers does not qualify for special treatment under this category.

Section 202.4 General rule prohibiting discrimination.

1. *Scope of section.* Other provisions of the regulation identify specific practices that are expressly prohibited by the act or that are impermissible because they could result in credit discrimination on a basis prohibited by the act. The general rule stated in this section covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. It covers, for example: application procedures, criteria used to evaluate creditworthiness, communications with the applicant, administration of accounts, and treatment of delinquent or slow accounts. Thus, a credit practice that differentiates among applicants on a prohibited basis violates the act because it violates the general rule set forth in this section—even though the practice is not specifically prohibited in the regulation.

Section 202.5 Rules concerning taking of applications.

5(a) *Discouraging applications.*

1. *Potential applicants.* Generally, the regulation's protections apply only to applicants, persons who have requested or received an extension of credit. In keeping with the purpose of the act—to require that a creditor not discriminate on a prohibited basis in making credit equally available to all credit-worthy persons—section 202.5(a) covers certain acts or practices directed at potential applicants. It bars the creditor from an act or practice that would discourage someone, on a prohibited basis, from applying for credit. Examples of practices prohibited by this section include:

- A statement that the applicant shouldn't bother to apply, after the applicant states that he is retired.
- A pattern of using advertisements illustrated with people of only one race in a community that is multi-racial.
- Use of phrases or symbols that are known to exclude or offend a particular racial or ethnic group.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of protected groups to apply for credit, especially groups that might not normally seek credit from that creditor.

5(b) *General rules concerning requests for information.*

Paragraph 5(b)(1).

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section 202.6 governs how information may be used.

5(d) *Information a creditor may not request.*

Paragraph 5(d)(1).

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

- The applicant's obligation to pay alimony, child support, or separate maintenance.
- The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.
- Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.
- The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2).

1. *Appropriate disclosure.* The sample application forms in Appendix B to the regulation illustrate how a creditor can inform applicants of their right not to disclose alimony, child support, or separate maintenance income.

2. *Specific inquiry about income.* When it inquires about income, a creditor need not give the disclosure about alimony and the like if the inquiry is worded in a way that would not lead the applicant unintentionally to disclose alimony, child support or separate maintenance payments. For example, an inquiry asking the applicant to list specific types of income such as salary, wages, or investment income need not be prefaced by the disclosure. But if the application form asks for salary or wages, the creditor should also provide space for the applicant to report income from other sources.

5(e) *Application forms.*

1. *Requirement for written applications.* The requirement of written applications for certain types of dwelling-related loans specified in section 202.13 is intended to assist the federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act. A creditor will satisfy the requirement for taking written applications by writing down the information that it normally considers in making a credit decision. Model application forms are provided in Appendix B, although use of a form is not required.

2. *Telephone applications.* A creditor who accepts applications by telephone for dwelling-related credit covered by § 202.13 can meet the requirements for written applications by writing down the information that is provided orally by the applicant. The creditor should also note on the form or other application record that the application was received by telephone.

Section 202.6 Rules concerning evaluation of applications.

6(a) *General rule concerning use of information.*

1. *Scope of rule.* When evaluating an application for credit, a creditor may generally use or consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 202.5

from obtaining. There are certain limited exceptions for considering age, under § 202.6(b)(2), and other exceptions for special purpose credit, under § 202.8.

2. Effects test. The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964. Congress intended this doctrine to be applicable to a creditor's determination of creditworthiness. This Congressional intent is documented in the Senate Report that accompanied H.R. 6516, No. 94-589, pp. 4-5; and in the House Report that accompanied H.R. 6516, NO. 94-210, p. 5. Thus, the act and regulation prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a protected class, even though the creditor has no intent to discriminate, and even though the practice appears neutral on its face. The fact that a credit standard has a disproportionately negative impact on a prohibited basis does not make it necessarily unlawful if use of the standard meets a legitimate business need that cannot be achieved by means that are less disparate. For example, requiring that applicants have incomes in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and non-minority applicants. So long as there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, use of the income standard will likely be permissible. However, to lessen the potential negative impact on protected groups, a creditor might make adjustments that will still serve its business purposes, for example, by establishing a lower credit limit for those with lower incomes.

6(b) Specific rules concerning use of information.

Paragraph 6(b)(1).

1. Prohibited basis—marital status. A creditor may not use marital status as a basis for determining the applicant's creditworthiness. However, a creditor may consider an applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

2. Prohibited basis—special purpose credit. A creditor may in some cases consider a "prohibited basis" to determine whether the applicant possesses the characteristic needed for eligibility in a special-purpose credit program. (See § 202.8.)

Paragraph 6(b)(2).

1. Favoring the elderly. In any system of evaluating creditworthiness, a creditor may take age into account for the purpose of favoring a credit applicant who is age 62 or older.

2. Consideration of age in a credit scoring system. Age may be taken directly into account in a credit scoring system that is "demonstrably and statistically sound," as defined in § 202.2(p), with one limitation: an applicant who is 62 years or older must be

treated at least as favorably as anyone who is under age 62.

3. Consideration of age in a judgmental system. Any credit scoring system that does not meet the definition in § 202.2(p)(2) is a judgmental system. In a judgmental system, a creditor may not take age directly into account in any aspect of the credit transaction. For example, a creditor may not reject an application or terminate an account because the applicant is approaching age 60, nor base the number of years for maturity of a mortgage on whether the applicant is 35 or 55 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. For example:

- A creditor may take into account information such as the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.
- A creditor may consider age to ascertain the adequacy of a security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. (An elderly applicant might not qualify for a 5 percent down, 30 year mortgage loan, but might qualify with a large downpayment or a shorter loan maturity.)
- A creditor may consider an applicant's age to assess the significance of the applicant's length of employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-time residence).

4. Use of a combined system. A creditor that uses a credit scoring system that qualifies under § 202.2(p) may also consider other factors (such as a credit report or the applicant's cash flow) on a judgmental basis. Doing so will not affect the classification of the credit scoring system as "demonstrably and statistically sound." However, in the judgmental evaluation, the creditor may consider age only for the purpose of determining a "pertinent element of creditworthiness."

5. Consideration of public assistance. When considering income derived from a public assistance program, a creditor may take into account, for example:

- The length of time an applicant will likely remain eligible to receive such income.
- Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (e.g., Aid to Families with Dependent Children of Social Security payments to a minor).
- Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5).

1. Consideration of individual applicant. Certain types of income—such as income derived from part-time employment, alimony, child support or separate maintenance, retirement benefits, or public assistance—must be evaluated on an individual basis, not based on aggregate statistics. A creditor must assess the reliability or unreliability of an

applicant's income on the applicant's actual history, not on statistical measures derived from a group.

2. Payments consistently made. In determining the likelihood of consistent payments of alimony, child support or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available to the creditor.

3. Consideration of income. There are several acceptable methods for considering income, whether in a credit scoring or a judgmental system:

- A creditor can score or consider the amount of all income stated by the applicant without taking steps to evaluate the income.
- A creditor can evaluate each component of the applicant's income, and then score or consider reliable income separately from income that is not reliable, or the creditor may disregard a portion of income to the extent that it is not reliable before aggregating it with reliable income.
- A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income not evaluated.

In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income.

4. Part-time employment, sources of income. A creditor may take into account the fact that an applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently from earned income from a primary source. However, the creditor may not score or otherwise take into account the number of sources with respect to income from protected sources, e.g., retirement income, social security, alimony. Nor may the creditor treat negatively the fact that an applicant's only source of earned income is derived from a part-time job.

Paragraph 6(b)(6).

1. Types of credit references. A creditor has the latitude to set reasonable restrictions on the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. However, a creditor may not refuse to consider credit information solely because it is from another creditor (such as a credit union that does not regularly report credit history) rather than from a credit bureau. If a creditor denies an application because the applicant's credit references are not among the types that the creditor accepts, the statement of reasons given to the applicant must be specific on this point. (See the commentary to § 202.9.)

Paragraph 6(b)(7).

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider and differentiate, for example, between a noncitizen who is a long-term resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

Section 202.7 Rules Concerning Extensions of Credit

7(a) Individual accounts.

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. However, the creditor may condition the designation by the account holder of an authorized user on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation based on relationships that discriminate on a prohibited basis. For example, if the creditor accepts the designation of an applicant's spouse as an authorized user, it may not refuse to accept a non-spouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the account assume liability for any overdraft.

7(b) Designation of name.

1. *Single name on account.* A creditor may require that joint applicants on an open-end account designate a single name for purposes of administering the account and that a single name be embossed on the credit card(s) issued on the account. But the creditor may not require that the name be the husband's name. (See § 202.10 for rules governing the furnishing of credit history on accounts held by spouses.)

7(c) Action concerning existing open end accounts.

Paragraph 7(c)(1).

1. *Termination coincidental with marital status change.* When there is a change in an account holder's marital status, a creditor generally may not terminate an account unless it has evidence that the account holder is unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in the account holder's marital status, when one or both spouses:

- Repudiate responsibility for future charges on the account.
- Request separate accounts in their own names.
- Request that the account be closed.

Paragraph 7(c)(2).

1. *Procedure pending reapplication.* A creditor may require a reapplication from a contractually liable party, even when there is no evidence of unwillingness or inability to

repay, if the credit was based on the qualifications of an applicant who is no longer available to support the credit. The creditor may specify a reasonable time period within which the consumer must submit the required information. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may terminate, suspend, or otherwise restrict access to a contractually liable party only as permitted by § 202.7(c)(1).

2. *Updating information.* A creditor may periodically request updated information from applicants, but may not use events related to a prohibited basis—such as an applicant's retirement or change in name, marital status, or age—to make such a request.

7(d) Signature of spouse or other person.

1. *Qualified applicant.* The signature rules assure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant applies for individual credit but does not alone meet a creditor's standards, the creditor may require a cosigner, guarantor or the like—but cannot require that it be the spouse. (See commentary to § 202.7(d)(5) and (6).)

Paragraph 7(d)(1).

1. *Joint applicant.* The term "joint applicant" refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to a person whose signature is required by a creditor as a condition for granting credit under § 202.7(b)(5).

Paragraph 7(d)(2).

1. *Jointly owned property.* In determining the value of the applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition and the cost of such action. If the applicant's interest in the property does not support the amount and terms of credit sought, the creditor may give the applicant some other option of providing additional support for the extension of credit. For example:

- Offering the signature of the co-owner of the property on an instrument to assure access to the property, but not to impose personal liability.
- Requiring an additional party under § 202.7(d)(5).

- Offering to grant the applicant's request on a secured credit basis.

Paragraph 7(d)(3).

1. *Permissible questions.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may:

- Assume that the applicant is a resident of the state, unless the applicant indicates otherwise.
- Ask the applicant's marital status.
- Obtain any information about the spouse of an applicant that may be requested about an applicant.

2. Consideration of community income.

Under the equal management laws of some community property states each spouse, acting alone, may have the power to manage and control all of the community property, including the earnings of the other spouse. In such a state, if one spouse requests unsecured credit relying on the nonapplicant's earnings, a creditor must treat the income as community property. It may not require the signature of the nonapplicant spouse on the application, note, or other credit instrument.

Paragraph 7(d)(4).

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require them to do so.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to assure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be required to sign the integrated instrument if the signature is only needed to perfect the security. But the spouse could be asked to sign an integrated instrument which makes clear that the spouse's signature is only to perfect security and that signing the instrument does not impose personal liability. For example, a legend placed next to the spouse's signature could make clear that the signature is only to perfect security and does not impose personal liability.

Paragraph 7(d)(5).

1. *Qualifications of cosigners.* In establishing guidelines for eligibility of cosigners, a creditor may restrict the applicant's choice of cosigners but may not discriminate on the basis of sex, marital status or any other prohibited basis. For example, the creditor could require that the cosigner live in the creditor's market area, but not that the spouse be the cosigner.

2. *Income of another person.* An applicant who requests individual credit relying on the income of another person (such as a spouse) may be required to provide the signature of that other person to make the income available to pay the debt. In community property states, the signature may be required if the applicant relies on the separate income of another person, i.e.,

income or other property that, as a matter of state law, is not community property.

3. *Renewals.* When a fixed-term credit obligation is renewed, a creditor may not carry forward, or continue to require the signature of a cosigner or other additional party unless the creditor determines the applicant's creditworthiness at renewal continues to warrant an additional party.

Paragraph 7(d)(6).

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. The rules contained in § 202.7(d) bar a creditor from requiring the signature of a guarantor's spouse in the same way that they bar the creditor from requiring the signature of an applicant's spouse. For example, when all officers of a closely held corporation are required to personally guarantee a corporate loan, an officer who is married may not be required to provide the signature of the spouse if no additional signatures would be sought from an unmarried officer.

7 (e) Insurance.

1. *Differentiation.* Differentiation in the availability, rates, and terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used, however, for determining eligibility and premium rates for insurance, and not in making the credit decision.

Section 202.8 Special Purpose Credit Programs

8(a) Standard qualified programs.

1. *Determining qualified programs.* The Board does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an "economically disadvantaged class of persons." The agency or creditor administering or offering a loan must make these decisions regarding the status of its program.

2. *Compliance with program authorized by federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by the administering government agency implementing a special-purpose credit program under § 202.8(a)(1). The responsibility lies with the administering agency to promulgate a regulation that is consistent with applicable federal and state law.

3. *Expressly authorized.* A credit program expressly authorized by federal or state law includes programs authorized by federal, state and local statute, regulation or ordinance, or by judicial or administrative order.

8(b) Rules in other sections.

1. *Applicability of rules.* A creditor that denies an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must still notify the applicant of action taken as required in § 202.9.

8(c) Special rule concerning requests and use of information.

1. *Example.* Examples of programs under which the creditor can ask for and consider information related to a prohibited basis are:

- Energy conservation improvements credit programs for the elderly, for which the creditor must consider the applicant's age.
- Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must ask and consider the applicant's minority status.

8(d) Special rule in the case of financial need.

1. *Examples.* Examples of programs in which financial need is a criterion are:

- Housing subsidy programs for low to moderate income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's income, etc.
- Student loan program based on the family's financial need, for which a creditor may have to consider the spouse's financial resources.

2. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as guarantor when it is required by federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See § 202.7(d)(1) and (5).) A signature may not be required when a student has a work or credit history that satisfies the creditor's standards.

Section 202.9 Notifications

1. *Withdrawn applications.* If an applicant expressly withdraws a credit application, the creditor is relieved of the notification requirements under § 202.9. The creditor must, however, comply with the record retention requirements of the regulation. (See § 202.12(b)(4).)

2. *Form of notice.* The information for notifications required under § 202.9 may appear on either or both sides of a paper if there is a clear reference on the front to any information on the back.

9(a) Notification of action taken, ECOA notice, and statement of specific reasons.

Paragraph 9(a)(1).

1. *Timing.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision.

2. *Notification of action.* Notification occurs when a creditor delivers or mails a notification to the applicant's last known address or, in the case of an oral notification, when the creditor communicates with the applicant.

3. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement if it gives the applicant the credit card, money, property, or services requested.

4. *Incomplete application.* A creditor that receives an application that is incomplete, but that contains sufficient information on which to base a credit decision, may deny the application and notify the applicant of the denial in accordance with § 202.9(a)(1). It

need not follow the alternative notice procedure contained in § 202.9(c).

5. *Timing of counteroffer.* A creditor must notify an applicant of a counteroffer within 30 days of receiving a completed application.

6. *Counteroffers.* Section 202.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or for any particular length of time.

7. *Counteroffer—combined notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 202.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer.

9(b) Form of ECOA notice and statement of specific reasons.

Paragraph 9(b)(1).

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial will comply with the regulation if it is "substantially similar" to the notice contained in § 202.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain credit scoring systems. In addition, a creditor may include as part of the notice a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2).

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under § 202.9(a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Specificity of reason.* Creditors need not describe how or why a factor adversely affected an applicant. For example, the notice may say "length of residence" rather than "too short a period of residence."

4. *Credit scoring system.* If a creditor bases the denial on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was considered may be excluded from disclosure. The creditor must disclose reasons actually considered (for example, "age of automobile") even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. *Judgmental system.* If a creditor uses a judgment system, the reasons for the denial must relate to those factors in the applicant's record actually reviewed by the person making the decision.

6. *Combined credit scoring/judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgment components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit score an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors actually

score in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally.

7. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor) cannot be offset by other information about the applicant. When a creditor denies the credit request because of an automatic factor, the creditor must disclose that specific factor.

8. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for credit denial that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

9. *Combined ECOA-FCRA disclosures.* Sample forms C-1 through C-8 of Appendix C provide for two disclosures, one under the ECOA and the other under the Fair Credit Reporting Act (FCRA). The ECOA requires disclosure of the principal reasons for denying an application for an extension of credit. The FCRA requires that when a creditor has based a decision in whole or in part on information from a source other than the applicant or the creditor, that fact must be disclosed. Disclosing that a credit report was obtained and used to deny the application—the disclosure under FCRA—does not satisfy the requirement under the ECOA for disclosure of specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. To satisfy the FCRA requirement, the creditor must also disclose that a credit report was obtained and used to deny credit.

9(c) *Incomplete applications.*

Paragraph 9(c)(2).

1. *Reapplication.* If the information requested is submitted after the expiration of the time period designated by a creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3).

1. *Oral inquiries for additional information.* If the applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the

applicant within the 30 day period specified in § 202.9(c)(1) and (c)(2). If the applicant does provide the information, the credit shall take action on the application pursuant to section 202.9(a).

9(f) *Multiple creditors.*

1. *Third-party notice—content.* If a single adverse action notice is being provided to an applicant on behalf of several creditors, and they are under the jurisdiction of different federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

2. *Inadvertent error.* When a notice is to be provided through a third party, a creditor is not liable for any act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adopted to prevent such violations.

Section 202.10 *Furnishing of Credit Information*

1. *Scope.* The requirements of section 202.10 for designating and reporting credit information apply only to creditors that furnish credit information to credit bureaus or to other creditors. There is no requirement for a creditor to engage in such reporting.

2. *Reporting on all accounts.* The requirements of § 202.10 apply only to accounts held or used by spouses. However, a creditor has the option of designating all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulations does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by § 202.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name. A creditor may establish whatever system will enable its employees to locate the credit file.

10(a) *Designation of accounts.*

1. *New parties.* If a creditor learns that new parties who are spouses have permanently undertaken payment on an account, as in the case of a mortgage loan assumption, the creditor should change the designation on the account to reflect the new parties, and should furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse upon the account and does not require a creditor to change the name in which the account is maintained.

Section 202.12 *Record Retention*

12(a) *Retention of prohibited information.*

1. *Use of retained information.* Although a creditor may retain information as provided in § 202.12(a), its use of the information remains subject to the limitations of § 202.6.

12(b) *Preservation of records.*

1. *Copies.* A copy of the original record includes carbon copies, photo copies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechanized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 202.12(b) by retaining the information actually entered. It need not store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 202.13, however, the creditor is required to retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(4).

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. In such cases, the 25-month requirement runs from the date of application, as when:

- An application is withdrawn by the applicant.

- An application was submitted to more than one creditor on behalf of the applicant, and the application was approved by one of the other creditors.

12(c) *Failure of compliance.*

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not a *bona fide* error under the regulation.

Section 202.13 *Information Requests for Dwelling-Related Loans*

13(a) *Information to be requested.*

1. *Natural person.* The requirements of § 202.13 apply only to applications from natural persons.

2. *Principal residence.* The requirements of § 202.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two-to-four unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of § 202.13.

4. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 202.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to § 202.13.

5. *Loan purpose.* Only loans made for the purposes stated in § 202.13 are covered. For example:

- A loan to finance school expenses is not for a covered purpose even though it is secured by the applicant's principal residence.
- A loan to finance an addition to the applicant's principal residence, and secured by it, to be used as a business office, if for a covered purpose since it is for an improvement to the dwelling.
- A loan to finance both an addition to the applicant's principal residence and a family vacation is not for a covered purpose if the primary purpose of the loan is the vacation. A creditor may rely on the statement of the applicant about the primary purpose of the loan to determine coverage.

6. *Open-end home equity loans.* An application for an open-end line of credit based upon the borrower's equity in a principal residence and secured by that dwelling is not subject to § 202.13.

7. *Refinancings.* An application submitted to the original creditor to change the terms

and conditions of an existing extension of credit is not subject to § 202.13 if the monitoring information was obtained on the original application for credit or subsequent financing. However, § 202.13 does cover an application for refinancing that is made to other than the original creditor.

13(b) *Method of obtaining information.*

1. *Forms for collecting data.* A creditor may collect the information specified in § 202.13(a) either on an application form or on a separate form referring to the application.

2. *Written applications.* The regulation requires written applications for the types of credit covered by § 202.13. (See the commentary to § 202.5(e).)

3. *Telephone, mail applications.* If an applicant does not apply in person for the credit requested, a creditor does not have to complete the monitoring information. For example:

- A creditor that accepts applications by telephone does not have to request the monitoring information in the course of the telephone conversation.
- A creditor that accepts applications by mail does not have to make a special request to the applicant if the applicant fails to complete the monitoring information on the application form sent to the creditor.

However, if the applicant later appears in person at the creditor's place of business to complete the processing of the application or to close the loan, the creditor should seek and

note the information at that time. (See commentary to § 202.5(e)).

4. *Applications through loan shopping services.* When a creditor accepts applications through an unaffiliated loan shopping service, that application is not subject to the requirements of § 202.13. (See commentary to § 202.2(f).)

5. *Inadvertent notations.* If a creditor inadvertently obtains the monitoring information in a transaction not covered by § 202.13, the creditor may act on and retain the application without violating the regulation. (See § 202.12(a).)

13(c) *Disclosure to applicant(s).*

1. *Procedures for providing disclosures.* The disclosures to an applicant regarding the monitoring information must be provided in writing. Appendix B contains a sample disclosure. However, a creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the applicant to provide the monitoring information.

By order of the Board of Governors of the Federal Reserve System, March 7, 1985.

William W. Wiles,

Secretary of the Board.

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March 18, 1985

Part III

Environmental Protection Agency

40 CFR Part 421

Nonferrous Metals Manufacturing, Phase II; Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Notice of Data Availability and Request for Comment

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL-2799-1]

Nonferrous Metals Manufacturing, Phase II; Point Source Category, Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: EPA has obtained additional data and information necessary to fill data gaps and respond to comments made on the nonferrous metals manufacturing Phase II (hereinafter, nonferrous metals manufacturing) effluent limitations guidelines, pretreatment standards, and new source performance standards proposed under the authority of the Clean Water Act. EPA is making the data and information available for public inspection and comment.

DATES: Comments on the data and information must be submitted by April 17, 1985.

ADDRESSES: Send comments to Ms. Maria M. Irizarry, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Attention: EGD Docket Clerk. The supporting information and data described in this notice are available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) PM-213. The comments on this notice will be made available for public inspection as they are received at the above location. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Ernst P. Hall, at (202) 382-7126.

SUPPLEMENTARY INFORMATION: EPA proposed effluent limitations guidelines, pretreatment standards, and new source performance standards for the nonferrous metals manufacturing point source category on June 27, 1984 (49 FR 26352). The comment period closed on October 2, 1984. EPA received comments on this proposal from 30 commenters.

To address a number of issues that arose during the proposal phase of nonferrous metals manufacturing, the Agency decided to collect additional information to fill certain data gaps and clarify comments. Engineering and

sampling visits were made to two nonferrous metals manufacturing plants to collect process, flow and chemical analysis data. These plants are involved in the secondary molybdenum and vanadium and primary and secondary tin subcategories. In addition to information from these two nonferrous metals manufacturing plants, EPA is also using data gathered from engineering and sampling visits to nine nonferrous metals forming plants to collect process, flow and chemical analysis data. The nine plants are involved in the metal powder (iron, copper and aluminum), nickel-cobalt, titanium, zirconium-hafnium, refractory metals, precious metals or uranium subcategories. Trip reports from these plant visits that were claimed confidential by the companies are in the confidential record; the rest are in the public record.

EPA has also obtained clarification and completion of data collection portfolio (dcp) information. In addition, we have sent dcp's to seven secondary tungsten and cobalt plants. Responses to four of these requests have been received. Responses to the other three are still pending. Those newly completed dcp's which have been received and are not confidential are in the public record.

EPA is collecting additional economic information on plants in the primary and secondary tin subcategories. When this information is received, it will be placed in the public record.

Pollutants Selected for Regulations

EPA is considering revising the pollutants to be regulated in 13 subcategories, either as a result of new information collected for 3 subcategories or as a result of post proposal review of 10 subcategories. As a result of the new information collected, EPA is considering revising the pollutants to be regulated in secondary molybdenum and vanadium, primary and secondary tin and secondary uranium subcategories.

In the secondary molybdenum and vanadium subcategory the proposal regulated antimony, lead, nickel, molybdenum, ammonia, total suspended solids (TSS), and pH. We are now considering regulating the toxic pollutants arsenic, nickel, chromium, copper, lead, selenium and zinc; the nonconventional pollutants aluminum, ammonia, boron, cobalt, germanium, iron, manganese, molybdenum, tin, titanium and vanadium; the conventional pollutants, pH, and TSS because new information collected after proposal revealed that only these pollutants were present in the wastewaters at treatable amounts.

In the primary and secondary tin subcategory we had regulated the same set of pollutants for both primary and secondary plants; however we are now considering regulating a different set of pollutants for primary tin smelters. The pollutants regulated for proposal were antimony, cyanide, lead, nickel, tin, ammonia, fluoride, TSS and pH. EPA is continuing to propose regulation of these pollutants for the secondary tin building blocks. For the primary tin building blocks, however, we are now considering regulation of the toxic pollutants arsenic, cadmium, copper, lead, selenium, and zinc; nonconventional pollutants aluminum, barium, boron, iron, manganese and tin; conventional pollutants TSS and pH because new information collected after proposal revealed that only these pollutants were present in the wastewaters at treatable amounts.

The toxic pollutants arsenic, cadmium, chromium, copper, lead, nickel, selenium and zinc and the nonconventional pollutants ammonia, cobalt and germanium, have been regulated in the proposal using lime, settle and filter as the control technology. We intend to use the same treatment effectiveness levels for these pollutants as used for proposal. Pollutants which have not been previously regulated in this category, nonconventional pollutants aluminum, iron, and manganese are shown in Table 1 with the treatment effectiveness levels expected from a line, settle and filter system. These treatment effectiveness values were published in the development document for this category at proposal and are believed to be applicable to each subcategory in the category. We invite comment on the applicability and achievability of these treatment effectiveness value.

TABLE 1

Pollutant	Long-term average (mg/l)	1-day maximum (mg/l)	Monthly average (mg/l)
Aluminum	1.49	6.11	2.71
Iron	0.28	1.20	0.81
Manganese	0.14	0.30	0.23

See also table 5.

The secondary uranium subcategory is currently being sampled. The data will be provided to affected facilities as soon as it is available. Nonconfidential information will be placed in the public record without further notice. In this subcategory we have collected data on uranium. However, the Department of Energy (DOE) has commented that EPA lacks the legal authority under the Clean

Water Act to establish effluent limitations for uranium as a pollutant. Although EPA had intended to regulate only the depleted form of uranium in its June 27, 1984 proposal, the Agency has been informed by DOE that this substance is considered as "source material" under the Atomic Energy Act. In light of the Supreme Court's decision in *Train v. Colorado Public Interest Research Group*, 426 U.S. 1 (1976) that "source", "special nuclear" and "by-product" materials are not pollutants within the meaning of the Clean Water Act, EPA is now considering the withdrawal of effluent limitations for this substance.

For nine (primary cesium and rubidium, primary and secondary germanium and gallium, metallurgical acid plants, primary molybdenum and rhenium, primary precious metals and mercury, secondary precious metals, secondary tantalum, secondary tungsten and cobalt and primary zirconium and hafnium) subcategories certain of the principal metals being manufactured at the facilities were not regulated in the plant's wastestreams at proposal. However, EPA has determined that most of these metals could be present at significant levels in the discharges from these subcategories and should, therefore, be considered for regulation as nonconventional pollutants.

For one additional subcategory, primary beryllium, we are also considering adding the toxic pollutant cyanide, and the nonconventional pollutant ammonia. This is necessary because the Agency has new information indicating that those pollutants are present in the wastestreams from that subcategory at treatable levels. We intend to use the same control technology used for proposal, cyanide precipitation and ammonia steam stripping, to control these pollutants to the same treatment effectiveness levels used for proposal as in other subcategories. These technologies are discussed briefly in the preamble to the proposed regulation and in detail in Section VII of the development document.

For primary molybdenum and rhenium we are considering adding the nonconventional pollutants fluoride and rhenium and for metallurgical acid plants in conjunction with molybdenum manufacture we are considering adding the nonconventional pollutants fluoride and molybdenum. At proposal we had indicated that we were considering

regulation of fluoride for the primary molybdenum and rhenium subcategory.

The metallurgical acid plants subcategory was modified at proposal to add molybdenum acid plants. For those facilities having a molybdenum acid plant blowdown cotreated with primary molybdenum and rhenium wastes, fluoride precipitation with lime will be used as the control technology to the same treatment effectiveness level as used for other subcategories at proposal.

The additional pollutants being considered for regulation in these ten subcategories are shown in Table 2. The Agency proposes to use lime, settle and filter, the same technology used for proposal, as the normal control technology; however additional technologies may be required for specific pollutants. We believe that the concentrations shown on Table 3 are achievable by the technologies discussed for each pollutant. We specifically request additional information on the treatment effectiveness of lime, settle and filter treatment for those pollutants and also information on any other applicable technology not considered by EPA. Commenters are requested to include data on pH, TSS, paired influent and effluent metals concentrations, analytical methods used, nature of the samples and treatment system, a description and a diagram of the treatment system, capital and operating costs.

TABLE 2

Subcategory	Additional pollutants to be regulated
Primary beryllium	Cyanide ammonia
Primary cesium and rubidium	Cesium, rubidium
Primary and secondary germanium and gallium	Gallium
Metallurgical acid plants (molybdenum only)	Fluoride molybdenum
Primary molybdenum and rhenium	Rhenium fluoride
Primary precious metals and mercury	Gold
Secondary precious metals	Palladium
Secondary tantalum	Tantalum
Secondary tungsten and cobalt	Tungsten
Primary Zirconium and hafnium	Zirconium hafnium

The Agency does not have treatment effectiveness data for cesium, rubidium, gallium, rhenium and hafnium. However, we believe that these pollutants can be regulated based on chemical similarities to other pollutants or chemicals for which performance data are available

from the literature. Cesium and rubidium are monovalent ions which can be removed by ion exchange. The levels to which these pollutants can be removed are derived from demineralizer data on potassium and have been placed in the record. Gallium is most chemically similar to chromium and we have assumed that it can be removed in a conventional lime, settle and filter system to the same level as chromium. Rhenium is chemically similar to molybdenum and we have assumed that it can be removed by iron coprecipitation to the same level as molybdenum. Hafnium is chemically similar to zirconium and we have assumed that it can be removed in a conventional lime, settle and filter system to the same level as zirconium.

The Agency solicits data on the treatment effectiveness of the technologies discussed or any other relevant technologies and on the underlying assumption.

TABLE 3.—TREATMENT EFFECTIVENESS LEVELS FOR POLLUTANTS NOT REGULATED AT PROPOSAL

Pollutant	Long-term average (mg/l)	1-day maximum (mg/l)	Monthly average (mg/l)
Cesium	0.124	0.51	0.23
Rubidium	0.124	0.51	0.23
Gallium	0.084	0.44	0.18
Rhenium	1.23	5.03	2.23
Hafnium	4.81	19.7	9.01

See also Tables 5 and 6.

Changes to Building Blocks. The Agency is considering changing the production normalized flow and the production normalizing parameters in the building blocks in three of the subcategories as a result of new information collected after proposal. The subcategories affected are secondary molybdenum and vanadium, primary and secondary tin and secondary uranium.

In the secondary molybdenum and vanadium subcategory we are considering changing the name of subdivision (b) Molybdenum Filtrate to Molybdenum Filtrate Solvent Extraction Raffinate. This change reflects the use of solvent extraction for the recovery of molybdenum prior to wastewater treatment. We are also considering changing the production normalized flow and the production normalizing parameter from amount of molybdenum produced to amount of both

molybdenum and vanadium produced to account for wastewater generated in the production of both metals. The new PNF under consideration is 60,550 liters per kilokilogram of molybdenum and vanadium produced. The supporting data have been claimed confidential and unless a request for the information is made and EPA determines the information is not entitled to confidential treatment, it will only be available to the facilities that provided the specific information.

In the primary and secondary tin subcategory we are considering changing production normalized flow (PNF) and the production normalizing parameter for subdivision (a) Smelter Scrubber. The new PNF under consideration is 8,761 liters per kilokilogram of crude tapped tin produced. The new production normalizing parameter is crude tapped tin, the smelter product. At proposal, the PNF was high purity refined tin metal produced.

In the secondary uranium subcategory we are considering changing the name of three of the subdivisions to more accurately reflect the actual processes in use. These changes are shown in Table 4. We are also considering changing the production normalized flow and the production normalizing parameter (PNP) in subdivision (a) Refinery Sump Filtrate. The new PNF under consideration is 73,340 liters per kilokilogram of uranium in feed materials to the refinery. The PNP has been changed from the amount of uranium trioxide produced to the amount of uranium processed in the refinery. Also we are considering changing the PNF for subdivision (d) Digestion Operation Wet Air Pollution Control to zero because there is no discharge associated with it.

TABLE 4.—SECONDARY URANIUM SUBCATEGORY

Subdivision	Old name	New name
(a)	Refinery filtrate	Refinery sump filtrate
(b)	Slag leach slurry	Slag leach reslurry
(c)	Solvent extraction raffinate	Solvent extraction raffinate filtrate

EPA invites comments on the changes noted above.

The Agency has received comments requesting new building blocks or changes on the PNF and PNP in an additional six subcategories, primary antimony, primary beryllium, secondary nickel, secondary precious metals, primary rare earth metals and primary zirconium and hafnium. We are currently evaluating these requests.

Please submit any additional information leading to the development of PNP, PNF and addition of new building blocks in these subcategories.

At proposal the Agency excluded from BAT effluent guidelines and pretreatment standards for existing sources the primary cesium and rubidium subcategory because it believed that there were no facilities discharging wastewater to surface waters or a POTW. Subsequently, we have learned that there is one plant which generates and sends approximately four hundred gallons per year from that subcategory to another facility where it is discharged to surface waters. In view of the fact that EPA does not believe that the amount and the toxicity of each pollutant in the limited discharge from this subcategory justifies developing a national regulation at this stage of the rulemaking, the Agency is considering continuing the exclusion under Paragraph 8(a) IV of the Settlement Agreement and relying on the use of a best professional judgment permit to control the discharge for this subcategory.

Treatment Effectiveness Concentrations

The proposal included limits and standards for a number of nonconventional metal pollutants based on engineering estimates of the model treatment technology's effectiveness. Several commenters argued that these treatment effectiveness concentrations are not achievable. The Agency has subsequently obtained additional data on pollutant concentrations in both the process wastewaters and treated effluent which show the effectiveness of lime and settle treatment in removing barium, boron, molybdenum, tantalum, tin, titanium, tungsten, uranium, vanadium, and zirconium. These new data, which are included in the record of this notice, indicate that the concentrations listed in Table 5 can be achieved by the BAT model end-of-pipe treatment technology of lime, settle and filter.

The pollutants aluminum, ammonia, barium, boron, cobalt, fluoride, gold, iron, manganese, molybdenum, palladium, platinum, tin, titanium and vanadium are measured by approved test procedures under 40 CFR Part 136 of the Clean Water Act. The pollutants cesium, gallium, germanium, hafnium, rhenium, rubidium, tantalum, tungsten, uranium and zirconium are not listed under 40 CFR Part 136. However, cesium, gallium, germanium, hafnium, rhenium and rubidium are measured by atomic absorption spectrophotometry; tantalum and tungsten by X-ray fluorescence; uranium by fluorimetry,

and zirconium by inductively coupled plasma optical emission spectroscopy.

TABLE 5

	Long-term average (mg/l)	1-day maximum (mg/l)	Monthly average (mg/l)
Barium	0.28	1.15	0.51
Boron	0.36	1.64	0.84
Tantalum		0.45	
Tin	0.14	0.38	0.22
Titanium	0.13	0.53	0.23
Tungsten	0.85	3.48	1.56
Uranium	2.64	10.8	4.81
Vanadium		0.10	
Zirconium	4.81	19.7	9.01

The Agency believes that the L&S and LS&F treatment effectiveness values used as the basis for proposal and as modified by new data are generally applicable across all of the subcategories subject to this notice and can be achieved in each subcategory. Similarly, the treatment effectiveness level for pollutants not considered at proposal for regulation is based on data and information indicating they can be controlled to the suggested levels in all affected subcategories.

Steam stripping to remove ammonia and two stage precipitation to control special metals concentrations are treatment technologies of universal application across all of the subcategories subject to this notice and they will perform equally in all cases.

Boron is precipitated as a calcium borate in a conventional lime, settle and filter system. The data for the achievable concentrations were derived from nonferrous metals forming plants. Barium precipitates as a sulfate and requires iron coprecipitation. The data is derived from a nonferrous metals forming plant. Comments are requested on the achievability and basis for the treatment effectiveness concentrations set forth above.

We expect to sample another plant that manufactures and forms depleted uranium to collect additional data on the treatment effectiveness of lime and settle treatment for the secondary uranium subcategory. These data will be added to the public record as soon as they are available. We believe that the achievable concentration of uranium (as measured by fluorimetry analytical methods) with properly operated lime, settle and filter treatment may be smaller than the data tabulated above indicate and, therefore, specifically request comment on the concentration noted. However, it should be emphasized as indicated above, that the Agency is reviewing DOE's comments with respect to uranium and if, after a careful analysis of this issue, we

conclude that there is inadequate authority under the Clean Water Act, we will not promulgate effluent limitations for this pollutant.

Data collected at two refractory metals forming plants using x-ray fluorescence analytical methods indicate that lime and settle treatment reduces tantalum levels to below the level of detection. Another sampled lime and settle treatment system is operated at a higher pH, from 10.5 to 11.5; effluent concentrations of tantalum collected from this system are significantly above the level of detection. These data indicate that if the treatment system is operated at a pH near 8, tantalum should be removed to below the level of detection. Since removals at the lower pH were below the level of detection, it is impossible to determine precisely what lower limit is achievable, or to monitor for compliance with any lower level. Therefore, the level of detection is being used as the one-day maximum concentration for the lime and settle treatment effectiveness and EPA is considering establishing no long-term average, 30-day or 10-day average concentration. Although the lime, settle and filter treatment, as the more advanced technology, should reduce the discharge level of these metals still further, the Agency intends to use the level of detection as the basis for the one-day maximum for this technology as well since, as explained above, a lower level cannot be determined.

The treatment effectiveness concentration for tungsten using x-ray fluorescence analytical methods is based on data collected at the treatment system with the high pH (10.5 to 11.5) described above. The data indicate that maintaining the pH within this range achieves significantly better removal of tungsten than a pH near 8. Therefore, refractory metals plants that treat wastewaters containing both tantalum and tungsten or other regulated metals that precipitate at a higher pH may need to use a two-stage lime, settle and filter treatment to meet the limitations. This will be reflected in the cost estimates for the subcategories affected.

The Agency is considering the establishment of limitations and standards for gold, for the primary precious metals and mercury subcategory and for platinum and palladium for the precious metals subcategory. We have obtained information indicating that gold, platinum and palladium (Table 6) can be treated to less than the level of detection (0.01 mg/l) analyzed by a graphite furnace atomic adsorption spectrophotometer. The model

technology that would achieve this removal is lime, settle, and filter technology with an ion exchange column added as a final polishing step. This technology is demonstrated at precious metals manufacturing plants which claim to achieve a level of 0.01 mg/l, the level of detection, without difficulty. Therefore, we propose to use the level of detection as the basis for establishing the daily maximum for the precious metals subcategory and not establish any monthly average requirements. The information the Agency has indicates that the cost of the ion exchange should be balanced by the value of the metal recovered; therefore, we have assumed there will be no cost for this technology. We invite comment and additional information regarding this approach.

TABLE 6

	Long-term average (mg/l)	1-day maximum (mg/l)	Monthly average (mg/l)
Gold		0.01	
Platinum		0.01	
Palladium		0.01	

EPA also received several comments about the toxic metal pollutant limits which were derived using the lime, settle and filter treatment effectiveness data based in part on EPA's combined metals data base (CMDB). On the question of the achievability of the nickel treatment effectiveness concentration which forms the basis for the nickel limits and standards, the Agency sampled two nickel forming plants and has added the data from these two plants as well as from other industrial categories (including iron and steel, battery manufacturing) to the nonferrous metals manufacturing record. These data further demonstrate that the concentration basis for nickel is achievable with the application of the BAT model treatment.

We are also adding data to the record that supports the achievability of the lead limits. These data come from battery manufacturing, copper forming, iron and steel manufacturing and, metal molding and casting plants.

We have also reviewed the treatment effectiveness of various technologies for removal of molybdenum. The proposed molybdenum limits and standards were based on the effectiveness of lime, settle and filter treatment. Data used for the proposal shows that a molybdenum manufacturing plant can achieve a concentration of 1.41 mg/l on a long-term basis with lime and settle treatment and that the addition of a filter should reduce this to 0.94 mg/l on

a long-term average basis. Molybdenum is removed by a production process, single stage solvent extraction, to an average of 19 mg/l for 97% removal. In a poorly operated lime and settle system it is removed to an average of 40 mg/l for 85% removal. We are considering the use of two-stage (series) solvent extraction technology which would be expected to further reduce molybdenum to 0.6 mg/l. We have collected data on coprecipitation of molybdenum with iron at a nonferrous metals forming plant that can achieve a mean concentration of 1.75 mg/l using lime and settle technology. Filtration should further reduce this to 1.17 mg/l. This level is of the same order of magnitude as the numbers used for proposal. The sampling data and information on molybdenum coprecipitation with iron are in the public record. We solicit comments on the use of lime, settle and filter, iron coprecipitation, and two-stage solvent extraction technology as control technologies for molybdenum removal.

New data on vanadium has been collected from two nonferrous forming plants showing that conventional lime settle and filter treatment removes vanadium to the limit of detection, 0.1 mg/l. Therefore, we are considering using the limit of detection for a one-day maximum achievable concentration and not promulgating a long-term mean or monthly average concentration.

For wastestreams containing high levels of multiple metallic pollutants, the Agency is considering the use of two-stage precipitation as the control technology. The precipitation is accomplished by the use of the appropriate chemical which could be hydroxide, alkalis or sulfides. Some metals precipitate at a lower pH than others therefore requiring the use of two stages to accomplish the removal of the pollutants of concern. Where necessary two stages have been used to develop the compliance costs for the subcategories.

The Agency has received information indicating that certain sulfate levels in waste streams subjected to steam stripping for ammonia removal may impair the ability of the stripper to achieve the proposed limitations for ammonia. The Agency is considering alternative limits for ammonia where sulfate levels exceed 1 gram per liter. The Agency solicits comments on the need for alternative limits. The Agency solicits the following information from facilities which use ammonia steam stripping on waste streams that may also contain sulfates: sulfate levels in the influent, paired influent and effluent

pollutant concentrations, operating conditions including cleaning cycles and procedures, operating pH, temperature, pressure, capital and operating costs.

Effluent Limitations and Standards

EPA has not recalculated the effluent limitations and standards for each pollutant regulated for each process in each subcategory in this notice of availability. These effluent limitations will be derived however, for final promulgation using the same methodology as was used in the proposed rule. The discharge allowance for each pollutant is the product of the regulatory flow and the treatment effectiveness concentration and therefore can be readily calculated. Any persons with questions about the effluent limitations that would be applicable to them should call or write the technical contact listed in the beginning of this notice.

Compliance Costs

The Agency has re-estimated the cost of compliance for three of the subcategories, based on new data collected after proposal. The subcategories are secondary molybdenum and vanadium, primary and secondary tin, and secondary uranium. The Agency believes that the regulation of additional pollutants in other subcategories will be accomplished with no substantial additional cost; however if further analysis indicates increased costs for these subcategories the estimates of compliance costs will be modified as is appropriate. We have used the same costing methodology used for proposal. The plant-by-plant cost estimates have been summed to derive subcategory totals. The Agency costed three levels of treatment: level 1 is lime and settle end-of-pipe treatment and flow normalization, level 2 has flow reduction technologies and in-process controls in addition to lime and settle treatment, and level 3 adds a polishing filter to level 2. Except for confidential data, these costs appear in the public record

for this rulemaking. We invite comment on the revised cost estimates.

Using these plant-by-plant costs, we have recalculated the total cost of compliance for Phase II of the nonferrous metals manufacturing category. In the proposal, the cost estimates for level 1 treatment for the entire category were \$6.24 million for capital investment and \$4.10 million in annual costs; comparable revised costs are \$7.22 million (in 1982 dollars) in capital costs and \$4.50 million in annual costs. Proposed cost estimates for level 2 treatment for the entire category were \$6.31 million for capital investment and \$4.13 million annually; comparable revised costs are \$7.29 million in capital costs and \$4.53 million in annual costs. Proposed cost estimates for Level 3 treatment (BAT and PSES) for the entire category were \$7.10 million for capital investment and \$4.47 million annually; comparable revised costs are \$8.08 million in capital costs and \$4.87 million in annual costs. The Agency invites comments on the estimates of compliance costs for nonferrous metals manufacturing plants.

Treatment Technologies

The Agency is considering the application of new treatment technologies for achieving the proposed limits for specific pollutants such as molybdenum present in the process wastewaters of the subcategories subject to this notice. As an alternative or supplement to the model treatment technology, we are considering treatment using a sacrificial electrode, iron coprecipitation of sulfide precipitation to remove metals. A discussion of the sacrificial electrode technology has been placed in the public record. Data provided by the vendor of this technology show the effectiveness of the technology in treating metals; in particular this treatment technology appears to be an effective treatment technology for the pollutants molybdenum and vanadium. This technology is currently used at several industrial facilities and while we do not

have specific data on its cost, we do not expect this technology to be significantly more costly than lime, settle and filter treatment. We invite comments and additional data concerning the costs and application of this technology.

The total compliance costs for the molybdenum subcategory included in this notice have been based on the use of iron coprecipitation by addition of either ferrous sulfate or ferric chloride in a pretreatment system prior to the lime, settle and filter system. The precipitate, a molybdenum iron complex, is removed by the lime, settle and filter system. The costs of this technology are approximately 30 percent higher than those using conventional lime, settle and filter. Iron coprecipitation is widely used in plants in the subcategories subject to this notice. The Agency invites additional comments on the costs, design criteria, and application of this technology.

Sulfide precipitation is considered as effective treatment technology capable of achieving better removals for regulated toxic metals and other regulated multivalent metals than hydroxide precipitation. It is available to plants in the subcategories subject to this notice and was used at proposal as the basis for costing on three subcategories, primary molybdenum and rhenium, secondary molybdenum and vanadium, and molybdenum acid plants.

The Agency is considering the use of an ion exchange column added as a final polishing step for removal of precious metals to the level of detection. This technology is widely used in the photochemical industry as well as the precious metals industry at essentially no cost because the value of the metals recovered exceed the cost of the treatment. The Agency invites additional comments on the costs and application of this technology.

Dated: March 8, 1985.

Henry Longest II,

Acting, Assistant Administrator for Water.

[FR Doc. 85-6356 Filed 3-15-85; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Monday
March 18, 1985

Part IV

Department of Education

Office of Elementary and Secondary
Education

34 CFR Parts 251, 252, 253, and 263
Indian Education Programs; Final Rule
Indian Education Act; Indian Fellowship
Program; Application Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 251, 252, 253, and 263

Indian Education Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Formula Grant—Local Educational Agencies and Tribal School Program, the discretionary grant programs for Indian-Controlled Schools—Establishment and Enrichment Projects, and the Indian Fellowship Program. These amendments reflect recent changes in the authorizing statutes for these programs.

EFFECTIVE DATE: Unless Congress takes certain adjournments, these regulations will take effect 45 days after publication in the Federal Register. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Adrien Baird, 400 Maryland Avenue, S.W. (Room 2177, FOB-6), Washington, D.C. 20202. Telephone: (202) 732-1890.

SUPPLEMENTARY INFORMATION: This document conforms existing regulations in Parts 251, 252, 253, and 263 in Title 34 of the Code of Federal Regulations to recent changes made to the Indian Education Act by the Education Amendments of 1984, Pub. L. 98-511. In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed regulations. However, because these amendments merely incorporate statutory changes and do not establish any substantive policy, the Secretary has determined that publication of this document as a proposed rule for public comment is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(3).

The specific purpose of each amendment is described below:

1. Section 251.22 is amended by adding the word "written" before "approval of that parent committee" in paragraph (b)(3)(v)(C), which requires approval of applications for formula grants by a parent committee, and deleting the rest of the sentence following the phrase "of that parent committee."

2. Section 251.30 is amended by revising paragraph (c) to clarify how formula grant amounts are determined.

3. and 4. Sections 252.2 and 253.2 are amended by reorganizing the sections and by adding a new paragraph (b) to each of these sections to exempt schools serving Indian children in Alaska, California, or Oklahoma from the requirement that schools assisted under the Indian-Controlled Schools programs be located on or near a reservation.

5. Section 263.4 is amended by removing paragraph (a)(1)(viii), redesignating paragraphs (a)(2) and (a)(3), and adding a new paragraph (a)(2) to add psychology to the list of fields for which fellowships for Indian students are allowed.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The regulations reflect only specific statutory amendments that either do not have an ascertainable economic impact or do not affect a substantial number of small entities.

Intergovernmental Review

The program assisted under Part 251-Formula Grants—Local Educational Agencies and Tribal Schools is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Paperwork Reduction Act of 1980

These regulations do not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 34 CFR Parts 251, 252, and 253

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indian, Indians—

education, Reports and recordkeeping requirements.

34 CFR Part 263

Colleges and universities, Education, Engineers, Health professions, Indian education, Law, Natural resources, Reports and recordkeeping requirements, Scholarships and fellowships.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Numbers 84.060, Indian Education—Formula Grants to Local Educational Agencies and Tribal Schools, 84.072, Indian Education—Grants to Indian Controlled Schools, and 84.087, Indian Education—Fellowships for Indian students)

Dated: March 12, 1985.

William J. Bennett,
Secretary of Education.

The Secretary amends Parts 251, 252, 253, and 263 of Title 34 of the Code of Federal Regulations as follows:

PART 251—FORMULA GRANTS—LOCAL EDUCATIONAL AGENCIES AND TRIBAL SCHOOLS

1. In § 251.22 paragraph (b)(3)(v)(C) is revised to read as follows:

§ 251.22 What must an application include?

- • • • •
- (b) • • •
- (3) • • •
- (v) • • •

(C) With the written approval of that parent committee;

• • • • •
(20 U.S.C. 241dd)

2. In § 251.30 paragraph (c) is revised to read as follows:

§ 251.30 How does the Secretary determine the amount of a grant?

• • • • •
(c) In setting the amount of a grant, the Secretary allocates to each approved applicant an amount that bears the same ratio to the total amount appropriated as the product of paragraphs (b) (1) and (2) of this section for that applicant bears to the sum of these products for all approved applicants.

(20 U.S.C. 241bb(a), 241ff(a))

PART 252—INDIAN-CONTROLLED SCHOOLS—ESTABLISHMENT

3. Section 252.2 is revised to read as follows:

§ 252.2 Who is eligible for assistance under this program?

(a) Under this program any applicant among the following is eligible for assistance if it operates or plans to establish and operate a school for Indian children—or, if eligible, an LEA—that is located on or geographically near one or more reservations:

- (1) Indian tribes.
- (2) Indian organizations.
- (3) Local educational agencies (LEAs) that have been in existence not more than three years.

(b) The requirement that a school to be assisted under this part be located on or near a reservation does not apply to any school serving Indian children in Alaska, California, or Oklahoma.

(20 U.S.C. 241bb(b))

PART 253—INDIAN-CONTROLLED SCHOOLS—ENRICHMENT

4. Section 253.2 is revised to read as follows:

§ 253.2 Who is eligible for assistance under this program?

(a) Under this program any applicant among the following is eligible for assistance if it operates or plans to establish and operate a school for Indian children—or, if eligible, an LEA—that is located on or geographically near one or more reservations:

- (1) Indian tribes.
- (2) Indian organizations.
- (3) Local educational agencies (LEAs) that have been in existence not more than three years.

(b) The requirement that a school to be assisted under this part be located on or near a reservation does not apply to

any school serving Indian children in Alaska, California, or Oklahoma.

(20 U.S.C. 241bb(b))

PART 263—INDIAN FELLOWSHIP PROGRAM

5. Section 263.4 is amended by removing paragraph (a)(1)(viii), redesignating paragraph (a)(2) as paragraph (a)(3) and paragraph (a)(3) as paragraph (a)(4), and adding a new paragraph (a)(2) to read as follows:

§ 263.4 What are the allowable fields of study?

- (a) * * *
- (2) Psychology.
- * * *

(20 U.S.C. 3385b)

[FR Doc. 85-6515 Filed 3-15-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Indian Education Act—Part B—Indian Fellowship Program

AGENCY: Department of Education.

ACTION: Application Notice for New Indian Fellowships for Fiscal Year 1985.

Applications are invited for new fellowships under the Indian Education Act—Indian Fellowship Program. This program authorizes the award of fellowships to Indian students.

Authority for this program is contained in section 423 of the Indian Education Act, as amended.

(20 U.S.C. 3385b)

The purpose of these awards is to enable Indian students to pursue courses of study leading to: (a) Postbaccalaureate degrees in medicine, psychology, law, education, and related fields, or (b) Undergraduate or graduate degrees in business administration, engineering, natural resources, and related fields.

Closing Date for Transmittal of Applications: An application for a new fellowship must be mailed or hand delivered by May 15, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.087, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (3) A dated shipping label, invoice, or receipt from a commercial carrier.
- (4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with his or her local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that his or her application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: In Fiscal Year 1984, 200 new fellowships were awarded totaling \$1,186,906. The average fellowship was \$5,935.

Fellowships awarded under this program will be for a period of one year. An applicant desiring assistance after the one year fellowship will have to apply as a new applicant the following year.

Available Funds: It is estimated that \$1,470,000 will be available for new and continuation awards. It is estimated that approximately \$1,272,120 will be available for new fellowships.

The Secretary is not establishing any priorities among the allowable fields of study described in 34 CFR 263.4 of the final regulations.

The estimated maximum stipend allowed for a graduate fellow will be \$600 per month. The estimated maximum stipend allowed for an undergraduate fellow will be \$375 per month. An estimated maximum allowance of \$90 per month will be allowed for each dependent. Financial need and the applicant's resources will be taken into account in determining the amount of the fellowship award. The Secretary awards a fellowship in an amount up to but not more than the difference between the student's

resources, including other sources of financial aid, and the student's expenses as defined in 34 CFR 263.3.

Application Forms: Application forms and program information packages are expected to be ready for distribution by March 29, 1985.

They may be obtained by writing to the Director, Indian Education Programs, U.S. Department of Education, Room 2177, 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that applicants not submit information that is not requested.

(Approved by Office of Management and Budget under control number 1810-0020)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Indian Fellowship Program Regulations, published in the **Federal Register** at 48 FR 35333 on August 3, 1983 (34 CFR Part 263).

(b) A technical amendment to these regulations published in this issue of the **Federal Register**.

Further Information: For further information, contact Alice Ford, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, Room 2177, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 732-1923.

(Catalog of Federal Domestic Assistance No. 84.087; Indian Education—Fellowships for Indian Students (B))

Dated: March 13, 1985.

Lawrence F. Davenport,
Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 85-6527 Filed 3-15-85; 8:45 am]

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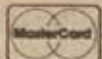
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Part I: Presidential Proclamation 11644, Relating to the
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Part II: Executive Order 11644, Relating to the
Establishment of the National Park Service

Part III: Executive Order 11644, Relating to the
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