

Thursday
October 6, 1988

Test Report



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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV-88-117]

Domestic Dates Produced or Packed in Riverside County, CA; Final Rule Changing the Conversion Factor Used To Compute the Whole Date Equivalent Weight of Pitted Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the conversion factor used to convert the weight of pitted dates to their whole date equivalent. Currently, the weight of pitted dates is converted to whole date weight by dividing the weight of pitted dates by 0.875. This final rule changes the conversion factor to 0.83. This change will result in more precise inventory, sales, and shipment reports. Carryover determinations and assessment determinations will also be affected.

EFFECTIVE DATE: October 6, 1988.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 987 (7 CFR Part 987), regulating the handling of domestic dates produced or packed in Riverside County, California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has

been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 26 handlers of California dates regulated under this marketing order, and approximately 135 date producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the date handlers and producers may be classified as small entities.

Notice of this action was published in the Federal Register on September 2, 1988 (53 FR 34108). The comment period ended September 19, 1988. No comments were received.

This final rule changes § 987.105 of Subpart—Administrative Rules (7 CFR 987.101-987.172). That section specifies a conversion factor of 0.875 for use in computing the whole date equivalent weight of pitted dates. The weight of pitted dates is converted to whole date weight by dividing the weight of the pitted dates by that factor. The current factor has been in place since the late 1960's.

The current conversion factor is based on a weight loss resulting from the removal of the pit, estimated at 12.5 percent of the whole date weight. However, the 12.5 percent represents the weight of the pit only, and does not account for all of the date flesh lost in the pitting process. Use of the updated conversion factor (0.83) will result in more precise sales, shipment, and inventory reports. Carryover

determinations completed on a whole date weight would be affected. Use of the updated factor will also affect assessment weight obligations for pitted dates because the assessment obligations of date handlers are computed on a whole date weight basis.

At a meeting held on June 27, 1988, the committee unanimously recommended that the conversion factor be changed from 0.875 to 0.83, effective at the beginning of the 1988 crop year. Handlers of pitted dates furnished information to the committee indicating that the weight loss resulting from the pitting process ranges from 15 to 19 percent with an average of 17 percent. The conversion factor of 0.83 is based on a 17 percent weight loss. The committee stated that the 0.83 conversion factor will more accurately reflect the weight loss resulting during the pitting process. Updating the conversion factor will not add to or complicate handlers reporting requirements.

Based on available information, the Administrator of AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the recommendation submitted by the committee, and other information, it is found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553). It is important that the conversion factor be in effect at the beginning of the 1988-89 crop year, so that all 1988-89 shipments of pitted dates are converted to whole date equivalents using the updated factor. Moreover, no comments were received questioning the need for the new factor.

List of Subjects in 7 CFR Part 987

Marketing agreements and orders, Dates, California.

For the reasons set forth in the preamble, § 987.105 of Subpart—Administrative Rules (7 CFR 987.101-987.172) is revised as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

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

Note: The following change will be published in the Code of Federal Regulations.

2. Section 987.105 is revised to read as follows:

§ 987.105 Whole equivalent of pitted dates.

For the purposes of this part, the whole date equivalent weight of pitted dates shall be determined by dividing the weight of the pitted dates by 0.83.

Dated: October 3, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-23020 Filed 10-5-88; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1736

Electric Standards and Specifications

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends 7 CFR Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50-1, Electric Transmission Specifications and Drawings. This revised bulletin contains construction specifications and drawings for 115 kV to 230 kV transmission structures. REA Bulletin 50-2 contains up-to-date construction specifications and drawings for 34.5 kV to 69 kV. Bulletins 50-1 and 50-2 will replace Bulletin 50-1 (REA Form 805) which covered 34.5 kV to 230 kV structures.

The new bulletin will provide: (1) A common format for all structures and assemblies; (2) strength information for some assemblies; (3) clear construction details; (4) several new structures; (5) additional guying attachments and assemblies; and (6) expanded specifications to reflect state-of-the-art practices. The new Bulletin 50-1 when combined with a completed REA Form 831, Electric Transmission Construction Contract, will provide a transmission line bidding specification package.

EFFECTIVE DATE: October 6, 1988. The incorporation by reference of the publications mentioned in this rule has been approved by the Director, Office of

the Federal Register, effective July 12, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. Donald G. Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Electrification Administration, Room 1246, Washington, DC 20250, telephone 202-382-9086. The Final Impact Statement describing the options considered in developing these rules and the impact of implementing the chosen option are available on request from Mr. Donald G. Heald at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936 as amended (7 U.S.C. 901 *et seq.*), the Rural Electrification Administration (REA) is amending 7 CFR Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50-1. This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and therefore, has been determined to be "not major." REA has concluded that promulgation of this rule will not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or recordkeeping requirements which require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Background

The Rural Electrification Administration (REA) maintains a system of bulletins which contain construction standards and specifications for materials and

equipment applicable to electric system facilities constructed in accordance with the REA loan contract. These standards and specifications contain REA's requirements for construction units and material items and equipment units commonly used in REA Electric borrower's systems. REA Bulletin 50-1, Electric Transmission Specifications and Drawings, for 115 kV to 230 kV contains construction specifications and drawings for lower voltage transmission lines.

A notice of the proposed rulemaking was published in the *Federal Register* on June 11, 1982. Interested parties were given sixty (60) days in which to express their views on the proposed rule. However, comments reviewed after that date were still considered. Comments were received from several consultants, manufacturers, and REA cooperatives. A sampling of comments received are as follows:

a. One person suggested that a preconstruction conference should be made an integral part of the specifications in order that certain agreements can be reached between the owner, contractor, and engineer, e.g., (1) who can act for the owner; (2) who represents the contractors in the field; and (3) who is responsible for approving the performance of the contractor.

Preconstruction meetings are an excellent idea and are encouraged by REA. However, the above information should be part of the front-end documents. The instructions to this bulletin indicate that the user of the construction specification and drawings must add front-end documents including any supplemental instructions to the bidders and any general conditions.

b. Another party suggested that items to be "filled in" by the engineer be kept to a minimum. A supplement should be made containing all the data that would be provided by the engineer. For example, the blanks for the "fill in" on page 1 and page 27 should be filled in for the specific project under consideration at the time the specification is being used.

In the *Instructions*, Section C. information to be completed, summarizes the actions which must be taken by the user of these specifications and drawings. Included in Section C.1, is a check list of pages in the specification which are to be completed. Section C.2 summarizes the items which must be completed in the drawings. It is intended that these items be completed or "filled in" for a specific project.

c. In the *General* section, two people commented on the safety paragraphs. One party suggested that the

specification should clearly spell out that neither the owner nor engineer is responsible for the contractor's observance of safe working practices on the project.

Paragraph 2 of the *Safety* section indicates this. A paragraph was added to require the contractor to maintain a safety program for the duration of the contract. The program is to be supervised and enforced by an employee of the contractor.

d. Concerning *Access*, Section III, one person suggested that the contractor be made aware of all special requirements set forth in easements.

REA set up the construction specification such that any special requirements would be noted at the end of the appropriate section.

e. In one instance, it was suggested that removal of the gate units, Paragraph 13.5, be taken out of this section. With a permanent easement, all gates installed are left for maintenance in the future. Also a bid item should be included for the gate installation because many times the exact number of gates required is not known and may vary considerably from the initial estimates.

Paragraph B.1 was changed to indicate that all material and labor required for gate installations will be furnished by the contractor per bid unit. If additional units are necessary than those shown in the bid documents, then additional units as well as deletion of units, should be per bid unit. It is recognized that most gates installed during construction will remain, but in cases where the gates must be removed and the fence restored, it is the intention of the specification to include in the unit price for gate installation, the cost of gate removal and fence restoration. The wording of Paragraph B.5 has been changed to read, "In those cases as determined by the engineer, the contractor shall remove the gate and restore the fence."

f. Concerning access roads, one commentor indicated that he could not believe that any contractor would come in and place fill in 1-foot layers. He felt that access roads exist principally to allow the contractor to move equipment onto the site to construct the project and he will build an access road suitable for travel of his equipment. The specification was changed to indicate that the fill will be compacted by suitable heavy construction equipment. Any other provisions concerning compaction should be shown on additional drawings concerning access roads or in the *Special Requirements* section at the end of the section.

g. Under Section IV, Pole Inspection, Handling and Distribution, several

people suggested eliminating reference to REA Specification DT-5C, REA Specification for Wood Poles, Stubs and Anchor Logs. Also one person suggested that poles be supported every 20 feet.

Both suggestions were incorporated in the specification.

h. Several comments concerned the practice of saving extra heavy choice, chose-grained poles for angles, deadends and crossings. They either felt that this requirement should be directed to the pole supplier or that it wasn't needed since these poles are guyed.

The practice of having the contractor use extra heavy choice, and close grained poles at angles and deadends is appropriate if the project is a turnkey job and the poles are being supplied by the contractor. The use of these poles at the stated locations is to better utilize project resources.

i. Two people commented that field gaining of the pole should not be acceptable. During construction of H-frame lines, problems occur due to insufficient quantities of the correct size of fixed and/or adjustable spacers or the matching of replacement poles. The contractor generally will request or make an attempt to field gain the poles in order to use existing materials.

Although field gaining saves construction time, it may cost the owner years of pole life. As a result, prohibiting field gaining will be included in the *Structure Assembly* section.

j. Because grid gain seating jacks are no longer available, one person proposed that grid gains be seated by a combination of tightening the assembly bolts and hammering as the accepted method.

The above suggestion has been incorporated in the specification under *Structure Assembly*.

k. In the *Structure Assembly* section, there was one comment suggesting a method for installing crossarms, crossbraces, and knee braces. The commentor emphasized that in no case will the owner allow total framing on the ground and the erection of a rigid structure.

These remarks were carefully considered. The intention of this specification is to frame the structures on the ground and then erect the entire structure. No one objected to this procedure, with the exception of the above remark which seems to be opposed primarily to erection of a rigid structure. This construction specification allows the contractor certain freedoms in erecting the structures. In the *Structure Erection* section, the specification does require that care be taken by contractor not to overstress any members or connections when

installing structures. Of course, any structure damaged by the contractor during handling and erection, would be replaced by the contractor. In cases where the structure is to be framed in the air, the *Structure Assembly* section should be modified.

l. Several comments were made concerning backfilling and compaction of the pole holes during the structure erection. A summary of these suggestions follow: (1) The compacted dry density shall not be less than the in place dry density; (2) two mechanical vibrators and one shoveler be used when backfilling; (3) a spare vibrator be maintained in good working order; (4) sufficient water be poured in the hole as backfill is added to maintain a water level 2-3 inches above the material; and (5) three hand tampers and one shoveler be used.

The specification was revised to include 1 and 2 above. Although requiring a spare vibrator is an excellent idea, we feel this is a detail which should be left up to the contractor. Pouring water in a hole as the backfill is added may not always be a good idea. Although the backfill should have an optimum moisture content, too much water can prevent proper compaction.

m. Two people requested that when surplus excavated material is spread at the tower site, the landowner should be contacted and agree to it in writing.

Although common practice in rural areas is to spread surplus soil from the pole holes over the site, it may not be appropriate in some instances. As a result, the specification was changed to indicate "when approved by the engineer."

n. When installing the guys and anchors, there were questions as to how the guys could be pretensioned without the conductors installed.

The wording has been modified to reflect the intention of the specification. The new wording will be "Each guy shall be pretensioned to remove the slack out of the guy strand."

o. The requirement by the specification that requires all anchors to be tested to their ultimate capacity was commented on by several people as being an unusually stringent requirement. One person indicated that they have installed many miles of transmission line without ever testing an anchor in place. In fact, he further mentions that the loads most anchors are subjected never approach their ultimate capacity.

In certain instances cooperatives have tested screw anchor installations and have found indications that their capacity may not reach the anticipated

capacity. As a result, REA felt that testing anchors in some situations may be necessary. The specification was revised to indicate that the anchors are to be tested where required by the engineer. The unit costs for testing of anchors should be requested in the bid costs.

p. In Section VI, Conductors and Overhead Ground Wires, several people made reference to the fact that the specification limits checking of the sag of the conductors to one method: Target and transit. Since the stopwatch method has been used successfully for years, they see no reason to eliminate this method from checking sags.

REA recognizes the use of stopwatch method, but prefers the direct target method. Because there are certain limitations which must be adhered to when using the stopwatch method, the specification has been modified to indicate, "When approved by the engineer, sags may be checked by the return wave method." The limitations when using the stopwatch method can be found in Chapter VII-7, Method for Checking Conductor Sag, of REA Bulletin 160-2, Mechanical Design Manual for Overhead Distribution Lines.

There were numerous comments to the drawings, many of which were editorial in nature. The following is a summary of many of the other comments. The comments have been organized to proceed from general remarks to more specific areas.

q. One of the most reoccurring comments concerning a change in the names of some of the pole top assemblies, insulator assemblies, etc. Several cooperatives indicated that this could cause considerable confusion as all past records, design drawings, plan-profile sheets, etc., have the old REA standard designations. Shifting unit designations may also cause major confusion for maintenance of previously constructed lines as well as for retirement of a previously constructed line. Also some of its cooperatives have designed additional structures for use in design and construction of transmission lines which start with the next number in sequence from where REA had stopped. These have designations which would conflict with some of those in the draft.

In changing some of the designations for the pole top units REA organized the designations in a systematic manner. In most cases where preliminary designations had been changed, they have been changed back to the old system. There is one exception, the pole top assembly for the TH-2A. As a deadend structure it is out of place with a numbering system putting it between

the tangent and small angle structure. Many of the anchors, guy attachments, and guy assemblies were renumbered, but should present no problem. These assemblies can be differentiated from the existing system because the new designation ends in a letter (example TG-10A).

r. Some people wanted the drawing reference number to refer to the same item on all drawings. For example, a $\frac{7}{8}$ " bolt would have a drawing reference of 5 on every pole top assembly drawing.

REA recognizes that the above system has some advantages. If such a system was used, the drawing references might as well be the item designations found in REA Bulletin 43-5, List of Materials Acceptable for Use on Systems of REA Electrification Borrowers. This system is presently used on the distribution drawings. A decision was made to keep the old system of drawing reference numbers.

s. In regard to the List of Materials found on the drawings, two people commented that they wanted the subassemblies to be specified, rather than leaving it up to the user. For instance, in the List of Materials for structure TH-235, item 14 is shown as: "GUY ATTACHMENT _____ DUTY, TG-____D." Why not standardize and show: "GUY ATTACHMENT, MEDIUM DUTY, TG-27D."

One of the main purposes of revising REA Form 805 was to enable the user to tie the selection of the guy attachments to the load and not the voltage. For a 115 kV line using a conductor normally found on a 230 kV line, the user can now specify an appropriate medium or heavy duty guy attachment. REA considered specifying the options presently shown on the drawings, with the user changing the material list as necessary. It was felt, however, that having the engineer fill in the subassembly allows flexibility in his/her choice while at the same time representing different manufacturer's products equally.

t. A question was raised as to why the "horizontal vee" construction was not addressed in this draft. Two or three manufacturers presently have this design available.

REA will include the horizontal vee at some future date, after a standard is developed for the polymer insulator. Use of "horizontal vee" construction either with porcelain or polymer will be continued on a case-by-case basis.

u. Several parties felt that a standard post insulator structure for 115/138 kV without a shield wire should be included in the standard. The structure has been used successfully in several areas.

Early in the project, a decision was made that standard structures 115 kV

and over would have an overhead groundwire. In areas where borrowers do not wish to use an overhead ground wire, the project will be treated on a case-by-case basis. REA basically feels that the use of an overhead ground wire for voltages over 115 kV is prudent even in areas of low isokeraunic levels.

A sampling of comments concerning specific drawings follow:

v. The TP-115, 138 small angle structures, are limited to line angles of 15°. In order to make better use of the structure, the line angle limitation should be based on tension of the conductor.

The horizontal post for these structures has the strength to accommodate larger line angles. The limitation arises from the design of the clamp holding the conductor. The 15° criteria is conservative in limiting wear on the conductors.

w. For the TS-115, 138 structures, a $3\frac{3}{8}$ " x $4\frac{1}{2}$ " brace should be considered instead of a $3\frac{3}{8}$ " x $5\frac{1}{2}$ " brace. The $3\frac{3}{8}$ " x $4\frac{1}{2}$ " is certainly adequate and will save money for the user.

The $3\frac{3}{8}$ " x $5\frac{1}{2}$ " brace is presently used for the TH-10 and TH-230 structures. The present standard for the TS/115 structure uses the larger size brace and although there may be some savings, those savings may be offset when a common size brace is used for several structure types.

x. One manufacturer suggested changing the crossarm size of $4\frac{1}{2}$ " x $7\frac{1}{2}$ " used with wishbone construction to $3\frac{3}{8}$ " x $7\frac{1}{2}$ ". In order to get the $4\frac{1}{2}$ " x $7\frac{1}{2}$ " size, the arms would have to be cut from the not too common size of $5\frac{1}{2}$ " x $8\frac{1}{2}$ ". To get the $3\frac{3}{8}$ " x $7\frac{1}{2}$ ", more common nominal $4\frac{1}{2}$ " x $8\frac{1}{2}$ " could be used.

The suggested change was made and the crossarm size for the wishbone structure is $3\frac{3}{8}$ " x $7\frac{1}{2}$ ".

y. A commenter found that the set of X-braces between the center pole and inside pole actually detracts from the overall strength of the TH-232 structure. The front X-brace assembly should be removed.

When analyzing a similar structure, we had made the same observation. The front brace was removed from the standard drawing.

z. One commenter addressed H-frame structures and the possible use of vee braces. It was noted that there is a problem with the 1'-0" dimension between the mounting bolt of the steel tie bar and the mounting bolt of the vee brace on the pole. For oversized pole tops for class 1 or 2 poles, it is difficult to install the vee brace. In order to install the vee brace, the contractor cannot change the spacer attachment by

moving it further from the pole, he will have to field drill a new hole in the pole above the one specified which may be only 8 inches below that of the tie bar. The raised vee brace presents a conflict in stringing. The dimension available between the bottom of the steel tie-bar and the vee brace is inadequate to prevent most stringing dollies from rubbing on the vee brace. Also with the raised brace installation of a cushioned suspension unit is difficult because of confined working space.

The above suggestion has been carefully considered. The top mounting bolt hole for the vee brace is to be field drilled. Only one hole should be drilled to accommodate the brace to pole connection. The problem with clearance could also be associated with the braces being supplied which may be too long for the TH-10 series. The length of the braces should be designed for a maximum length of 9'-5" which has a 6'-0" drop and a spacing of 7'-3". This length of brace will accommodate a 12-inch diameter pole at the brace location. We have not ruled out increasing the vertical dimension from the top of the pole to the crossarm by 3 inches to 6 inches, but we do question if the manufacturer of the vee brace has designed the standard brace for too long of a length.

aa. A manufacturer commented that the TM-110C should be shown on a separate sheet because of the difference in end fittings. Also, they did not believe a 1" bolt or grid gains were necessary for the TM-110C.

The new TM-110C is the same as the existing TM-110A. We have no basis to change the mounting bolts to 3/8". Theoretically, as the dimension between poles becomes greater, there is more compression and uplift in the poles creating a greater chance that the H-frame will "walk." Use of a 1" bolt instead of a 3/8" bolt helps to maintain the integrity of the crossbrace to pole connection.

ab. In reference to the second sheet of drawing TM-9, Grounding, the drawing shows multipole structures grounded together as well as grounded to anchors. On a three pole deadend structure with 17 anchors this would be a considerable project and many cases impossible if installed in rock. The person further commented that they have never installed ties underground as shown and questions the reasoning for this.

REA is not suggesting that these construction units be installed on every project. These grounding units can be specified if the borrower or consultant feels additional grounding is necessary. Even in the case of a deadend with 17 anchors some but not all the anchors

could be tied in with the pole ground. The number of anchors to be connected to the pole ground is also left to the discretion of the owner or owner's engineer.

ac. There was a request to retain the wood davit arm, as well as the steel davit arm.

REA has no objection to the use of wood davit arm and will consider it on a case-by-case basis. The steel davit arm has been found to be more economical than wood. Drawing TM-115 will standardize on the mounting of the steel arm.

ad. One person pointed out that on the drawing for Power Screw Anchors, note 2 should read, "minimum projection after preloading is 8 inches." Forcing a screw anchor rod past the required torque may weaken it. Leaving it stick out 2 feet is better than to over torque it.

Note 2 of drawing TA-1S to 24S will be revised. We agree with the thinking that over torquing of the screw anchor so that it doesn't project too far may not be prudent. Note 2 will read, "Recommended maximum projection after preloading is 8 inches. Projection may be increased to avoid over torquing of the shaft. Final projection shall be approved by the engineer."

ae. Several comments concerned the TMG drawings. They questioned why the guys are not shown and the guying arrangements are not shown in a plan view.

The particular details concerning guying are to be completed by the engineer before requesting construction bids. In the past, guying drawings were placed on a section of the plan-profile drawings, but many times they were accidentally omitted. By including basic drawings, it is hoped the necessary details are completed. One is to show the slope of the guy, the location and arrangement of anchors, and the right-of-way offset in plan and elevation of the structure. Because of the number of variations, it was not possible for these drawings to be filled in completely.

List of Subjects in 7 CFR Part 1736

Electric utilities, Engineering standards, Incorporation by reference.

In view of the above, 7 CFR Part 1736, § 1736.97 is amended by revising the entry for 50-1.

PART 1736—ELECTRIC STANDARDS AND SPECIFICATIONS

1. The authority cited for 7 CFR Part 1736 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

2. The table in § 1736.97(b) is amended by revising the entry for Bulletin 50-1 to read as follows:

§ 1736.97 Incorporation by Reference of Electric Standards and Specifications.

* * *

(b) * * *

Bulletin 50-1 (T-805-B), Electric Transmission Specifications and Drawings for 115 kV to 230 kV (10-88)

* * *

Date: September 30, 1988.

Jack Van Mark,

Acting Administrator.

[FR Doc. 88-23023 Filed 10-5-88; 8:45 am]

BILLING CODE 3410-15-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 615 and 618

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) adopts final regulations amending 12 CFR Part 615, Subpart H, and Part 618, Subpart J. The regulations amending Subpart H of Part 615 establish minimum permanent capital standards for Farm Credit System ("System") institutions and require them to adopt capital adequacy plans that enable them to meet such standards. The amendment to Subpart H implements section 301(a) of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233, which directs the FCA to issue regulations under section 4.3(a) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2001 *et seq.*, establishing minimum permanent capital standards, expressed as a ratio of capital to assets, that take into account relative risk factors. The regulation provides for a relative weighting of assets on the basis of risk and establishes a minimum ratio of permanent capital to risk-weighted assets of 7 percent, to be achieved by 1993. The standard is phased in through a series of interim permanent capital standards that are determined by reference to each institution's permanent capital ratio on June 30, 1988. Double counting of capital between related institutions is eliminated by subtracting the investment in another System institution from both the capital and assets of the investing institution before computing the permanent capital ratio. This method of eliminating double

counting between Farm Credit Banks (FCBs) and direct lender associations is phased in over a 10-year period. For institutions that are unable to meet their interim standards, the regulation provides a "safe harbor" from certain regulatory enforcement actions if forbearance criteria are met. Forbearance criteria are based on specified increases in institutions' permanent capital ratios. The regulation also sets forth factors that should be considered in developing plans to achieve capital adequacy for each System institution engaged in lending or leasing. The regulation amending Part 618, Subpart J, sets forth minimum requirements for an operational and strategic business plan that will be required of all System institutions.

The effect of the regulations amending Part 615 is to require System institutions that engage in lending and leasing activities to achieve a minimum permanent capital level of 7 percent of risk-adjusted assets by the beginning of 1993 and to develop capital adequacy plans for meeting such a standard. The effect of the regulations amending Part 618 is to require System institutions to develop strategic and operational plans for a minimum 3-year period that meet certain minimum requirements.

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after this publication during which either or both houses of Congress is in session. Notice of effective date will be published.

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4402

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: On July 23, 1986, the Farm Credit Administration (FCA) published for comment proposed regulations [51 FR 26402] relating to capital adequacy and minimum capital for System institutions pursuant to section 4.3(a) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2154. On October 16, 1986, the FCA published for comment proposed conforming amendments to Parts 614 and 615 (capital adequacy related regulations) [51 FR 36824]. On January 6, 1988, the Agricultural Credit Act of 1987, Pub. L. 100-233 (1987 Act) was enacted, amending the 1971 Act to alter

significantly the provisions relating to capitalization of System institutions. Section 301 of the 1987 Act directed the FCA to adopt minimum permanent capital standards for System institutions that take into account risk factors. On February 17, 1988, the FCA published an Advance Notice of Proposed Rulemaking (ANPR) soliciting comments on a proposed approach to the risk-based minimum permanent capital standard (53 FR 4642). On April 5, 1988, the FCA adopted proposed capital adequacy regulations, which were published for comment on May 12, 1988 (53 FR 16948), and withdrew the July 23, 1986 proposed capital adequacy standards. On June 9, 1988, the FCA held a public hearing on the proposed regulation. The comment period closed on June 10, 1988.

Comments were received from 143 organizations and individuals, including the Farm Credit Corporation of America (FCCA), the Federal land banks (FLBs), Federal intermediate credit banks (FICBs), and bank for cooperatives (BCs) in 9 districts, 57 Federal land bank associations (FLBAs), 48 production credit associations (PCAs), the Central Bank for Cooperatives, Federal Farm Credit Banks Funding Corporation (Funding Corporation), The Farm Credit Council, National Council of Farmer Cooperatives, American Bankers Association (ABA), the Independent Bankers Association of America (IBAA), National Association of Wheat Growers, First Boston Corporation, American Farm Bureau Federation, Iowa Institute of Cooperation, National Grange, GROWMARK, Nebraska Cooperative Council, Farm Credit System Audit Committee, Texas Federation of PCAs, 6 individual borrowers and 7 Federal legislators.

After considering the comments, the FCA solicited additional comments on August 10, 1988, (53 FR 30071) on two issues: Alternative methods for eliminating double counting of capital and a regulatory forbearance plan under consideration for incorporation in the final rule. The comment period closed on August 31, 1988.

Forty-seven comment letters were received, some representing the views of two or more institutions. Thirty PCAs, 20 FLBAs, 9 Farm Credit Banks formed from the mergers of FLBs and FICBs (FCBs), 4 BCs, and 1 FICB commented. Comments were also received from the FCCA, the Funding Corporation, the ABA, and the St. Paul District Federation on behalf of all PCAs and FLBAs in the St. Paul District.

The comments received during the initial comment period, testimony received at the public hearing, and the

comments received in response to the resolicitation are summarized below along with the FCA's response and an explanation of changes to the proposed rule made in the final rule.

A. Minimum Permanent Capital Standards

The FCA proposed for comment a minimum permanent capital standard of 7 percent, to be achieved by 1993 through a series of annual interim standards that would increase in annual increments equal to 20 percent of the difference between the permanent capital ratio of each institution on December 31, 1987 and 7 percent.

1. Summary of Comments

Almost all of the respondents in the initial comment period commented on the 7 percent requirement. A few respondents, including the ABA, the IBAA, and the National Association of Wheat Growers, supported the 7 percent requirement. The ABA and the IBAA noted that commercial banks are required to meet an 8 percent standard by 1992. The ABA suggested that the 7 percent level be increased to 8 percent in the interest of competitive equality and made reference to the FCA's assertion in the preamble of the proposed regulation that a capital level of at least 10 percent would have been required of System institutions to weather the last few years of economic stress. The ABA witness at the public hearing also noted that agricultural banks had average capital of 9.73 percent at yearend 1987 without taking into account the allowance for losses.

Several System institutions supported the 7 percent rate, some noting that it is hard to argue with 7 percent as an appropriate rate when System institutions have historically maintained capital at levels higher than 7 percent. A number of the respondents and witnesses at the public hearing stated that 7 percent would be an acceptable level, but thought a 5-year phase-in would be too short, requiring an unrealistic return on assets to achieve. Several of these respondents suggested alternative phase-in plans, which are discussed later in this document.

The majority of the respondents, most of which were System institutions, objected to the requirement as too high. Many of these respondents argued that the 7 percent rate phased in over 5 years would require raising borrower interest rates by 1 to 4 percent to uncompetitive levels, thereby making currently viable institutions nonviable because such a rate increase would result in accrual loans becoming nonaccrual loans and

borrowers being driven away from the System. The respondents asserted that this would increase the need for Federal assistance or the likelihood of forced merger or liquidation. Many respondents looked to borrowers as the only realistic source of additional capital. They argued that non-voting stock on which no dividend can be paid until permanent capital standards are met would not be attractive to the investment community. They thought this would be especially true for those System institutions with negative or very low levels of "permanent capital" as that term is defined in the regulation. They pointed out that since equities protected by section 4.9A of the 1971 Act, as amended, are excluded from the statutory definition of permanent capital, the only remaining component of permanent capital is earned net worth, which is at very low levels in many institutions.

A number of respondents perceived the 7 percent requirement to be a higher capital standard than the 8 percent that would be imposed upon commercial banks by uniform guidelines that have been proposed by other Federal bank regulatory agencies (Interagency Guidelines). These respondents argued that the 7 percent "permanent capital" requirement should be compared with the 4 percent "core" capital requirement proposed by the other regulators. These respondents noted that commercial banks are allowed to count subordinated debt and the general portion of the allowance for losses toward their regulatory capital requirement, whereas the allowance for losses is statutorily excluded from the definition of "permanent capital" and System institutions are unable to augment their permanent capital by issuing subordinated debt.¹

One respondent thought that the FCA had arrived at 7 percent by reference to the 8 percent required of commercial banks by counting each additional \$1.00 in tier two of the commercial bank requirement as \$.75 for the FCA requirement and stated that the FCA

should more thoroughly discuss and defend its assumptions.

A number of respondents, including some System institutions, agreed with the FCA's assertion that the System's single industry lending is inherently more risky than the more diversified lending of commercial banks. Some did not agree and argued that the agricultural industry itself is diverse, citing the diversity of commodities and geographic areas financed by the System. Some respondents opined that third world loans and energy loans pose a far greater risk to commercial banks than agricultural lending does to System institutions. The respondents also noted that other Federal bank regulators do not prescribe higher capital requirements for agricultural banks than for commercial banks generally.

Some respondents, including the FCCA, asserted that capital levels should be lower for System institutions than commercial banks because of the following System characteristics: Preferred access to capital markets due to sponsored agency status; joint and several liability; lower liquidity risks due to a lack of demand deposits, the existence of a secondary market for debt issues, and the authority of the Federal Reserve Board to purchase System obligations in the open market; lower country risk; lower payment risk; the greater percentage of collateralized loans in System institutions; and the greater protection for debtholders provided by the Farm Credit System Insurance Corporation than the FDIC provides for commercial banks. Several respondents noted that the required capital for the Federal National Mortgage Association (FNMA), a sponsored agency, is 2 percent.

For one or more of these reasons, many respondents asserted that the minimum permanent capital standard should be in the 3 to 4 percent range, although some respondents thought 5 or 6 percent would be acceptable, or even 7 percent with a longer phase-in period.

2. FCA Response

The FCA did not derive the proposed 7 percent requirement primarily from the 8 percent required of commercial banks. The FCA arrived at 7 percent after a review of levels of capital historically maintained by System institutions, previous statutory and regulatory capital requirements for the System and System-developed capital standards. The FCA also estimated the levels of permanent capital that would have been required by various System institutions to survive the stress of the last 5 years and still be able to generate positive

earnings in 1992 without Federal financial assistance. The FCA determined that a 7 percent risk-adjusted ratio is an appropriate level in view of System experience. The FCA then compared the historical System data and the proposed requirement with historical data for commercial banks and current and proposed capital requirements for commercial banks and concluded that such a level is also appropriate when compared to the requirements for commercial banks.

Historic System Experience

Prior to 1987, the 1971 Act required certain System institutions that are primary lenders to maintain statutory debt-to-capital ratios. PCAs were required to maintain a debt-to-capital ratio of 10 to 1. (See 12 U.S.C. 2074(c) (1980 Ed.), repealed by the 1987 Act.) This translates to a total-capital-to-total-asset ratio of 9.1. The issuance of debt obligations was subject to a Systemwide statutory limitation of 20 to 1 total-capital-to-total-asset ratio. (See 12 U.S.C. 2154 (1980 Ed.), repealed by the 1987 Act.) The 1971 Act, after its amendment by the 1987 Act, contains no Systemwide limits, but limits individual bank participation to limits on individual indebtedness. FCA regulations that are repealed by this regulation required debt-to-capital ratios of 20 to 1 for System banks individually. A 20-to-1 debt-to-capital ratio translates into a 4.8 percent total-capital-to-total-asset ratio. The FCA also looked at monitoring standards developed by the System in 1982 in support of its capital preservation and other loss-sharing agreements. These standards required total capital as a percentage of total assets at levels of about 1.5 percent for FICBs, 4 percent for FLBs, 7 percent for PCAs and 7 percent for BCs. In 1984, the System capital standard for banks was 7.5 percent of total assets.

These ratios are not directly comparable to the proposed standard because the asset base is not risk-adjusted. The effect of risk adjusting an institution's asset base is to require less capital since some assets are included in the asset base at less than 100 percent of the principal amount. Precise equivalence can only be determined on an institution-by-institution basis because the composition of the asset base varies from institution to institution. However, generally, a 7 percent capital-to-total-asset ratio is a higher standard than a 7 percent capital-to-risk-adjusted-asset ratio.

Of course, the exclusion of protected stock and the elimination of double-duty capital decreases the capital available

¹ One such respondent inaccurately asserted that core capital would include the general portion of the allowance for losses, up to 1.25 percent of assets. In fact, core (tier one) capital under the proposed Interagency Guidelines would consist essentially of common stockholder's equity (common stock, surplus, retained earnings including capital reserves that represent an appropriation or segregation of retained or undivided earnings, and perpetual preferred stock). The remainder of the 8 percent requirement could be met by supplementary (tier two) capital, primarily the general portion of the allowance for losses up to 1.25 percent of risk-adjusted assets; long-term and convertible preferred stock; subordinated debt; and hybrid capital instruments that meet specified criteria.

to meet the standard. The exclusion of protected stock is a temporary problem, since all borrower stock issued after October 5, 1988, must have the characteristics of permanent capital, and protected borrower stock will gradually be retired in the ordinary course of business. The phase-in of the capital standard in the final regulation is designed to deal with the effect of the exclusion of protected stock on the institution's ability to meet prudent capital standards in the early years. The effect may be ameliorated in a particular institution by a transfer of some of the double-duty capital between the direct lender and its funding bank during the phase-in period.

The FCA believes that the standard should be set at a level that is appropriate for the safe and sound operation of the institution rather than set on the basis of what institutions can easily meet. The FCA recognizes that the exclusion of protected stock from the statutory definition of permanent capital makes it difficult for many institutions to attain the 7 percent standard in the early years and has taken that fact into account in setting interim standards that are based upon the institution's beginning permanent capital ratio and in incorporating a regulatory forbearance plan in the final regulation.

The FCA estimated the levels of capital that would have been required by various System institutions to survive the stress of the last 5 years and still be able to generate positive earnings in 1992 without Federal financial assistance. These studies showed that the combined FLB/FLBA system would have needed permanent capital of about 10 percent of weighted assets, with some districts needing up to 16 percent. The FICB/PCA and BC systems were estimated to have needed somewhat less, while many individual PCAs would have needed substantially more. The FCA recognized that minimum standards based on what would be necessary to survive a historic downturn in the agricultural economy could be considered an overly conservative approach. The FCA therefore considered what would have been needed by four FLBs that experienced less than average stress, as measured by annual chargeoffs, yearend nonaccrual loans, and yearend allowance for loan losses, all taken as a percentage of gross loans for the period 1985 to 1987. These FLBs would have needed capital of about 7 percent of risk-weighted assets at the beginning of the stress period to continue generating positive earnings. The FCA has also looked at permanent capital ratios for the FLBs able to

maintain positive net operating incomes during the years 1985 to 1987. After the double counting of capital was eliminated, the ratios of the banks' remaining capital to risk-adjusted assets ranged from 8.5 percent to 11.2 percent, averaging about 9.7 percent. The FCA has concluded that very few, if any, institutions desiring to generate consistent net positive earnings throughout periods of stress could operate with much less than 8 percent risk-adjusted capital.

Commercial Bank Standards

While the FCA did not arrive at the 7 percent standard by reference to the 8 percent standard proposed by other Federal regulators, it has compared the two. The proposed 7 percent standard may be considered roughly equivalent to the 8 percent standard proposed by other Federal regulators when the general allowance for losses (up to 1.25 percent of risk-adjusted assets) and other components of capital not available to System institutions are taken into account. The FCA was persuaded by the argument that System institutions should be compared for this purpose with agricultural banks. Most of these banks do not have access to subordinated debt and other sources of capital that qualify as tier-two capital for commercial banks and consequently will have to meet the 8 percent standard primarily through the use of core capital. (Components of tier-two capital that are available to commercial banks but not available to System institutions, exclusive of the allowance for losses, constituted less than one-tenth of one percent (.10 percent) of total assets for all U.S. banks with above average proportions of farm loans in their portfolios from 1984 to 1987.)

The FCA has also compared the 7 percent risk-adjusted rate with the capital ratios currently required by other Federal regulators and with the average primary and equity capital ratios maintained by U.S. commercial banks generally and U.S. agricultural commercial banks for 1985 and 1986. In order to compare the 7 percent risk-adjusted rate with the total-capital-to-total-asset ratios currently required by other Federal regulators, it was necessary to convert the 7 percent risk-adjusted ratio to a permanent-capital-to-total-asset ratio. To accomplish the conversion, the FCA computed the amount of permanent capital that would have been required in each System bank for the years 1984 to 1987 had the 7 percent risk-adjusted standard been in effect and divided the result by total assets to derive a permanent-capital-to-total-asset ratio. Because the amount of

permanent capital required under the risk-adjusted standard is affected by the composition of each institution's assets, the permanent-capital-to-total-asset ratios vary from institution to institution.

After the conversion, the risk adjusted ratio of 7 percent translated to ratios that ranged from 4.3 percent to 6 percent for combined FLBs/FICBs. By comparison, commercial banks were required to have total capital levels of at least 6 percent of total assets over this period, of which 5.5 percent was required to be "primary capital." "Primary capital" includes essentially stockholders equity and the allowance for losses. Stockholder's equity is essentially stock (common and perpetual preferred), paid-in surplus, and retained earnings. The primary capital ratio for commercial banks is derived by dividing the bank's primary capital by total assets plus the allowance for losses.

This comparison is inexact because of the different treatment of the allowance for losses. Commercial banks are allowed to count the allowance for losses as primary capital, but are required to add back the allowance for losses to the asset base, whereas Farm Credit institutions are not permitted to count the allowance as capital but are allowed to deduct the allowance from the asset base. While the inclusion of the allowance for losses on both the capital and the asset sides of the ratio gives commercial banks a slight advantage in meeting their capital requirements, the exclusion of the allowance from permanent capital is not as great a disadvantage as many respondents appeared to believe, because the allowance is also deducted from the asset base. When an adjustment is made to the primary capital ratio to account for the inclusion of the allowance for losses, the adjusted ratio for commercial banks is 4.7 percent. The adjustment is made by subtracting from the required primary capital percentage an amount equal to the average actual allowance for loss stated as a percentage of assets for all commercial banks, which for 1985 and 1986 was 0.8 percent.

In addition, the FCA has compared the 7 percent risk-adjusted rate, converted to a permanent-capital-to-total-asset ratio as described above, to the average primary capital and equity capital as a percentage of total assets of all U.S. commercial banks and all U.S. agricultural commercial banks (banks in which at least 25 percent of the loan portfolio consists of loans to agricultural enterprises) for 1985 and 1986. Over this

period, U.S. agricultural commercial banks held even more equity capital than commercial banks in general. Commercial banks in general held average equity capital of 9.2 percent and 8.9 percent of total assets in 1985 and 1986, respectively, while agricultural commercial banks held average equity capital of 10.2 percent and 9.3 percent of total assets in 1985 and 1986, respectively. Thus, on the average, commercial banks possessed substantially more equity capital than either the amount required of them or the amount that would have been required of System banks had the proposed standard been in effect in 1985 and 1986.

The FCA does not agree with the arguments put forth by the FCCA and others that System institutions should have a lower capital requirement than commercial banks. The FCA believes that Farm Credit institutions should be operated as self-sustaining businesses with as little reliance upon Federal assistance as possible. As such, they should be subject to the same standards of safety and soundness and prudent lending as other lenders. The existence of joint and several liability on consolidated Systemwide obligations makes prudent capital standards more rather than less necessary, inasmuch as joint and several liability imposes potential obligations on System institutions as well as conferring potential benefits. Furthermore, joint and several liability is an advantage to investors only if it is supported by adequately capitalized institutions.

Nor does the FCA believe that greater protection offered to System investors by the Farm Credit System Insurance Corporation (FCSIC) should necessarily result in a lower capital standard for Farm Credit institutions than for commercial banks, inasmuch as there are countervailing considerations that argue for a higher rate, such as single-industry lending. Moreover, the actual level of reserves in the insurance corporation during the 5-year-start-up period will be insufficient to assist any single large institution in the System in a material way. Furthermore, it is doubtful that even a fully funded insurance corporation could have provided sufficient assistance to the weaker institutions to avert the need for Federal assistance during the 1980s. The situation in which the savings and loan industry currently finds itself, in which insolvent institutions cannot be liquidated because there are insufficient reserves in the insurance fund to pay off depositors, should be ample evidence of the folly of relying too heavily upon the

existence of insurance. Also, it should be noted that the "Cabinet Council Recommendations for Change in the Federal Deposit Insurance System" published in January 1985 and cited in the report of the General Accounting Office on Federal deposit insurance, stated that notwithstanding the existence of Federal deposit insurance, insured institutions should have capital in the range of 8 to 10 percent of assets.

The FCCA asserted that System institutions should have a lower capital standard than commercial banks because they have less liquidity risk, less funding risk, less payment risk and less country risk. The FCCA pointed out that the Federal Reserve Board is able to purchase Farm Credit securities in the open market and that there is an active secondary market in Farm Credit securities that enhances their marketability and lessens liquidity risk. The FCCA also pointed out that Farm Credit institutions do not take demand deposits.

The FCA finds it difficult to differentiate in any quantifiable fashion between the liquidity risks posed to commercial banks from their funding sources and the liquidity risks posed to the System from its principal funding source. Liquidity for the System is measured primarily by the ease with which System banks can access the agency market to sell their notes and bonds. The major factor in market access is public confidence that the System will repay the notes and bonds in a timely manner when they mature. Public confidence is also a principal factor determining the stability of the demand deposit base of commercial banks. One of the key indicators that the public will look to in assessing whether to make funds available to financial institutions (commercial banks and Farm Credit institutions alike) is the level of capital that the financial institutions have as a cushion against loss.

The FCA also continues to believe that single-industry lending is inherently more risky than diversified lending despite the diversity that exists within agriculture. The widespread distress in the Farm Credit System during the recent downturn in the agricultural economy provides ample evidence. Few districts were unscathed. The FCA agrees that commercial banks that have concentrated their lending in third world debt or energy related loans are also engaged in high-risk lending. The difference between Farm Credit banks and commercial banks is that Farm Credit banks are legally restricted in the degree to which they can diversify,

whereas a commercial bank that has concentrations of energy loans or third world debt can elect to diversify. The fact that the other Federal regulators have not established a separate standard for agricultural banks or other banks with single industry concentrations could be due to the difficulty and impracticality of attempting to design such a sensitive standard where concentrations occur as a matter of choice and can fluctuate in the discretion of the bank rather than being required as a matter of law.

Sponsored Agencies

In addition, the FCA does not believe that the System's "sponsored" status should necessarily result in lower capital requirements to support their lending operations. While there appears to be a public perception that the United States Government stands behind institutions that sell securities in the agency securities market, there is no explicit guarantee by the United States Government and there is no guarantee that Federal assistance would be forthcoming in the event of default. Also, there is a similar perception with respect to institutions whose deposits are Federally insured, even though the deposit insurance corporations have no explicit guarantee of Federal assistance should their funds be depleted. In both cases, the level of capital continues to be a matter of concern to investors.

The operations of System institutions are not analogous to the operations of FNMA, as the reference to its required capital levels would suggest, inasmuch as FNMA is a secondary market intermediary and System institutions are not. System institutions play an important role in the primary mortgage market as direct loan originators. They do not have the characteristics of a secondary market participant, nor are they active at present in the secondary market. The FCB does not function as a true intermediary in the same way as FNMA does and bears substantially more risk. Despite this greater risk, the minimum permanent capital standard adopted in the final regulation, had it been in effect, would have required System FICBs to maintain an average permanent capital-to-total asset ratio over the 1984 to 1987 period of about 1.4 percent, a lower rate than the comparable capital-to-total asset rate required of FNMA of 2 percent.

Conclusion

After carefully gathering and analyzing all of the above information and considering the comments, the FCA has concluded that the proposed

minimum capital standard of 7 percent is appropriate as a minimum standard for the safe and sound operation of well managed System institutions during normal business cycles and adopts such a standard in the final regulation. Many institutions will require more.

B. Phase-In

1. Summary of Comments

Many of the System institutions that commented asserted that they would be unable to reach the standard by 1993, citing interest rate increases and returns on assets that would be required and that were deemed to be uncompetitive and unrealistic. Many respondents suggested that the phase-in should be longer and/or non-linear and/or more flexible, since the starting point is an historic low and the minimum permanent capital standard higher than that for their competitors, commercial lenders. Many respondents pointed out factors that would make reaching even the interim standards difficult in the early years: (1) One-time events occurring in 1988, such as the required stock purchase in the FAC, reallocation of loss-sharing accruals for some institutions, and PCA allowance for loss adjustments required by tax law changes; (2) continued high average System debt costs and the lingering effects of nonaccrual loans; (3) the high percentage of statutorily protected borrower stock in the early years; and (4) the requirement for banks to record a pro rata share of FAC bonds. A non-linear phase-in was often suggested to take into account these factors and to allow for the compounding effect of earnings. Several legislators who commented asserted that Congress did not intend standards to be so high that most institutions would be in violation the first year.

A number of alternative phase-in plans were suggested. A back-loaded, non-linear phase-in, which requires little or no increase in capital during the first and second year and increasing in the third through the fifth year was the alternative most often suggested. However, a number of respondents suggested extending the phase-in over a longer period, from 10 to 15 years. Several respondents suggested requiring 3 to 5 percent by 1992, with some higher figures, 6 to 7 percent, to be achieved in 10 to 15 years. One respondent suggested that institutions be allowed to set their own phase-in standards. Another suggested that the FCA establish regulatory oversight on the basis of an institution-by-institution evaluation. Establishing subcategories of institutions by financial condition,

with appropriate interim standards for each was also suggested.

FCA enforcement of its capital standards during the phase-in period appeared to be a primary concern of those who commented on the phase-in. While some respondents supported enforcement during the phase-in period, two senators wrote in opposition to enforcement during the phase-in period, although the 1987 Act appears to contemplate it. Other respondents proposed that FCA develop a formal regulatory forbearance plan that would provide a "safe harbor" for institutions that are making reasonable progress toward meeting their minimum permanent capital standards. Some suggested that the granting of forbearance be based on a specified minimum return on assets and others, on a specified increase in the permanent capital ratio. Several respondents expressed concern that a failure to attain the interim standard would automatically result in enforcement action, including draconian measures such as forced merger and liquidation, despite the FCA's assurance in the preamble of the proposed regulation that it would take into account the good faith efforts and reasonable progress of System institutions in determining whether an enforcement action is appropriate. Other respondents, while not expressing such a concern, appeared to assume such a result.

2. FCA Response

The FCA recognizes that the statutory exclusion of protected equities may make it difficult for some institutions to meet the standard in the early years. However, the FCA believes it important to set a standard that will continue to be appropriate when protected stock is phased out and all borrower equities are at-risk. Since that statute requires a 5-year phase-in period, the FCA cannot extend the phase-in period beyond 5 years. However, the FCA was persuaded by the arguments of the respondents that some formal assurance should be given to institutions that enforcement actions will not be taken against institutions that are making a good faith effort to reach the standard and are improving their capital ratios by at least a reasonable amount. Therefore, the FCA solicited additional comment on a forbearance plan, which is discussed later in this document. Because of the many extraordinary expenses in 1988, the FCA asked respondents to the resolicitation to assume that the permanent capital ratio as of December 31, 1987, would be the interim standard for 1989. The FCA concluded that such a delay in requiring

an increase in the permanent capital ratio would be appropriate because some of the extraordinary events to which the respondents referred were related to the transfer of funds between Farm Credit System institutions required by the 1987 Act, such as the requirement to purchase stock in the Farm Credit System Financial Assistance Corporation (FAC) and loss sharing reversals.

Respondents to the resolicitation asserted that many institutions would have difficulty even maintaining the December 31, 1987 ratio in 1988, because none of the one-time events required by the 1987 Act would have been recorded as of December 31, 1987. Since the extraordinary events referred to above were recorded in the first half of 1988, the FCA concluded that the simplest way to make allowance for these events would be to use the permanent capital ratio as of June 30, 1988, as the beginning permanent capital ratio and the interim standard for 1989 and reflected this change in the final regulation.

The final regulation does not attempt to make any additional adjustment for the effect of the recent change in the Federal tax laws relative to the allowance for losses beyond that which would result from using the June 30, 1988 permanent capital ratio as a beginning permanent capital ratio. However, some flexibility in managing the effect of such increased tax liabilities on the direct lender association's ability to meet its minimum capital standards may be afforded by the manner in which the elimination of the double counting of capital between direct lender associations and their funding banks is phased in the final regulation. (See discussion of "Double duty dollar adjustments" below.)

The FCA considered the effect of a non-linear, back-loaded phase-in as well and concluded that it would have the effect of requiring institutions to achieve a pronounced increase in their permanent capital at the end of the phase-in period, which would be difficult for many institutions to achieve in a single year. If interim standards are to easily attainable in the early years, institutions could be lulled into a false sense of security, only to be faced with a steep increase in the requirement at the end of the phase-in. Since the final regulation provides for a forbearance plan and delays any required increase in the interim permanent capital ratios until January 1, 1990, the FAC concluded that a linear phase-in would be preferable to avoid such an effect in the last year of the phase-in. In addition,

most institutions will achieve some increase in permanent capital in 1988 and 1989 as result of the statutorily mandated conversion of some portion of protected stock to at-risk stock and the issuance of new at-risk stock after October 5, 1988. This increase alone will permit many institutions to meet their interim permanent capital standards in 1990. Therefore, the final regulation retains a linear phase-in of the 7 percent standard.

The interim standards of the final regulation are based on a percentage of the difference between the institution's permanent capital as of June 30, 1988, and 7 percent. However, since no increase in the permanent capital ratio is required for 1989, instead of requiring an incremental 20 percent of the shortfall to be achieved in each of the 5 phase-in years, the final regulation requires a 25 percent increment to be achieved in each of the 4 remaining years of the phase-in, beginning in 1990.

C. Forbearance Plan

1. Summary of Comments

In the resolicitation of comments published on August 10, 1988, the FCA invited comment on a forbearance plan developed in response to comments on the original May 12, 1988 proposal. Under the plan, an institution would be exempt from regulatory enforcement action imposed solely for failure to meet its minimum permanent capital standard during any year from 1989 through 1993 in which it maintains its permanent capital ratio at or above the average permanent capital ratio for the previous year plus the increase specified below:

Forbearance Criteria

Increase in Permanent Capital Ratio
Over the Average of the Previous Year's
Closing Capital Ratios.

	Basis points
1989.....	0
1990.....	50
1991.....	75
1992.....	75
1993.....	100

The previous year's average permanent capital ratio for an institution would be computed by summing the adjusted permanent capital balances computed from each closing statement for that year (numerator) and dividing by the total of the risk-adjusted assets (denominator) computed from each closing statement for that year. For the purpose of commenting, respondents were instructed to assume that until 1991, the average would be computed

using averages of monthend balances, and that beginning in 1991, the average would be computed using averages of daily balances. Under the plan, if an institution were to maintain its permanent capital ratio throughout a given year at or above its prior year's average plus the forbearance increment, it would be exempt from enforcement action taken solely for failure to meet its interim minimum permanent capital standard for that year. The plan proposed on August 10, 1988, would require the institution to meet the criterion at all times during the year.

The ABA opposed regulatory forbearance for Farm Credit institutions altogether, opining that the statutory phase-in period is already a forbearance plan. The ABA also asserted that any extension of the forbearance plan beyond 5-year period would in fact constitute a direct contravention of the statute. The ABA suggested that the FCA delay implementation of forbearance until capital standards have been finalized so that some estimate of the effect of the forbearance plan can be determined.

Most of the respondents to the resolicitation supported the forbearance plan, but thought that it should be extended beyond 5 years. One respondent thought that either the period should be extended or the criteria lowered. Some respondents thought that any extension of the forbearance should be limited to 3 to 5 years beyond 1993, but others thought that it should be open ended until 7 percent is reached. A number of respondents suggested that increments of 100 basis points in the permanent capital ratio should be required to qualify for forbearance in the extended period. A few respondents asserted that forbearance should be negotiated with each institution in order to take into account the particular circumstances of that institution. Two respondents favored regulatory forbearance, a non-linear phase-in and a lower minimum capital requirement within 5 years and a higher level within 7 to 10 years. These respondents asserted that the weakened position in which many Farm Credit institutions started, with declining accruing loans, high costs due to borrower rights compliance, insurance fund implementation and repayment of financial assistance, warrant such an approach. Otherwise, the respondents assert, institutions could price themselves out of the market.

Several respondents, including the FCCA, suggested that the forbearance plan should have a cumulative provision which would provide a safe harbor for

an institution that meets the lesser of the required annual forbearance increment or the cumulative annual forbearance increments. These respondents asserted that such a provision would encourage the retention of earnings above the amount needed to meet the forbearance standard in the early years.

Most of the respondents who commented on the forbearance plan asserted that the institution should be able to pay dividends and retire stock when the forbearance criteria are met. In support of this position, the respondents argue that the ability to retire stock is essential to enable the institution to remain competitive and to retain accruing loan volume. One respondent asserted that the institutions' inability to retire stock will be perceived by borrowers as a stock freeze. A few respondents suggested that institutions be allowed to retire stock if the cumulative forbearance standard were met even if interim permanent standards are not met. Only a few respondents appeared to recognize that this would require the FCA to characterize the forbearance criteria as a minimum permanent capital standard to avoid the statutory prohibition on the payment of dividends and the retirement of stock when permanent capital standards are not met. (See section 4.3A(d) of the 1971 Act, as amended.) The FCCA also suggested that the regulation provide temporary forbearance to an institution that achieves its annual increment despite not doing so previously. A few respondents requested that the FCA make provision for unforeseen occurrences, such as having to record a pro rata share of the bonds of the FAC and the cost of liquidating other institutions.

A number of respondents objected to the manner in which the FCA proposed to compute and apply the regulatory forbearance criteria. Several thought that the institution should not be required to maintain the increment throughout the year but that the institution's satisfaction of its criteria should be measured once a year. These respondents pointed to the seasonality of their business and short term uncertainties in their loan portfolios in support of their views. Many respondents objected to having to compute the criteria on an average daily balance after 1990. Some suggested the use of a 13-month rolling average instead.

2. FCA Response

The FCA does not agree with the ABA that the statutory phase-in period is

intended to operate as a regulatory forbearance plan. Rather, the FCA notes that the statute requires the rate, which is based on safety and soundness concerns and not on an institution's progress, to be phased in. Such a phase-in is necessary because of the stock protection provisions of the 1987 Act and the statutory definition of permanent capital, which makes most of the equity in Farm Credit institutions unavailable for meeting the capital requirements the FCA is required to establish. Nor does the FCA believe that extending regulatory forbearance beyond 1993 contravenes the 1987 Act. Capital requirements are not relaxed by the forbearance plan. The institutions must still meet the capital requirements in order to be able to retire stock or distribute earnings. The regulatory forbearance plan merely provides a mechanism for the FCA to communicate to Farm Credit institutions in a way that gives some level of comfort that the FCA will not initiate enforcement actions against institutions solely for failure to meet minimum permanent capital standards when they are making a good faith effort to meet these standards and are achieving reasonable progress in meeting their requirements.

The final regulation incorporates a forbearance plan similar to the plan published for comment on August 10, 1988, and extends the forbearance beyond 1993 for institutions that increase their permanent capital ratios by 100 basis points each year until they reach 7 percent. In the final regulation the forbearance plan operates cumulatively and cumulatively only. Under the final regulation, the forbearance criteria for each year is determined by adding the cumulative total of the annual basis point increments for prior years and the current years, as published in the resolicitation, to the beginning permanent capital ratio, calculated as of June 30, 1988, as illustrated below:

Year	Forbearance criteria
1990.....	Beginning ratio plus 50 basis points.
1991.....	Beginning ratio plus 125 basis points.
1992.....	Beginning ratio plus 200 basis points.
1993.....	Beginning ratio plus 300 basis points.
Thereafter.....	1993 ratio plus 100 basis points each year, cumulatively, until 7 percent is reached.

Any institution that meets the cumulative criteria in any year is eligible for forbearance despite failing to meet it previously, which eliminates the

need to provide for "temporary forbearance."

The final regulation does not make any adjustments in the criteria for unforeseen occurrences, as suggested by the respondents. There does not appear to be any practicable way to take into account unforeseen occurrences in establishing objective criteria. Since the criteria are objective and the effect of meeting the standards is to preclude enforcement action for failure to meet the standard, the FCA believes that the criteria should be rigorous. As always, the FCA will take into account individual circumstances and extenuating circumstances (including unforeseen occurrences) in determining whether enforcement action is appropriate and useful. The FCA notes, however, that the recording of FAC bonds is not an unforeseen occurrence, as it occurs at maturity, and institutions should consider that event in their capital planning.

The final regulation requires forbearance criteria to be met at all times during the year, rather than at the end of the year as several respondents suggested. The FCA believes that to require the forbearance criteria to be met only at the end of the year is too lenient a standard for a provision that establishes a "safe harbor" from enforcement action for failure to meet minimum permanent capital standards. Providing a guarantee of forbearance if an institution meets a certain target at previous yearend could effectively prevent the FCA from taking appropriate action in a deteriorating permanent capital institution until after the next yearend. This might encourage System institutions to adopt policies and practices intended solely to ensure that the forbearance criteria are met at one point in time but not on an ongoing basis. Institutions that are making significant progress toward their permanent capital requirements, but fail to meet the forbearance criteria on one or a few days during the year, are not likely to face enforcement action solely for that failure.

The FCA continues to believe that, for purposes of computing an institution's permanent capital requirements and determining whether forbearance is available, average daily balances are the fairest and most accurate means available. However, the FCA was persuaded that allowing an institution to average its available permanent capital as well as assets would provide significant additional flexibility with little additional risk so long as the period used was reasonably short. Consequently, the final regulation

continues to require the computation of permanent capital ratios using average daily balances, but provides that both permanent capital and assets are to be averaged for the most recent 3 months.

The final regulation does not permit the retirement of stock or distribution of earnings when the forbearance criteria is met but the interim standard is not. If the FCA were to characterize the forbearance criteria as a minimum capital adequacy standard within the meaning of section 4.3A(d) of the Act, as the respondents suggested, the forbearance standard would merely be a relaxation of the interim standards. Furthermore, if the FCA were to interpret the forbearance standard as an alternate minimum interim standard, so as to permit the retirement of stock and the payment of dividends, the FCA would be unable to extend the forbearance plan beyond 1993, as Congress has clearly limited the phase-in period to 5 years. Therefore, the final regulation does not permit the retirement of stock or the payment of dividends unless the institution will continue to meet its interim percent capital standard after the action is taken.

While the FCA concurs that retaining accruing loan volume is critical to the attainment of capital standards for many institutions, certain legislative judgments about the operation of the Farm Credit System were made by the 1987 Act which the FCA is not free to ignore. The 1987 Act has clearly changed the manner in which Farm Credit institutions are to be capitalized and these changes result in a change in the relationship of the institutions with their borrower/shareholders. No longer is there an obligation to retire stock upon repayment of the loan without regard to the capital position of the institution. Rather, the 1987 Act shifts the focus from capitalizing the loan to capitalizing the institution. While this may be viewed as a change adverse to borrowers, the 1987 Act conferred a substantial benefit on existing borrowers by providing protection for outstanding stock. The Act also allows institutions more flexibility in meeting capital standards, including lowering minimum stock purchase requirements and tapping outside sources of capital. While the weakened condition of many Farm Credit institutions may presently limit the availability of outside capital, this option will ultimately benefit Farm Credit borrowers. Nevertheless, the 1987 Act did not change the cooperative nature of the System, and the primary means of capitalization, at least for the present, is likely to continue to be the

borrower/shareholder. If borrowers are unwilling to capitalize the institution they own and choose to borrow elsewhere to avoid capitalizing the institution, Farm Credit institutions will undoubtedly suffer. The Farm Credit System was established to meet a perceived need for a reliable source of credit in good times and bad. If borrowers are unwilling to assume the risk of ownership to capitalize the institutions, the continued need for a special purpose lending institution owned and managed by agricultural producers is called into question. Borrowers with foresight should be willing to temporarily forego the payment of dividends and the retirement of stock upon repayment of the loan if they understand the benefits they derive from the long-term viability of the institution.

The forbearance plan provides a safe harbor only from enforcement action for failure to meet minimum permanent capital standards established by the FCA, and only until an institution reaches 7 percent. It does not foreclose FCA enforcement action for other unsafe and unsound conditions, including failure to maintain adequate total capital. Nor is it available to an institution that satisfies one or more of the statutory conditions for liquidation or conservatorship.

D. Computation Issues

A number of comments were received on the adjustments to permanent capital and assets required by the proposed regulation prior to risk-weighting, as well as other computation issues, such as the use of average daily balances and statutory modifications of GAAP. These comments and the FCA responses are discussed below under topical headings.

1. Adjustments to Permanent Capital

The proposed regulation defined permanent capital as all capital except: (1) Stock and other equities that are protected under section 4.9A of the Act or is otherwise not at risk; or (2) stock and other equities that may be retired on the repayment of the holder's loan or otherwise at the option of the holder. It expressly excluded certain equities deemed not to be at risk. In addition, certain adjustments were made to eliminate double counting of capital between related institutions. Comments were received on a number of these adjustments.

a. Preferred Stock Issued to the FAC

The proposed regulation excluded preferred stock issued to the FAC to the extent such stock is issued to offset an impairment of equities protected under

section 4.9A of the Act. A few respondents took issue with this exclusion, arguing that preferred stock issued by the FAC is available to absorb risk even though it cures an impairment of borrower stock, which must be retired at par.

The FCA continues to believe that preferred stock should be excluded from permanent capital to the extent it is issued to offset an impairment of protected stock. In effect, such stock substitutes for the impaired portion of eligible borrower stock, which must be retired at par, and such preferred stock is at risk only to the extent eligible borrower stock is at risk. The 1987 Act appears to contemplate that the ability to retire stock at book value even when book value is below par is an essential ingredient of at-risk stock. In addition, the FCA notes that, to the extent such preferred stock is not retirable at the option of the institution's board, it would not be permanent capital at all regardless of how it is used. The regulatory exclusion is intended to make clear that even if such preferred stock would otherwise be considered permanent capital, it must be excluded if it replaces capital that is not permanent capital. Therefore, the final regulation, like the proposed regulation, excludes preferred stock that is issued to offset an impairment of protected stock.

b. FLB Pass-through Equities

One Farm Credit district opposed the exclusion from permanent capital of FLB (now FCB) pass-through equities that support protected borrower stock in the FLBA, challenging the rationale and legal analysis supporting the exclusion. Pass-through equities are equities of the FLB that were purchased by the FLBA in connection with a loan in an amount corresponding to the amount of FLBA equities the borrower is required to purchase in connection with a loan.

In the preamble to the proposed regulation, the FCA contended that pass-through equities should be excluded because they represent a statutorily required, direct, dollar-for-dollar pass-through of FLBA equities purchased by the borrower. FLBA equities purchased by the borrower in connection with a loan were required by the 1971 Act prior to amendment in 1987 to be retired upon repayment of the loan. It has long been the practice of the FLB to retire the pass-through stock when the loan is repaid in order to permit the FLBA to retire the borrower's stock. Indeed, most FLBAs are unable to retire such stock unless the pass-through investment in the FLB is retired, since the FLBA has historically acted in an

agency-like capacity for the FLB, which is the contractual creditor. An FLBA that acts in this capacity carries no loan assets on its books and receives its income pursuant to a compensation agreement with the FLB, which may or may not bear a direct relationship to the income generated from the loans originated by the FLBA. For these reasons, the FCA contended that the FLB pass-through equities should be considered retirable upon repayment of the loan for the purpose of determining permanent capital.

In addition, the FCA concluded that the 1987 Act could be read to require such a result using well accepted principles of statutory construction, which require that a statute be construed where possible, to give meaning to all of its terms. The FCA noted that Congress excluded two categories of equities from permanent capital: (1) Equities protected under section 4.9A or otherwise not at risk; and (2) equities that must be retired upon repayment of the loan or otherwise at the option of the borrower. The FCA contended that there are no equities that could fall within category (2) that are not already included in category (1), except FLB pass-through equities, since under the new capitalization bylaws required by section 4.3A(c) of the 1971 Act, as amended, no stock may be issued that is retirable upon repayment of the loan. To consider the pass-through equities as permanent capital would thus render category (2) a nullity and could thwart the statutory scheme for the protection of borrower stock, since most FLBAs would be unable to retire borrower stock unless the FCB retired the pass-through stock. This would allow FLBAs with impaired stock to seek Federal assistance even though the FCB may be overcapitalized.

The respondent stated that a number of FLBAs in two districts have substantial net worth and are not dependent upon the retirement of FLB stock to retire borrower stock. In addition, the respondent challenged the assertion that no stock retirable upon repayment of the loan may be issued under the new capitalization bylaws, citing language prohibiting such issuance that was deleted from S.B. 1665 before its incorporation in the 1987 Act. This, the respondent argued, created an inference that such issuance is allowed, although it is excluded from permanent capital. The respondent also argued that protected stock that is required to be exchanged for new stock issued under the bylaws continues to be retirable upon repayment of the loan even though it loses its protection under section 4.9A

and that this stock could be included in category (2). In addition, the respondent noted that it is conceivable that the FCB could issue other types of equities that would be retirable upon repayment of the loan or otherwise at the option of the holder. The existence of these possibilities, the respondent asserted, undercuts the FCA's argument that Congress must have considered such equities to be retirable upon repayment of the loan. The respondent suggested that FCB pass-through equities be permitted to be included in permanent capital if the bylaws make clear that such equities are retirable only in the discretion of the board of the bank and that there is no right, express or implied, for such capital to be retired upon loan repayment or at any other time.

2. FCA Response

The FCA disagrees with the respondent's legal analysis and continues to believe it appropriate to exclude FLB pass-through equities that support protected stock in the FLBAs. Furthermore, the FCA believes that the effect of the capitalization provisions of the 1987 Act is to require that all equities issued after October 5, 1988 be permanent capital. Not only does the statute clearly state that the capitalization bylaws shall permit the stock to be retired at the discretion of the board, the Conference Report described the effect of incorporating the provisions of S.B. 1665 relating to the capitalization bylaws in the 1987 Act as follows:

The Senate amendment will prohibit after the adoption of the new bylaws, the issuance by FCS institutions of stock that can be retired by the holder when he repays his loan, or otherwise at the option or request of the holder. (Sec. 4.3A(c)(1)(A)).

H.R. Rep. No. 490, 100th Cong., 1st Sess. 247 (1988). The language of the Conference Report clearly overrides any negative inference that may be raised by the deletions in S.B. 1665 prior to its incorporation in the 1987 Act. Such language also indicates that when stock is exchanged for new stock issued under the new bylaws, such new stock is not retirable upon repayment of the loan. Stock issued under the 1971 Act is issued subject to the terms of the 1971 Act as it may be amended from time to time. The provision requiring the borrower to exchange protected stock for new stock issued under the bylaws operates as a modification of the contract between the bank and the stockholder with respect to such stock. The final regulation, like the proposed regulation, excludes pass-through

equities that support protected stock from permanent capital.

c. "Double-duty dollar" Adjustments

Offset against protected stock. The proposed regulation required the deduction from permanent capital of an amount equal to the institution's investment in another System institution to eliminate the double counting of capital. A number of respondents pointed out that when the investment amount is offset by protected stock (which can not be counted as permanent capital), a double deduction results if the investment amount is not first reduced by the amount of protected stock before a deduction is made from permanent capital.

The double deduction that results from the failure to offset the institution's protected stock against the amount of investment in another System institution before deducting such amount from permanent capital is an unintended result. Section 615.5210(d) (2) and (3) of the proposed regulation have been revised in the final regulation to require protected stock to be deducted from total capital, which includes protected stock. "Total capital" is defined in the final rule to mean assets less liabilities, determined in accordance with GAAP, except that eligible borrower stock is counted as capital even though there is an obligation to retire the stock at par. This change has the effect of allowing an offset of the investment against protected stock before a deduction from permanent capital is made.

Investment exclusion. The regulation proposed on May 12, 1988, would have eliminated double-counted capital between the FCB and its direct-lender owners by deducting an amount equal to the direct lender's investment in the FCB from the FCB's permanent capital; between institutions having a participation relationship, by requiring an amount equal to the investment required to capitalize the participation to be deducted from the permanent capital of the investing institution (for this purpose, FLBAs that are not direct lenders are considered to be an investing institution having a participation relationship with the FCB); and between the Leasing Corporation and its owners, by deducting from the permanent capital of its owners an amount equal to their investment in the Leasing Corporation.

A number of respondents noted that the proposed regulation makes no provision for the deletion of the investment from the asset base when a corresponding amount is deducted from capital. Where the deduction from capital is made from the investing

institution, the result is to require the institution to capitalize the investment even though the offsetting amount of capital has been deducted, resulting in an effective capitalization rate of more than 100 percent. This situation occurred under the proposed regulation for the owners of the Leasing Corporation and for the investing institution in a participation relationship. These respondents argued that the investment should be excluded from the asset base as well. Some respondents argued that a similar exclusion should be made in the elimination of the double counting of capital between the FCB and its direct-lender owners, even though the capital deduction is not made in the investing institution.

The FCA agrees that where a deduction of an investment amount from capital is required in the owner institution to eliminate double counting of capital, it is appropriate to exclude the investment from the assets of the owner institution, to avoid the result described above. The final regulation allows such an exclusion. This exclusion applies in the elimination of the double counting of capital between the Leasing Corporation and its owners, between participating institutions (including FLBAs that are not direct lenders and the FCB) and between direct lenders and their funding banks to the extent, and only to the extent, a deduction is required to be made from the direct lender's capital for its investment in the bank. That is to say, where the FCB is required to deduct the association's investment from its capital, there is no offsetting entry on the asset side to deduct. Rather, the investment is reflected in the assets of the owner institution (direct lender). The FCA believes that to the extent the association is not required to deduct an amount equal to this investment from its capital, the investment should be capitalized, as it represents a separate risk to the association. The final regulation weights such an asset in the 20 percent category.

Elimination options. In the preamble to the proposed regulation, the FCA invited comment on two alternative options for eliminating the double counting of capital between institutions having a lending/investing relationship, such as the FCB and the direct-lender associations. One was to eliminate 75 percent of the association's investment in the bank from the bank's capital and an amount equal to 25 percent of the association's investment in the bank from the association's capital. This approach would have the effect of counting 25 percent of the double-duty

capital at the bank level and 75 percent at the direct lender level. The second option was to eliminate the double-counting of capital at the direct lender level by deducting from the direct lender's capital the amount of its investment in the funding bank (owned funds approach).

Only four comments were received. Two PCAs supported the approach set forth in the proposed regulation. The reasons cited were: (1) All asset risk to the association's equity lies in the farmer's debt; (2) the borrower's stock relies directly on the association's investment in the FCB to maintain its value; (3) if PCAs were not permitted to have value for their investment in the FCB, all capital would have to be built from the farmer's pocket in the form of higher interest rates, which would drive away the best customers; (4) the farmer paid for the association's investment in the FCB and should be permitted to directly utilize the benefit through counting such investment as permanent capital; and (5) the direct lender is the level of primary risk and should utilize the investment as permanent capital.

A Farm Credit service center (a jointly managed branch office of a PCA and FLBA) and a PCA supported the elimination of the capital at the association level. Two reasons were given. First, the recent one-time purchase FAC stock demonstrated that such a requirement can be very damaging when an institution carries capital on its books to which it has no access. Second, the bank and the association should each have capital which each is free to use as necessary to protect its respective operational interests. The PCA that supported the elimination of the double counted capital at the association level believed that this would encourage the accumulation of a surplus account made up of "good hard cash."

Consideration of these comments stimulated additional discussion within the FCA of the various options for eliminating the double counting of capital between direct lenders and their funding banks. As a result of these discussions and in view of the small number of comments received, the FCA determined that it would be useful to solicit additional comment on the options as well as on the regulatory forbearance plan discussed above, resulting in the rescission published on August 10, 1988. In particular, the FCA solicited comments on the "owned funds" option described in the proposed regulation and invited comment on whether an allocation based on the distinction between purchased equities

and equities received as a distribution of earnings would be appropriate.

Many respondents supported the owned funds approach in theory but expressed reservations about whether the funding banks would be willing (and in some cases able) to downstream the "good hard cash" to the association and about the short-term effect on the association's ability to reach its capital standards. One respondent expressed support for the owned funds approach provided it were coupled with a retirement of equities received as distributions of earnings from the Farm Credit Bank and noted that now is an ideal time to retire such equities because the one-time purchase of FCA stock would more than offset the tax liability created by such a retirement. This association noted that the increased earnings from the funds downstreamed from the bank through retirement of bank equities would allow the reduction of its minimum capitalization requirement to 2 percent, which would help increase volume and still meet the 7 percent requirement. The respondent asserted that a further advantage would be to give the association stockholder some control of FCB funding, which would, the respondent asserted, ensure that FCBs would operate in an efficient manner and be more accountable than in the past. The respondent believed that this would result in reducing the FCBs to a discount and contract services agency requiring little capitalization and that investors would have adequate protection in an adequate allowance for losses, the insurance fund, and joint and several liability, under which banks could assess the associations. Another respondent supported the owned funds approach provided some portion of the investment of the direct lender in the bank could be counted at the association. Yet another respondent suggested that the capital should be counted at the bank level until the bank meets the minimum permanent capital adequacy standards established by the FCA and the total capital requirements set by its board and only subsequently should the balance be allowed to be counted at the association level. This approach was viewed as more consistent with cooperative principles, which require the patrons of the cooperative to capitalize it, than the owned funds approach, which the respondent asserted would force the bank to capitalize itself through earnings, which would mean higher interest rates to associations. Also, the respondent feared that returning all bank equities to the association would

weaken the financial structure of the bank, weaken the combined bank/association financial position due to the major tax liabilities that would result and further work against the bank as it attempts to prepare for the retirement of the preferred stock owned by the FAC. One respondent supported the philosophy of the owned funds approach, believing it to be most consistent with the 1987 Act, but suggested that it be phased in, to allow for flexibility in managing the tax liability that would result from the retirement of bank equities. The respondent suggested that the investment be counted at the direct lender level for a specified period of time and the allocation then shifted from the association to the bank over a period of 5 to 10 years on an incremental basis, giving the bank an opportunity to retire the equities representing excess capital to assist the association in meeting its capital requirements.

Many respondents opposed the owned funds approach. Some opposed any approach that would cause earnings to be accumulated in taxable institutions rather than in non-taxable ones, arguing that such an approach would convert potential capital dollars into tax liabilities. Some opposed it because they feared it would renew and invigorate disputes between the PCA borrowers and the FLB borrowers that arose during the mandatory mergers of the FLBs and the FICBs and possibly lead to more litigation over the use of FICB surplus to capitalize FLB borrowers. As noted above, some agreed in theory with the owned funds approach, but objected primarily to the immediate impact on associations, some of which would start with negative permanent capital positions. Several respondents noted that the owned funds approach would require too rapid a transfer at the expense of not effectively managing the tax consequences that would result. One noted that having to meet forbearance criteria would further reduce the flexibility of the association in managing the tax liability. One respondent argued that the cost of retiring distributed equities is too high unless equities could be converted in a tax-free transaction to a form of redeemable preferred stock or unsecured obligation that would give the association immediate access and pay a reasonable return on the investments.

One respondent asserted that it is not necessary to have the good hard capital at the direct lender level in order to have strong primary lenders. Another asserted that mutual dependence will continue, regardless of where the "good

hard cash" is, as the banks must continue to be capitalized, either through association investments or earnings, and the associations will continue to own the bank and influence its action through the election of directors.

A number of respondents agreed with the FCA that accessibility of association capital is a problem, but believed that it is primarily a problem of liquidity, which should be addressed outside the capital regulations. Other respondents took issue with the FCA's assertion that the owned funds approach would best promote the autonomy of the associations, arguing that the associations would be dependent on the banks' willingness to retire equities to meet their capital requirements and that banks would be unwilling and in some cases unable to downstream capital. This would result, these respondents argued, in greater rather than less dependence on the bank and a centralization of capital at the bank level. This, some asserted, is a disguised loss sharing agreement, which is inconsistent with the message they believe was sent by the 1987 Act, that strong associations should not be assessed to the point of non-viability. One respondent asserted that the owned funds approach would lead to unsafe and unsound practices on the part of the associations, but offered no examples. Another respondent rejected the notion that the bank should be reduced to a discounter in order for associations to become more independent, noting that the Stenholm amendment, which would have accomplished that, was rejected and that Congress reaffirmed the banks' role as the primary lender for the associations.

One respondent argued that the capital should be counted where the direct obligation lies and where stockholder/borrowers can most directly influence System operations and prohibit the further accumulation of double-counted capital by requiring banks to pay a portion of their patronage in cash and revolve their equities like banks for cooperatives. Another stated that the owned funds approach would require associations to "regressively rebuild" equity through earnings, which would be tantamount to requesting the borrower to capitalize the association twice. This respondent also argued (somewhat inconsistently) that direct lenders should have access to the investment in the FCB and the FCB should be able, if it needed additional capital, to require all institutions in the district to contribute, either through stock or earnings to an equitable

capitalization. One respondent argued that the owned funds approach is in direct conflict with the risk weightings, which weight borrower loans (that are not guaranteed) at 100 percent and weight the bank's direct loan to the association at 20 percent.

Respondents who opposed the owned funds approach found little solace in the proposed regulatory forbearance plan, primarily because even if forbearance criteria were met, stock could not be retired or earnings distributed unless the interim minimum permanent capital standard is met. Many respondents especially associations, view the ability to retire stock in the ordinary course of business as critical to their marketing efforts and hence key to continued viability and autonomy.

The Funding Corporation pointed out that System obligations are sold on the strength of the combined financial strength of the banks and associations, which is made possible by the interdependence of the banks and associations. The investment of association surplus in bank capital, the Funding Corporation asserted, is a significant factor of that interdependence. Also, the Funding Corporation opined that the statutory authority for regulations allowing capital calls on associations is not at all clear and that in any event it would be premature to rely on a regulation that is not yet final. However, the Funding Corporation noted that if there were contractual arrangements with associations to respond to the bank's capital needs, there would be less concern with the owned funds approach.

Many of the respondents who opposed the owned funds approach supported the original proposal, citing some of the advantages referred by the FCA in the preamble to the resolicitation, such as the need to maintain a strong capital position to enhance investor confidence and to enable the FCB to assist troubled associations. Also, some respondents reiterated the premise of the original proposal, that the capital should be counted at the direct lender level where the primary risk resides. One respondent asserted that association stockholders have paid for the association's investment in the bank and should be entitled to count it at the association so that they are not penalized in the form of higher interest rates to correct past ills. Some respondents emphasized the importance of being able to retire borrower stock at the association level to retain borrower confidence and loan volume. Other respondents noted that concentrating

capital at the bank level increases the cost of delivery of credit to the borrowers and discourages mergers of FLBAs and PCAs because of the tax consequences of accumulating the earnings in taxable entities.

Regulatory allocation of the double-counted capital between the FCB and its associations was favored by a number of respondents, some as a first choice and others as a second choice to allocation by agreement. One respondent thought the purchased versus distributed allocation would be a very workable alternative if clear provision were made for FLBAs that are not direct lenders. This approach was viewed by the respondent as offering the most flexibility and encouraging downstream while allowing the funding bank to maintain adequate permanent capital. The ABA expressed no real preference for any method of eliminating double-duty dollars, as long as they are eliminated but noted that the purchased versus distributed alternative would create a more business-like incentive mechanism. Several respondents indicated that this would be an acceptable approach if allocation by agreement is not to be allowed, but a few respondents affirmatively opposed the approach. One of these opposed it because the level of purchased equities varies considerably between associations in the same district. Several respondents stated that it would have an especially negative impact when combined with a proposed district reallocation and county transfer program.

The 75/25 allocation was affirmatively opposed by a few respondents. One asserted that the formula appeared arbitrary. Another stated that although the approach appropriately recognizes the need to reasonably allocate capital between direct lender associations and the funding bank, it is too rigid and does not accommodate different kinds of relationships that might exist between the funding bank and direct lenders. A number of respondents favored some kind of regulatory allocation as an equitable, balanced approach that allows each entity optimal control and flexibility, but for some of these respondents, regulatory allocation was a second choice to allocation by agreement. Several respondents favored an 80/20 allocation and one urged that the sum of permanent capital of the Bank and the associations should be equal to the permanent capital of the district combined.

For some respondents, the original proposal or the owned funds approach

or one of the allocation approaches was a second choice to allowing the banks and associations to enter into binding agreements allocating the double-counted capital as they see fit, for the purpose of determining capital ratios. The FCCA and a number of banks supported this approach. The FICB of Jackson noted that although there is sufficient combined capital to meet a 7 percent requirement for both the FICB and the associations, the original proposal would require the FICB to generate a substantial amount of additional capital to meet its 7 percent standard. Allocation by agreement, they assert, would eliminate the need for unwarranted charges or income manipulation between entities to actually transfer capital.

The FCA weighed carefully the many thoughtful comments on this complicated issue in light of the provisions of the 1987 Act and its legislative history and arrived at the following conclusions. The clear thrust of the 1987 Act is to promote greater autonomy for System associations and strengthen local management and control. However, the Act did not change the fundamental cooperative nature of the System, the funding mechanism, or the funding relationship between the banks and associations. The 1987 Act shifts the focus from capitalization of loans to capitalization of institutions, and requires System institutions to develop sufficient permanent capital to meet standards established by the Farm Credit Administration. The 1987 Act also provides institutions with considerable flexibility in determining their capital structures. At the same time, there is a clear direction to the System from the Congress to streamline for more efficient operation. The decision of how best to achieve greater efficiency is generally left to System institutions and ample authorities for different combinations and configurations are provided. The challenge to the FCA in determining how the double counting of capital should be eliminated between direct lender and funding bank has been to balance the diverse and sometimes conflicting interests of the various Farm Credit institutions that currently exist and potentially may exist under the 1987 Act in a manner consistent with the thrust of that Act.

As the FCA grappled with the many complex issues involved in developing this regulation, both substantive and technical, the owned funds approach emerged as the most logical and internally consistent method. Using the owned funds approach between direct

lender associations and their funding banks is consistent with the methods used for participating institutions and for FLBAs that are not direct lenders. It is consistent with the accepted accounting eliminations used to combine the financial statements of parents and subsidiaries, and most importantly from a regulatory perspective, it provides the clearest picture of where capital is actually located in the Farm Credit System. The owned funds approach also contributes to achieving the objectives of the 1987 Act by creating incentives to accumulate accessible capital in each institution to replace the double duty capital, thereby promoting greater autonomy for the direct lender associations. Therefore, the final regulation incorporates the owned funds approach to eliminating double counting of capital between direct lender associations and their banks. The premise of this approach is that the double-duty capital should be counted where it is located, that is, where it is accessible to the institution's board of directors.

The FCA considered the comments of respondents who believed that earnings should be accumulated at the bank level rather than at the association to avoid tax liabilities that would further increase the cost of capital. The FCA concluded that the determination of how to eliminate double counting of capital between direct lender associations and their funding banks should be driven by regulatory concerns for safety and soundness and for the creation of an environment in which each institution must assume responsibility and accountability for its performance and an environment which will facilitate the FCA's evaluation of each institution's performance. The FCA does not believe that tax avoidance is an appropriate goal of regulatory policy and concluded that the owned funds approach should not be rejected merely because of its tax consequences if it were the most coherent and logical approach to the elimination of double counting of capital.

The FCA recognizes that accessible capital at the direct lender association level may cause an increase in tax liability, particularly if the associations rely on retained earnings to provide the bulk of their permanent capital requirements. However, associations may choose to issue "at risk" stock which would assist them in meeting their permanent capital requirements rather than relying solely on retained earnings. Application of the "owned funds" method will require that for retained earnings to qualify as

permanent capital they must be in cash or invested in earning assets rather than in bank equities, which are illiquid and inaccessible to the association without bank agreement.

The FCA was not persuaded by the argument that the owned funds approach should be rejected because it would require PCA borrowers to subsidize borrowers from FLBAs that are not direct lenders. To the extent that such a result occurs, it occurs because of the mergers between the FLB and the FICB mandated by Congress and because FLBAs are allowed to continue their agency-like role. This may be an appropriate consideration for bank management in pricing and funding the various segments of its business, but should not be the decisive factor in adopting regulatory capital standards.

The FCA was persuaded by the many comments suggesting that an immediate implementation of the "owned funds" proposal would be too disruptive to System associations. Therefore, the final regulation provides for a phase-in of the "owned funds" method over a 10-year period. Until 1993, which coincides with the phase-in of the 7 percent rate, FCBs may agree with their direct lender associations on a districtwide plan, which may be amended annually, on how the associations' investments in the bank are to be allocated between the bank and the associations for the purpose of computing permanent capital ratios. If it is not possible to agree, the final regulation requires that the direct lender association's investment in the bank be allocated 20 percent to the bank and 80 percent to the association. In 1993 and thereafter, the purchased portion of the direct lender association's investment in the bank must be counted at the bank level and a corresponding amount deducted from the association's capital. In 1993, all of the direct lender association's investment in the bank that was allocated to the association as a distribution of earnings must be counted at the association and deducted from the bank's capital. In each year after 1993, the portion of the distributed investment that can be counted by the association decreases in 20 percent increments until 1998, when all the association's investment in the bank must be counted at the bank level and deducted from the association's capital and assets prior to computing the permanent capital ratio. As a result, beginning in 1998, capital in direct lender associations, as in other investing institutions in the System, will be measured by the ratio of the association's "owned funds" to its risk-adjusted assets exclusive of its

investment in the bank. The phase-in is illustrated graphically as follows:

Year	Method of allocation of investment in FCB	
Until 1993.....	Agreement between FCB and direct lender associations.	
Year	FCB	Direct lender associations
1993.....	100% of purchased investment.	100% of distributed investment.
1994.....	100% of purchased. 20% of distributed.	0% of purchase. 80% of distributed.
1995.....	100% of purchased. 40% of distributed.	0% of purchased. 60% of distributed.
1996.....	100% of purchased. 60% of distributed.	0% of purchased. 40% of distributed.
1997.....	100% of purchased. 80% of distributed.	0% of purchased. 20% of distributed.
1998 and...	100% of purchased.	0% of purchased.
Thereafter.	100% of distributed.	0% of distributed.

Many associations that commented supported the philosophy of the "owned funds" approach but feared the immediate impact of implementation. Some associations were skeptical of the bank's ability and willingness to downstream capital. The FAC believes that such associations may underestimate their influence as owners to elect their bank's board of directors or otherwise to influence bank policy. The phase-in of the owned funds approach will give the bank and associations a sufficient period of time for any necessary downstreaming to occur without undue disruption and will allow more flexibility in managing tax liabilities that might arise. The FCA further believes that the phase-in of the "owned funds" method will provide a reasonable period of time for institutions to achieve the efficiencies contemplated by the 1987 Act, and will not be an impediment to restructuring and merger activity.

The FCA does not intend this approach to encourage the retirement of all bank equities outstanding to associations. The FCA believes it appropriate that some portion of the banks capitalization should be in the form of equity owned by the associations. Further, the FCA wishes to emphasize that System institutions are cooperative in nature and that associations have an obligation to

assure that the banks are adequately capitalized. Furthermore, both the bank and the associations need sufficient accessible capital to support their respective risks (including potential calls under joint and several liability) and to thrive. Banks must determine their required levels of capital and allocate their requirements among their associations in an equitable manner, equalizing them periodically to assure that all shareholders bear their fair share of the capital burden.

The FCA considered the comments of the Funding Corporation and other respondents that the FCA should take care not to undermine the basis for the use of combined financial statements to sell System securities. The question of the continued appropriateness of combined financial statements after the 1987 Act is a broader question than whether the surplus of the associations is invested in bank equities. It is a question that must certainly be addressed as the 1987 Act is implemented and as the System restructures itself under its provisions. However, the FCA believes that the ability of the bank to access capital in the associations in support of joint and several liability is as important, if not more important, than whether the association's surplus is invested in bank equities. Whether the surplus is invested in bank equities is not likely to be decisive of the question, and in any event associations will continue to be free to invest their surplus in bank equities. Therefore, the FCA has concluded that the decision on where to count double-duty capital is a regulatory judgment that should be driven by safety and soundness concerns and the need to create an environment that will promote the autonomy and accountability of each institution. The FCA has concluded that the owned-funds method best accomplishes those goals and provides the clearest picture of the capital position of each institution.

The FCA agrees with the implicit assumption of the Funding Corporation that if there is no authority for the bank to make capital calls and there are no contractual agreements in place obligating associations to respond to such calls, the banks would need to have more capital than the minimum 7 percent of risk-adjusted assets to support joint and several obligations, especially in view of the risk-weighting of loans to associations at 20 percent rather than 100 percent. In § 615.5200 of the final regulation, the FCA has clarified that joint and several liability risks as they may be evaluated from

time to time are to be taken into account in determining the level of total capital that is appropriate by adding potential obligations under joint and several liability. The FCA's authority to promulgate a regulation authorizing banks to make capital call on associations will be more fully addressed in the adoption of the capital adequacy related regulations after consideration of comments on this issue received in the public comment period. However, if there were no such regulation and no such agreements in place in a particular district, the FCA would encourage banks to consider the absence of such agreements in determining their total capital requirements and in making decisions on the downstreaming of capital to associations. If the associations are unwilling to adequately capitalize the bank or otherwise provide necessary support for joint and several liability, it is the associations and their borrowers that have the most to lose from the loss of its advantages.

d. Minority Interest in Unconsolidated Subsidiaries

The FCCA requested that the proposed regulation allow minority investments in unconsolidated subsidiaries to be included in the permanent capital of the investing institution and noted that such a requirement would be consistent with the Interagency Guidelines proposed by the other Federal regulators.

The proposed regulation would allow investments in unconsolidated subsidiaries to count as permanent capital unless such subsidiaries are System institutions. This position is consistent with the proposed Interagency Guidelines of the other Federal regulators, whose regulations require the elimination of related party transactions and do not contemplate that such minority investments would be between related entities. Those proposed guidelines also state, "[a]ny equity or debt capital investments in banking or finance subsidiaries that are not consolidated under regulatory reporting requirements are to be deducted from an organization's total capital base * * *."

e. Allowance for Losses

A few respondents objected to the exclusion of the allowance for losses from permanent capital since its very function is to absorb loss. Some of the respondents appeared to be unaware that the allowance is statutorily excluded from permanent capital. Others suggested that a legislative

solution is needed. In addition, a few respondents urged that the excess of the statutory 3½ reserve required of PCAs over a GAAP allowance be permitted to be included in permanent capital.

The 1971 Act, as amended, requires that the minimum permanent capital standards be applied on the basis of financial statements prepared in accordance with GAAP. Compliance with that statutory requirement would have the effect of including in permanent capital any excess of the statutorily required reserve over a GAAP reserve. No adjustment to the regulation is necessary.

2. Adjustments to Asset Base

a. Allowance for Losses

A number of respondents urged that the allowance for loan and lease losses and other reserves be deducted from the asset base before weighting the assets. These respondents noted that such an exclusion would be consistent with GAAP and not inconsistent with the statute.

The FCA believes it appropriate to calculate the institution's permanent capital ratio on the basis of assets adjusted for any allowance for losses as required by GAAP. No adjustment to the regulation is necessary.

b. Protected Stock

One respondent suggested that the regulation allow the deduction of protected stock from loan assets prior to weighting the assets, on the theory that the stock will be retired when the loan is paid off and the loan minus the stock amount is the net asset that should be weighted. In many institutions the last payment on a loan is made by netting the outstanding stock against the loan balance.

The FCA regards protected stock retired under these circumstances as closely analogous to a compensating balance. GAAP does not permit the netting of compensating balances against the loan balance in presenting the loans outstanding on financial statements. Since the minimum permanent capital standard is required to be applied to financial statements prepared in accordance with GAAP, the final regulation does not permit the netting of protected stock against the loan balances to determine capital requirements.

c. Depreciation

Several respondents asked for a clarification concerning whether depreciation could be deducted from assets prior to weighting, as permitted by GAAP. The FCA believes it

appropriate to calculate the institution's permanent capital ratio on the basis of assets adjusted for any associated depreciation as required by GAAP, but does not believe that any adjustment to the proposed regulation is necessary.

d. Advance Conditional Payments

A few respondents suggested that advance conditional payments be deducted from the loan balance prior to risk-weighting. Advance conditional payments are loan payments which are made in advance and draw interest until they are applied, but which can be withdrawn for any purpose for which a loan could be made. The FCA does not believe that advance conditional payments should be permitted to be deducted from the loan balance prior to risk weighting, because such payments can be withdrawn upon the borrower's demand for an appropriate purpose and may never be applied to the loan balance.

e. FLB-FLBA Loss Sharing Agreements

The banks in one district and one Federal legislator, pointed out that the proposed regulation does not take into account the fact that in a few districts the FLB (now the FCB) and the FLBAs have entered into agreements to share, in a specified proportion, losses on loans originated by the FLBAs. Under the proposed regulation, the FCBs in these districts would be required to capitalize all of these assets, even though they may bear only a portion of the risk. Since a portion of the allowance for loss established for these loans is reflected on the books of the FLBA rather than the FCB and the asset amounts used in computing the permanent capital are net of the allowance for loss, the FCB's permanent capital ratio would appear artificially low. This effect would make such loss-sharing arrangements unattractive and would thus restrict the flexibility of districts in establishing relationships with the FLBAs.

The FCA recognized that some provision should be made for districts having such loss sharing agreements with FLBAs so as not to impose regulatory requirements that would restrict the flexibility of districts in establishing these relationships. Therefore, where an FCB and an FLBA have an enforceable, written agreement to share losses on loans originated by the FLBA on a predetermined, quantifiable basis, the final regulation would require the institutions, for the purpose of determining permanent capital ratios, to apportion the assets subject to the agreement between them in the same proportion as they have agreed to share the losses.

3. Average Daily Balance

Several respondents objected to the proposed requirement to use the average daily balance even with a phase-in period. Some respondents asserted that the cost of implementing procedures to allow its computation outweighs the benefits to be derived. One respondent noted that the effect of using the average daily balance is to overstate capital ratios when volume is increasing and understate them when volume is decreasing. Also, the FCA was asked to clarify whether only assets were to be calculated on the basis of average daily balances or whether capital is to be similarly calculated.

The FCA continues to believe that, for the purpose of computing an institution's permanent capital requirements, average daily balances are the fairest and most accurate means available. The FCA also continues to believe that daily closings impose a desirable discipline on financial institutions and facilitate the timely identification of problems and that these benefits outweigh the cost. As noted earlier, the final regulation has been changed from the proposed regulation to allow both permanent capital and assets to be averaged over the most recent 3-month period.

4. Statutory Modification of GAAP

Several respondents pointed out that section 6.9(e)(3)(d) of the 1971 Act, as amended, which provides that obligations of the FAC shall not be considered an obligation of System banks for all financial reporting purposes until such obligation reaches maturity, is inconsistent with GAAP, which would require System banks to include these and other liabilities of FAC on their books because the banks are ultimately responsible for obligations issued by the FAC. The respondents requested that the FCA read this statutory modification of GAAP into the statutory requirement to apply the minimum permanent capital standard to financial statements based upon GAAP, which would have the effect of increasing the institution's permanent capital by a corresponding amount.

The FCA believes that such a reading is the correct reading and the proposed regulation has been revised in the final regulation to clarify that the requirement to base the computation of the permanent capital ratio on the basis of GAAP-prepared statements is qualified by the statutory exclusion of obligations of the FAC from the bank's liabilities before maturity.

5. Entities Created After 12/31/87

One respondent requested that the FCA clarify the starting reference point from which the interim standards will be derived for entities that are created after 12/31/87. In the resolicitation, the FCA indicated that for entities merged or consolidated with other entities after 12/31/87, the FCA would consider pro forma capital and assets of the institutions as if they had been merged on 12/31/87. A few commenters requested additional guidance on these matters.

The final regulation provides that such pro formas should be as of June 30, 1988, the date of beginning permanent capital ratios for other institutions. The final regulation also provides that the interim minimum permanent capital standards for a new association that results from a special reconsideration under section 7.9(i) of the 1971 Act shall be the same standards as those of the association of which it was formerly a part. Since the FCA will not charter organizing entities that are inadequately capitalized, the issue is not likely to be present for newly organized entities. The FCA will provide any additional guidance on these matters that may be needed in another format.

D. Risk Weighting Assets

While respondents generally expressed support for establishing risk weights that are consistent with those of other regulators, a number of comments were made on specific risk weights. These comments and the FCA response are discussed below under topical headings.

1. Loans to System Institutions

Next to comments on the 7 percent rate, the most frequently made comment by System institutions related to the risk-weighting of loans to System institutions in the 20 percent category. While this is a low risk category, System institutions believed that these loans should have been weighted in the 0 percent category because of the elimination of double counting of capital. These comments appear to be based on the assumption that the risk in the direct loan and the risk in the direct lender's loans is identical and hence such risk is also double counted. These respondents disputed the FCA's contention that there is a secondary level of risk at the funding level that is distinct from the pass-through risk of the direct lender's loans and asserted that there is no secondary risk if associations maintain GAAP allowances for losses. Also, these comments appear to have been based on a view of the funding

bank and the direct lender as a combined lending unit; indeed, a few respondents urged that the capital requirements be applied to the banks and associations on a combined basis. These assumptions evidently led the respondents to conclude that an 8.4 percent effective rate of capitalization is required for loans through a direct lender: 7 percent for the direct lender and 1.4 percent for the funding bank. As a result, the respondents argued, there is a disincentive for an FLBA to become a direct lender or to merge with a PCA. Also, some respondents noted that the result is a higher requirement for the association/bank lending operation than for the BC lending operation.

While the FCA views the bank and its associations as related organizations and believes that eliminating the double counting of capital is therefore appropriate, it does not view the bank and association as a combined unit for the purpose of determining adequate capital standards. Therefore, the FCA disputes the appropriateness of comparing the 8.4 percent rate, constructed by combining the individual institutions' capital requirements, with the 7 percent used to compute the individual capital requirements imposed on each institution. Such a comparison obscures both the levels of capital actually required of the institutions and the focus of the capital requirements, which is the credit and other general risks inherent in each institution's operations.

The FCA views each institution as a separate entity and attempts to evaluate its capital needs based on the risk inherent in its assets. Since the direct loan comprises a significant portion of the funding bank's assets, weighting the loan at 0 percent would result in very low levels of capital, even with a 7 percent standard. The FCA believes that there is a level of secondary risk even if the associations maintain GAAP allowances for losses. Banks have risks other than the pass-through risk on the direct loans. In addition to direct loan risks, there are risks due to their joint and several liability on consolidated systemwide obligations. Also, bank assistance has been a first line of defense for associations in financial difficulty, which difficulty can result from factors other than loan losses. The Farm Credit System Insurance Corporation will have limited resources in the near term and will be unable to assist in a material way for some period of time. The banks must have some institutional capacity to absorb losses. In addition, banks may incur interest rate risks. The average cost of funds

may at times be higher than can reasonably be passed on to the direct lender, and the bank may need to absorb the excess cost for a period of time. And even when the capital is not needed to absorb specific risks, it is still fully employed to keep the interest rates to borrowers competitive, since it will enable the bank to charge the direct lender a rate that represents a narrower spread over the bank's cost of funds than would otherwise be the case.

The FCA does not believe that risk-weighting the direct loan at 20 percent would operate as any more of a disincentive to merge or to become a direct lender than the previous statutory and regulatory capital requirements would have. It is true that direct lenders are required to have more capital than FLBAs that are not direct lenders, but that result is unavoidable. An institution that carries risk assets on its books must capitalize them and this is true whether the proposed capital standard is applied or whether the former debt-to-equity standards are applied. Since this is the case, the argument that the 20 percent weighting is a disincentive to become a direct lender or to merge with a direct lender, while superficially attractive, is not convincing.

The FCA was not persuaded by the argument that risk-weighting the direct loan at 20 percent causes the PCA borrower to subsidize the FLBA borrower. Under the final regulation, the FCB will have some assets risk-weighted at 20 percent (loans to associations) and some assets that will be risk-weighted at 100 percent (loans to borrowers) on its books. After determining its capital requirements, the FCB will then determine how to allocate its capital requirements among its owners. Since there is no longer any statutory requirement to retire stock upon repayment of long term real estate loans and no longer any requirement for FLBAs to purchase stock in the FCB in an amount corresponding to the stock purchased by the borrower, the FCB would appear to be free to allocate its capital requirements among its owners in any manner which equitably distributes the burden of capitalizing the institution. Thus, this issue is an appropriate consideration for bank management in determining how to allocate its capital requirements and price its products, but the FCA's decision on how to risk-weight assets must be driven by safety and soundness concerns. Therefore, the final regulation continues to risk-weight the direct loans to associations at 20 percent.

2. Claims on Foreign Governments

One respondent suggested that claims of foreign governments should be included along with claims on foreign banks in each appropriate maturity category.

The proposed regulation is revised in the final regulation to risk-weight the claims of foreign governments in a manner consistent with the proposed Interagency Guidelines. Claims in the local currency of the foreign central government would be risk-weighted in the 20 percent category to the extent the System institution has local currency liabilities in that country. Any amount of such claims that exceed the amount of the institution's local currency liabilities are assigned to the 100 percent risk-weight category. All non-local currency claims on foreign central governments are assigned to the 100 percent risk-weight category.

3. FHMA-Guaranteed Loans

One respondent requested that the FCA clarify that loans guaranteed by the Farmer's Home Administration are among the "other claims" referred to in Category 2, which is weighted at 10 percent.

The FCA considers "other claims" to include all loans and portions of loans guaranteed by the U.S. Government or its agencies. However, only that portion of such loans that is guaranteed by a U.S. Government agency is included in the 10-percent category. The remainder is assigned to the risk category otherwise appropriate to the obligor(s).

4. State-Guaranteed Claims

One respondent suggested that securities and other claims guaranteed by State governments and agencies should be included in Category 3, which is weighted at 20 percent.

The final regulation includes all loans and portions of loans guaranteed by the full faith and credit of State governments or their agencies in the 20 percent category. However, only that portion of such loans that is guaranteed by a State government or agency is included in this category. The remainder is assigned to the risk-weight category otherwise appropriate to the obligor(s).

5. Rural Residence Loans

The proposed regulation made no distinction between rural residence loans and other loans in assigning risk weights and weighted these loans in the 100 percent category. At the time of the May 12, 1988 proposal, this was consistent with the Interagency Guidelines. At the urging of commercial banks that commented on the

Interagency Guidelines, other Federal regulators have indicated their intention to assign residential mortgage loans to the 50 percent category because these loans are deemed to have less risk than commercial loans. Therefore, the final regulation assigns rural residence loans made under the authority of the Act and 12 CFR 613.3040 to the 50 percent risk-weighting category.

6. Letters of Credit

One System district asserted that the method of converting standby letters of credit to their balance-sheet equivalent before risk weighting would place its bank for cooperatives at a competitive disadvantage relative to other domestic and international commercial banks. The respondent suggested that the conversion factor for trade-related standby letters of credit be changed to a 0 percent conversion factor.

The FCA reviewed the types of off-balance-sheet risk exposure to System institutions, and concluded that System institutions are exposed to many of the same types of off-balance-sheet risk as commercial banks. Off-balance-sheet risk exposure includes letters of credit (standby and commercial), direct credit substitutes, loan commitments and interest rate swaps. Therefore, the FCA adopted the conversion factors set forth in the proposed Interagency Guidelines. The effect of this approach is to ensure that such contingent risk is recognized and capitalized and that System institutions are not placed at a competitive disadvantage relative to commercial banks.

The final rule provides additional guidance in applying conversion factors to certain off-balance-sheet items, including letters of credit other than commercial letters of credit. Commercial letters of credit, like other trade-related contingencies, would be subject to a conversion factor of 20 percent. Standby letters of credit, which operate as guarantees, would be subject to two different conversion factors, depending on whether they guarantee financial claims such as loans and securities, or whether they guarantee the performance of nonfinancial or commercial undertakings. Standby letters of credit that operate as guarantees of financial claims would be considered to be direct credit substitutes and would be subject to a conversion factor of 100 percent. Performance-based standby letters of credit would be subject to a conversion factor of 50 percent. The final regulation adds definitions of standby letters of credit and performance-based standby letters of credit.

For purpose of applying the proposed regulation, standby letters of credit are

distinguished from loan commitments in that standby letters of credit are irrevocable obligations of the financial institution to pay a third-party beneficiary when a customer fails to repay an outstanding loan or debt instrument or fails to perform some other contractual obligation. A loan commitment, on the other hand, involves an obligation (with or without a material adverse change clause) of the financial institution to provide funds to its customer in the normal course of business should the customer seek to draw down the commitments. Therefore, the distinguishing characteristic of a standby letter of credit is the combination of irrevocability with the notion that funding is triggered by some failure to repay or perform on an obligation. Thus, any commitment (by whatever name) that involves an irrevocable obligation to make a payment to the customer or to a third party in the event the customer fails to repay an outstanding debt obligation or fails to perform on a contractual obligation would be treated, for the purposes of the proposed regulation, as a standby letter of credit.

The final regulation adds to the 0 percent credit conversion category, unused commitments with an original maturity of greater than 1 year if they are unconditionally cancellable by the institution and the institution has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition before each drawing under the lending arrangement. The second sentence in the definition of "commitment" in the proposed regulation excluded from the definition of commitment, lending, or leasing arrangements that are unconditionally cancellable at any time at the option of the institution provided the institution makes a separate credit decision based upon the borrower's current financial condition before each advance of funds or other credit under the arrangement. The effect of this exclusion was the same as placing such "commitments" in the 0 percent category. With the addition of such commitments to the 0 percent category in § 615.5210(e)(ii)(A), the exclusion in the definition of commitment is unnecessary and is deleted in the final regulation.

The final regulation is changed from the proposed regulation to clarify that the face amount of a direct credit substitute is to be netted against any participations sold in that item before applying the credit conversion factor and assigning it to a risk-weight category. The final regulation has also

been expanded to describe the essential characteristics of revolving underwriting facilities, note issuance facilities and other similar arrangements that are subject to a conversion factor of 50 percent.

7. Differences From Proposed Interagency Guidelines

Several respondents suggested that the two differences between the proposed FCA rule and the Interagency Guidelines should be eliminated. The proposed rule risk-weighted cash items in the process of collection in the 10 percent category; the Interagency Guidelines' risk weight is 20 percent. The proposed rule also risk-weighted U.S. Government and U.S. Government-agency securities in the 10 percent category; the Interagency Guidelines distinguish between U.S. Government and U.S. Government-agency securities maturing in 90 days or less (risk-weighted at 0 percent) and those securities maturing after 90 days (risk-weighted at 10 percent). The respondents suggested that the differences were unnecessary, but provided no further rationale in support of their position.

The FCA continues to believe that cash items in the process of collection pose less risk to System institutions than to commercial banks and therefore warrant a lower risk weighting of 10 percent. The FCA also believes that short-term Treasury securities (those with maturities less than 91 days) remain subject to some degree of interest rate and market risk and continue to warrant a 10 percent risk weight. Therefore no changes have been made in the final rule for these differences.

E. Distribution of Earnings

One respondent suggested that the regulation provide for the FCA, in limited circumstances, to waive the prohibition against distributing earnings when the interim capital standard is not met in order to enable institutions to sell stock. Another respondent suggested that the regulation allow distributions even if the standards are not met if the prior approval of the FCA is obtained. Another respondent objected to the FCA's statement that the institution should ascertain that it is reasonably probable that the institution will be able to meet the interim standard at the end of the next year even if interim standards are met.

Since the regulatory prohibition reflects a statutory prohibition, the FCA is unable to provide a waiver, no matter how compelling the circumstances. By establishing interim standards based on

the institution's beginning permanent capital ratio, the FCA has tried to strike an appropriate balance between the need for each institution to achieve the minimum permanent capital standard of 7 percent and the institution's need to offer dividends to attract capital from outside sources. Also, by phasing in the owned funds approach the regulation will give institutions some flexibility in allocating double-duty capital during the phase-in of minimum permanent capital standards so as to strike this balance in the most effective way. The FCA continues to believe that each institution should ascertain that it is reasonably probable, based on reasonable projections of earnings and losses, to meet its interim standard for the next year before distributing earnings. Until the minimum permanent capital standard is met, each System institution should distribute earnings only when it concludes that such a distribution will promote progress toward the capital goal either by retaining borrowers or attracting new capital.

The FCCA requested the FCA to clarify whether noncash patronage refunds from nontaxable institutions must qualify as permanent capital at the distributing institution only in order to qualify for the exemption from the statutory limitation on the distribution of earnings that applies when the minimum permanent capital standards are met, or whether the refund must also qualify as permanent capital at the receiving institution.

The FCA interprets the statute to mean that the refund must qualify as permanent capital at the distributing institution only. The FCA does not believe that the statute should be interpreted to require the capital of the receiving institution that is offset by the asset to be permanent capital before the distribution can be made without violating the statutory prohibition. The statutory prohibition appears to be directed at conserving the capital of the distributing institution. The final regulation has been clarified accordingly.

The FCA reemphasizes that the forbearance criteria are *not* interim permanent standards and that the prohibitions set forth in this regulation apply when the interim standards determined in accordance with § 615.5205 are not met, whether or not forbearance criteria are met.

F. Planning

A number of comments were received in relation to §§ 615.5200(b) and 618.8440 of the proposed regulations regarding the planning requirements. The most frequent comment was that the

requirements of these regulations were inappropriate for an arms-length regulator and were not consistent with the requirements of other Federal financial regulators. One respondent commented that the proposed regulations addressed practices that were consistent with sound business practices but feared that the enforcement of the regulation could infringe upon management prerogatives. Others thought that the regulation dictated operational methodology and did not recognize the varying needs of differing institutions.

The requirement of § 615.5200(b) to develop a capital plan that will enable the institution to meet the minimum permanent capital standards established by the FCA is a new requirement. The FCA believes it entirely appropriate to require such a plan by regulation and to enumerate the matters that should be addressed. The regulation does not attempt to do the planning for the institution, which would be inappropriate, but it does have the effect of putting institutions on notice that the FCA considers such a plan essential and sets forth the examination standard by which the planning effort would be judged.

On the other hand, the plan required by proposed § 618.8440, is a proposed revision of an existing requirement. The FCA has reviewed the comments made in relation to § 618.8440 and continues to believe that requiring institutions to develop annual operating and strategic plans and budgets is consistent with the FCA's responsibility to promote the safe and sound operation of System institutions. Other Federal regulators do frequently comment upon the need for planning in the examination process and occasionally suggest specific matters that such plans should address. However, in response to the comments, the requirements contained in the proposed regulation have been modified in the final regulation to remove many of the specific subcomponents of the planning process which were objectionable to the respondents. The FCA was persuaded by the argument that the proposed regulation may have been too rigid to take into account the varying needs of different institutions. The final regulation has been revised to permit institutions more flexibility in the implementation of their planning processes.

G. General Comments.

Several other comments of a general nature were received.

1. One respondent recommended that even though the proposed regulation

focuses only on credit risk, the FCA should encourage institutions to study all other risks. The FCA does encourage institutions to study other risks and make provision for them in setting their total capital goals under § 615.5200. Some of these risks are alluded to in § 615.5200(b), which sets forth factors that should be taken into account in developing a total capital adequacy plan.

2. One district asserted that the regulation is not consistent with the emphasis on local control that is evident in the 1987 Act. The FCA did not understand this comment, since no specific inconsistencies were cited. However, the FCA believes its insistence on viewing System institutions as separate entities with separate capital needs even though they are related entities is consistent with the central thrust of the 1987 Act, which the FCA views as providing for greater autonomy for direct lenders and allowing every Farm Credit association to become a direct lender.

3. A few respondents suggest that the FCA consider keying the regulation to the proposed Interagency Guidelines as they may be issued from time to time. The FCA believes that consistency with the Interagency Guidelines generally is a desirable goal and will carefully monitor any development in the adoption or amendment of those Guidelines, but declines to adopt a regulation that is automatically adjusted as the Interagency Guidelines are amended, without making its own judgment that the changes are appropriate for System institutions.

H. Final Regulation

For the reasons stated in the preamble, the following changes to the proposed rule are made in the final rule.

List of Subjects in 12 CFR Parts 615 and 618

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Archives and records, Insurance, Reporting and recordkeeping requirements, Technical assistance.

For the reasons stated in the preamble, Parts 615 and 618 of Chapter VI, Title 12, of the Code of Federal Regulations are amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 is revised to read as follows:

Authority: Secs. 4.3, 4.9, 4.14B, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2154, 2160, 2202b, 2243,

2252, 2278b, 2278b-6; Sec. 301(a) of Pub. L. 100-233.

2. Subpart H is revised to read as follows:

Subpart H—Capital Adequacy

Sec.

615.5200 General.

615.5201 Definitions.

615.5205 Minimum permanent capital standards.

615.5210 Computation of the permanent capital ratio.

615.5215 Distribution of earnings.

Subpart H—Capital Adequacy

§ 615.5200 General.

(a) The Board of Directors of each Farm Credit System institution shall determine the amount of total capital needed to assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum permanent capital standard prescribed in § 615.5205 is not meant to be adopted as the optimum capital level in the institution's capital adequacy plan. Rather, the standard is intended to serve as a minimum level of permanent capital that each institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) The Board of Directors shall establish and maintain a formal written capital adequacy plan as a part of the financial plan required by § 618.8440. The plan shall include the capital targets that are necessary to achieve the institution's capital adequacy goals as well as the minimum permanent capital standards. The plan shall address any projected dividends, patronage distribution, equity retirements, or other action that may decrease the institution's permanent capital. In addition to factors that must be considered in meeting the minimum standards, the board of directors shall also consider at least the following factors in developing the capital adequacy plan:

- (1) Capability of management;
- (2) Quality of operating policies, procedures, and internal controls;
- (3) Quality and quantity of earnings;
- (4) Asset quality and the adequacy of the allowance for losses to absorb potential loss within the loan and lease portfolios;
- (5) Sufficiency of liquid funds;
- (6) Needs of an institution's customer base; and
- (7) Any other risk-oriented activities, such as funding and interest rate risks, potential obligations under joint and several liability, contingent and off-balance-sheet liabilities or other

conditions warranting additional capital.

§ 615.5201 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) "Commitment" means any arrangement that legally obligates an institution to purchase loans or securities, to participate in loans or leases, to extend credit in the form of loans or leases, to pay the obligation of another, to provide overdraft, revolving credit or underwriting facilities, or to participate in similar transactions.

(b) "Credit conversion factor" means that number by which an off-balance-sheet item shall be multiplied to obtain a credit equivalent before placing the item in a risk-weight category.

(c) "Direct lender institution" means an institution that extends credit in the form of loans or leases to eligible borrowers in its own right and carries such loan of lease assets on its books.

(d) "Government agency" means an agency of the United States Government whose obligations are explicitly guaranteed by the United States Government or their successors.

(e) "Government-sponsored agency" means agencies or instrumentalities chartered by the United States Congress to serve a public purpose whose debt obligations are not explicitly guaranteed by the United States Government.

(f) "Institution" means a Farm Credit bank, Federal intermediate credit bank, Federal land bank association, production credit association, agricultural credit association, Farm Credit Leasing Corporation, bank for cooperatives, National Bank for Cooperatives, and their successors.

(g) "Performance-based standby letter of credit" means any letter of credit or similar arrangement that represents an irrevocable obligation to be beneficiary on the part of the issuer to make payment on any default by the account party in the performance of a nonfinancial or commercial obligation.

(h) "Permanent capital" means all capital except stock and other equities that may be retired on the repayment of the holder's loan or otherwise at the option of the holder, or is protected under section 4.9A of the Act, or is otherwise not a risk. For the purpose of computing the permanent capital ratio, permanent capital shall not include:

- (1) Preferred stock issued to the Farm Credit System Financial Assistance Corporation to the extent it is issued to offset an impairment of equities protected under section 4.9A of the Act;
- (2) Federal Land Bank equities required to be purchased by Federal

land bank associations in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(3) Capital subject to revolvment, unless:

(i) The bylaws of the institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvment cycle or at any other time; and

(ii) The institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvment cycle or at any other time is thereby granted.

(i) "Risk-adjusted asset base" means the total dollar amount of the institution's assets adjusted in accordance with § 615.5210(d) and weighted on the basis of risk in accordance with § 615.5210(e).

(j) "Standby letter of credit" means any letter of credit or similar arrangement that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by or advanced to or for the account of the account party; or

(2) To make payment on account of any indebtedness undertaken by the account party, in the event the account party fails to fulfill its obligation to the beneficiary.

(k) "Stock" means stock and participation certificates.

(l) "Total capital" means assets minus liabilities, valued in accordance with generally accepted accounting principles (GAAP), except that liabilities shall not include obligations to retire stock protected under section 4.9A of the Act.

§ 615.5205 Minimum Permanent Capital Standards.

(a) Beginning on January 1, 1993, each Farm Credit System institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted assets.

(b)(1) During each year beginning on January 1, 1989, through January 1, 1993, each institution that does not meet the minimum permanent capital standard established in paragraph (a) of this section shall maintain a level of permanent capital of all times during such year at a level that is not less than its interim minimum permanent capital standard for such year, determined in accordance with paragraph (b)(2) of this section.

(2) The annual interim minimum permanent capital standards shall be

determined for each institution in the following manner: A beginning permanent capital ratio shall be determined as of June 30, 1988. For institutions merged or consolidated after June 30, 1988, the beginning permanent capital ratio shall be determined on the basis of pro forma financial statements as of June 30, 1988. For each year between January 1, 1989 and 1993, the interim minimum permanent capital standard shall be the beginning permanent capital ratio plus the specified percentage of the difference (shortfall) between the beginning permanent capital ratio and the minimum permanent capital standard of 7 percent. During each of the following years each institution shall maintain its permanent capital at a level equal to or greater than its interim minimum permanent capital standard, determined in accordance with the percentage of its shortfall specified below:

Year Beginning—Interim Minimum Permanent Capital Standard

January 1, 1989—Beginning permanent capital ratio

January 1, 1990—beginning permanent capital ratio plus 25 percent of shortfall

January 1, 1991—beginning permanent capital ratio plus 50 percent of shortfall

January 1, 1992—beginning permanent capital ratio plus 75 percent of shortfall

January 1, 1993—the minimum permanent capital ratios shall be and thereafter 7 percent.

The interim minimum permanent capital standards for a new association that results from a special reconsideration under section 7.9(i) of the Act shall be the same standards as those for the association of which it was formerly a part.

§ 615.5210 Computation of the Permanent Capital Ratio.

(a) The institution's permanent capital ratio shall be determined on the basis of the financial statements of the institution prepared in accordance with generally accepted accounting principles except that the obligations of the Farm Credit System Financial Assistance Corporation shall not be considered obligations of any institution subject to this regulation prior to their maturity.

(b) Through December 31, 1989, the institution's assets and permanent capital may be computed using the average of the most recent 3 months' balances. Thereafter, the institution's asset base and permanent capital shall be computed using average daily balances for the most recent 3 months.

(c) The institution's permanent capital ratio shall be calculated by dividing the institution's permanent capital, adjusted

in accordance with paragraph (d) of this section (the numerator), by the risk-adjusted asset base (the denominator), to derive a ratio expressed as a percentage.

(d) For the sole purpose of computing the institution's permanent capital ratio, the following adjustments shall be made prior to assigning assets to risk-weight categories and computing the ratio:

(1) Where two Farm Credit System institutions have stock investments in each other, such reciprocal holdings shall be eliminated to the extent of the offset. If the investments are equal in amount, each institution shall deduct from its assets and its total capital an amount equal to the investment. If the investments are not equal in amount, each institution shall deduct from its total capital and its assets an amount equal to the smaller investment.

(2) Where a Farm Credit Bank is owned by one or more Farm Credit System institutions that are direct lenders, the double counting of capital shall be eliminated in the following manner:

(i) For each year, until January 1, 1993, each Farm Credit Bank and Federal intermediate credit bank shall, with the agreement of a majority of its related direct lender associations, adopt a districtwide plan specifying, for the purpose of computing the permanent capital ratio only, a percentage allocation of a direct lender association's investment in the bank between the bank and the direct lender association, which may be amended annually. The plan and any amendments thereto shall be forwarded to the office of the Farm Credit Administration responsible for examining the institution along with evidence of approval by the bank and a majority of its direct lender associations. If it is not possible to reach agreement, the direct lender's investment in the bank shall be allocated 20 percent to the bank and 80 percent to the association.

(ii) Beginning January 1, 1993 and in each year thereafter, all equities of a Farm Credit Bank and a Federal intermediate credit bank that have been purchased by direct lender associations shall be allocated to the bank.

(iii) Beginning January 1, 1993, all equities of the bank that have been distributed by the bank to the direct lender associations rather than purchased shall be allocated between the bank and its direct lender associations in the following manner:

ALLOCATION OF EQUITIES DISTRIBUTED

[In percent]

	Bank	Associa- tion
Year:		
1993	0	100
1994	20	80
1995	40	60
1996	60	40
1997	80	20
1998 and thereafter	100	0

(3) Where an institution invests in another institution to capitalize a participation interest purchased by such other institution, the investing institution shall deduct from its total capital an amount equal to its investment in the participating institution. For the purpose of computing the permanent capital ratio, the Federal land bank association that is not a direct lender shall be considered an investing institution and the Farm Credit Bank shall be considered a participating institution with respect to that Federal land bank association.

(4) The double counting of capital between the Leasing Corporation and its owner institutions shall be eliminated by deducting an amount equal to their investment in the Leasing Corporation from their total capital.

(5) Each institution shall deduct from its total capital an amount equal to any goodwill acquired after May 12, 1988. Beginning on January 1, 1993, each institution shall deduct from its total capital all goodwill, whenever acquired.

(6) To the extent an institution has deducted its investment in another Farm Credit institution from its total capital, the investment may be eliminated from its asset base.

(7) Where a Farm Credit Bank and an association have an enforceable written agreement to share losses on specifically identified assets on a predetermined quantifiable basis, such assets shall be counted in each institution's risk-adjusted asset base in the same proportion as the institutions have agreed to share the loss.

(e) The risk-adjusted asset base (denominator) shall be determined in the following manner:

(1) Each asset on the institution's balance sheet and each off-balance-sheet item, adjusted by the appropriate credit conversion factor in paragraph (e)(3) of this section, shall be assigned to one of five risk categories in accordance with this section. The aggregate dollar value of the assets in each category shall be multiplied by the percentage weight assigned to that category. The sum of the weighted dollar values from

each of the five risk categories shall comprise the denominator for computation of the permanent capital ratio.

(2) Balance sheet assets shall be assigned to the percentage risk categories as follows:

(i) *Category 1: 0 Percent*

(A) Cash on hand and demand balances held in domestic and foreign banks.

(B) Claims on Federal Reserve Banks.

(C) Goodwill acquired after May 12, 1988.

(D) Beginning 1993, all goodwill, whenever acquired.

(ii) *Category 2: 10 Percent*

(A) All securities issued by the United States Government and Government agencies.

(B) Cash items in the process of collection.

(C) Portions of loans and other assets collateralized by securities of the United States Government or Government agencies.

(D) Securities and other claims guaranteed by the United States Government or Government agencies or portions of such claims (but only to the extent guaranteed).

(iii) *Category 3: 20 Percent*

(A) Loans and other assets collateralized by United States Government-sponsored agency securities.

(B) Claims on foreign banks with an original maturity of 1 year or less.

(C) Claims on domestic banks (exclusive of demand balances).

(D) Investments in State and local government obligations backed by the "full faith and credit of State or local government." Other claims (including loans) and portions of claims guaranteed by the full faith and credit of a State government (but only to the extent guaranteed).

(E) Claims on official multinational lending institutions or regional development institutions in which the United States Government is a shareholder or contributor.

(F) Loans and other obligations of and investments in Farm Credit institutions.

(G) Local currency claims on foreign central governments to the extent that the Farm Credit institution has local liabilities in that country.

(iv) *Category 4: 50 Percent*

(A) All other investment securities with maturities under 1 year.

(B) Rural housing loans secured by first lien mortgages or deeds of trust.

(v) *Category 5: 100 percent*

(A) All other claims on private obligors.

(B) Claims on foreign banks with original maturity greater than 1 year.

(C) All other assets not specified above, including but not limited to, leases, fixed assets, and receivables.

(D) Until 1993, goodwill acquired before May 12, 1988.

(E) All non-local currency claims on foreign central governments, as well as local currency claims on foreign central governments that are not included in category 3 (G).

(3) Off-Balance-Sheet Items.

(i) The dollar amount of off-balance-sheet items that shall be assigned to a risk-weight category for inclusion in the denominator shall be determined by multiplying the face amount of the item by the appropriate credit conversion factor set forth in paragraph (e)(3)(ii) of this section. The resulting amount shall be then assigned to the appropriate risk-weight category described in paragraph (e)(2) of this section on the basis of the type of obligor.

(ii) Credit conversion factors shall be applied to off-balance-sheet items as follows:

(A) *0 Percent*

(1) Unused commitments with an original maturity of 1 year or less;

(2) Unused commitments with an original maturity of greater than 1 year if:

(i) They are unconditionally cancellable by the institution; and

(ii) The institution has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition before each drawing under the lending arrangement.

(B) *20 Percent*

(1) Short-term, self-liquidating, trade-related contingencies, including but not limited to, commercial letters of credit.

(C) *50 Percent*

(1) Transaction-related contingencies (e.g. bid bonds, performance bonds, warranties, and performance-based standby letters of credit related to a particular transaction).

(2) Unused loan commitments with an original maturity exceeding 1 year, including underwriting commitments and commercial credit lines.

(3) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements pursuant to which the institution's customer can issue short-term debt obligations in its own name, but for which the institution has a legally binding commitment to either:

(i) Purchase the obligations the customer is unable to sell by a stated date; or

(ii) Advance funds to its customer if the obligations cannot be sold.

(D) *100 Percent*

(1) Direct credit substitutes including financial-guarantee-type standby letters of credit that support financial claims on the account party. The face amount of a direct credit substitute shall be netted against any participations sold in that item. The amount not so sold shall be assigned to a risk-weight category using the criteria of § 615.5210(e)(2).

(2) Acquisitions of risk participations in bankers acceptances and participations in direct credit substitutes.

(3) Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.

(4) Forward agreements (i.e., contractual obligations) to purchase assets, including financing facilities with certain drawdown.

(iii) Credit equivalents of interest rate contracts and foreign exchange contracts (except single currency floating/floating interest rate swaps) shall be determined by adding the replacement cost (mark-to-market value, if positive) to the potential future credit exposure, determined by multiplying the notional principal amount by the following credit conversion factors as appropriate.

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less than 1-year	0	1.0
1 year and over	0.5	5.0

(iv) Credit equivalents of single currency floating/floating interest rate swaps shall be determined by their replacement cost (mark-to-market).

§ 615.5215 Distribution of earnings.

The boards of directors of System institutions may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock or allocated equities if, after or due to the action, the permanent capital of the institution would fail to meet the minimum permanent capital adequacy standard established under regulation § 615.5205 for that period. This limitation shall not apply to the payment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital at the issuing institution. Any System institution subject to Federal income tax may pay patronage refunds partially in cash if the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of

the refund paid qualifies as permanent capital.

§ 615.5216 Regulatory forbearance.

(a) During 1989, no institution shall be subject to a regulatory enforcement action solely for failure to meet its interim minimum permanent standard so long as it maintains its permanent capital ratio at or above the beginning permanent capital ratio of June 30, 1988. For each year thereafter no institution shall be subject to regulatory enforcement action solely for failure to meet its minimum permanent capital standard so long as it maintains its permanent capital ratio at or above the beginning permanent capital ratio plus the forbearance increment specified in this paragraph.

Year	Forbearance Criteria
1990	Beginning ratio plus 50 basis points.
1991	Beginning ratio plus 125 basis points.
1992	Beginning ratio plus 200 basis points.
1993	Beginning ratio plus 300 basis points.
Thereafter	1993 ratio plus 100 basis points each year, cumulatively, until 7 percent is reached.

(b) The provisions of paragraph (a) of this section shall not apply to any institution that meets one or more of the conditions specified in 12 CFR 611.1156 for the appointment of a conservator or receiver.

Subpart I—[Removed and Reserved]

3. Subpart I, §§ 615.5220 to 615.5240, is removed and reserved.

PART 618—GENERAL PROVISIONS

4. The authority citation for Part 618 is revised to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart J—Internal Controls

5. Subpart J is amended by adding a new § 618.8440 to read as follows:

§ 618.8440 Planning.

(a) No later than 30 days after the commencement of each calendar year, the board of directors of each Farm Credit System institution shall adopt an operational and strategic business plan for at least the succeeding 3 years.

(b) The plan shall include, at a minimum, the following:

(1) A mission statement.

(2) A review of the internal and external factors that are likely to affect the institution during the planning period.

(3) Quantifiable goals and objectives.

(4) Pro forma financial statements for each year of the plan.

(5) A detailed operating budget for the first year of the plan.

(6) The capital adequacy plan adopted pursuant to § 615.5200(b).

Dated: September 28, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88-22862 Filed 10-5-88; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-52-AD; Amdt. 39-6044]

Airworthiness Directives; Boeing Model 737-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive, applicable to Boeing Model 737-100 and 200 series airplanes, which currently requires inspections for cracks in the aft engine mount cone bolt, and replacement, if necessary. This amendment requires installation of an aft engine mount secondary support, installation of an aft mount cone bolt failure indicator, and continuing inspections of the aft mount indicator. Incorporation of these items constitutes terminating action for the currently required inspections. This action is necessary to prevent separation of an engine in the event of an aft mount cone bolt failure.

EFFECTIVE DATE: November 17, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Mudrovich, Airframe Branch, ANM-120S; telephone (206) 431-

1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 88-01-07, Amendment 39-5826 (53 FR 9; January 4, 1988), applicable to Boeing Model 737-100 and -200 series airplanes, to require installation of an aft mount secondary support, installation of an aft mount cone bolt failure indicator, and continuing inspections of the aft mount indicator, was published in the *Federal Register* on May 31, 1988 (53 FR 19800).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America requested, on behalf of its members, that the currently required ultrasonic inspections be allowed to continue as an option to installation of the aft engine mount secondary support. If this is not allowed, the ATA requested that the compliance period of 3,000 landings be extended to 4,000 landings to allow for delivery of parts and installation during scheduled maintenance. The FAA has determined that installation of the secondary support structure is necessary to prevent separation of an engine in the event of a cone bolt failure and, therefore, cannot concur with the request that the modification be optional. Subsequent to the issuance of the NPRM, the manufacturer confirmed that a parts availability problem exists; in light of this, the FAA concurs with the commenter's request to extend the compliance period from 3,000 to 4,000 landings for installation of the aft engine mount secondary support. The FAA has determined that this extension will provide an acceptable level of safety so long as the ultrasonic inspections continue in the interim. The AD has been changed accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with the change noted above.

It is estimated that 432 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$414,720.

The regulations adopted herein will not have substantial direct effects on the

states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising AD 88-01-07, Amendment 39-5826 (53 FR 9; January 4, 1988), to add a new paragraph B., and re-identify existing paragraphs B. and C. as C. and D., respectively, to read as follows:

Boeing: Applies to Model 737-100 and -200 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent separation of an engine from the airplane, accomplish the following:

A. Within the next 300 landings after the effective date of Amendment 39-5826 (January 25, 1988), and thereafter at intervals not to exceed 600 landings, inspect for cracks in the aft engine mount cone bolt in accordance with Boeing Alert Service Bulletin 737-71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the Boeing Alert Service

Bulletin previously mentioned, using magnetic particle inspection techniques. Replaced cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 600 landings.

B. Within the next 4,000 landings after the effective date of this amendment, accomplish the following:

1. Install an aft engine mount secondary support (2 per airplane), in accordance with Boeing Service Bulletin 737-71-1069, Revision 1, dated May 19, 1988.

2. Install an aft engine mount cone bolt failure indicator, externally, on each engine nacelle, in accordance with Boeing Service Bulletin 737-71-1069, Revision 1, dated May 19, 1988.

3. Following the accomplishment of paragraph B.2., above, inspect the aft mount cone bolt indicator at intervals thereafter not to exceed 3 calendar days (72 hours) on in-service airplanes. Improper alignment indicates a broken aft cone bolt. Broken cone bolts must be replaced with airworthy parts prior to further flight.

Accomplishment of the requirements of this paragraph constitutes terminating action for the inspection required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective November 17, 1988.

Issued in Seattle, Washington, on September 27, 1988.

Darrell M. Pederson,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 88-23012 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-23]

Removal of Transition Area; Welch, OK**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This amendment will remove the transition area located at Welch, OK. The cancellation of the standard instrument approach procedure (SIAP) serving the Patch Airport has made this amendment necessary. The intended effect of this amendment is to return that controlled airspace no longer required for aircraft executing the SIAP to the Patch Airport. Coincident with this amendment will be the changing of the status of the Patch Airport from instrument flight rules (IFR) to visual flight rules (VFR).

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT:

Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:**History**

On June 10, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Welch, OK (53 FR 26276).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will remove the transition area located at Welch, OK. The cancellation of the SIAP serving the Patch Airport has made this amendment necessary. The intended effect of this amendment is to return

that controlled airspace no longer required for aircraft executing the SIAP to the Patch Airport. Coincident with this amendment will be the changing of the status of the Patch Airport from IFR to VFR.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Welch, OK [Removed]

Issued in Fort Worth, TX, on September 20, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-23008 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASW-67]

Establishment of Transition Area; Wheeler, TX**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This amendment will establish a transition area at Wheeler, TX. The development of a new standard instrument approach procedure (SIAP) to the Wheeler Municipal Airport, utilizing the Sayre Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this amendment necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this amendment would be the changing of the status of the Wheeler Municipal Airport from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., January 12, 1989.

FOR FURTHER INFORMATION CONTACT:

Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:**History**

On June 10, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a transition area at Wheeler, TX (53 FR 26278).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D, dated January 1, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area at Wheeler, TX. The development of a new SIAP to the Wheeler Municipal Airport, utilizing

the Sayre VORTAC, has necessitated this amendment. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing this new SIAP. Coincident with this amendment would be the changing of the status of the airport from VFR to IFR.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Wheeler, TX [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Wheeler Municipal Airport (latitude 35°27'07" N., longitude 100°11'58" W.).

Issued in Fort Worth, TX, on September 20, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-23009 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASO-2]

Alteration of VOR Federal Airways; North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Charlotte, NC, very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) has been relocated to a site approximately one mile south of its present location. This action changes the descriptions of all airways affected by the relocation.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

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

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the descriptions of all airways affected by the relocation of the Charlotte, NC, VOR/DME. This action amends airway descriptions where necessary. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

This action only changes the descriptions of the airways affected by the relocation of the Charlotte, NC, VOR/DME. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested.

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

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (53 FR 2010), is further amended as follows:

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-133 [Amended]

By removing the words "From INT Charlotte, NC, 304 °" and by substituting the words "From INT Charlotte, NC, 305 °"

V-143 [Amended]

By removing the words "Greensboro, NC, 224 ° radials;" and by substituting the words "Greensboro, NC, 223 ° radials;"

V-259 [Revised]

From Grand Strand, SC; Florence, SC; Chesterfield, SC; to INT Chesterfield 314 ° and Fayetteville, NC, 267 ° radials. From INT Charlotte, NC, 006 ° and Barretts Mountain, NC, 137 ° radials; Barretts Mountain; to Holston Mountain, TN.

V-296 [Revised]

From INT Chesterfield, SC, 314 ° and Fayetteville, NC, 267 ° radials; Fayetteville; to Wilmington, NC.

V-364 [Amended]

By removing the words "From INT Charlotte, NC, 304 °" and by substituting the words "From INT Charlotte, NC, 305 °"

V-409 [Revised]

From Charlotte, NC; INT Charlotte 088 ° and Raleigh-Durham, NC, 244 ° radials; to Raleigh-Durham.

V-415 [Amended]

By removing the words "to INT Spartanburg 102 °" and by substituting the words "to INT Spartanburg 101 °"

V-454 [Amended]

By removing the words "to INT Greenwood 045 ° and Charlotte, NC, 229 ° radials" and by substituting the words "to INT Greenwood 046 ° and Charlotte, NC, 227 ° radials."

Issued in Washington, DC, on September 16, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-23013 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-18]

Alteration of VOR Federal Airways; Texas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the description of Federal Airway V-66. A mistake has been discovered in the description of V-66 between Midland, TX, and Abilene, TX. An incorrect magnetic variation was used to compute the true radial for that segment. This action corrects that mistake.

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

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88-10146, a final rule that amended the descriptions of all airways affected by the decommissioned Hyman, TX, VOR was published on May 9, 1988, (53 FR 16387). An amendment to the document was published in the Federal Register on June 10, 1988 (53 FR 21811). This action corrects the description of V-66 between Midland, TX, and Abilene, TX. Good cause exists for making this amendment effective less than 30 days after publication in order to meet charting dates.

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

traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 88-10146, as published in the Federal Register on May 9, 1988, (53 FR 16387) and amended (53 FR 21811) is further amended as follows:

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

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

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

§ 71.123 [Amended]

2. On page 16388, column 2, § 71.123 is amended as follows:

V-66 [Amended]

By removing the words "INT Midland 081" and by substituting the words "INT Midland 083"

Issued in Washington, DC, on September 26, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-23010 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 88-AWP-16]

Change Times of Use for Restricted Area R-3101 PMRFAC FOUR, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reduces the time of designation for Restricted Area R-3101 PMRFAC FOUR, HI. A U.S. Navy study of projected special use airspace requirements determined that the present "continuous" time of designation is no longer required for R-3101. This action increases the availability of the airspace for public access.

EFFECTIVE DATE: 0901 u.t.c., December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations reduces the time of designation for Restricted Area R-3101 from "continuous" to 0600 to 1800 local time daily with the provision to activate the area other times by Notice to Airmen (NOTAM). The U.S. Navy has determined that a "continuous" time of designation is no longer necessary. This amendment increases the availability of the airspace for public access. Since this amendment will change the time of designation to reflect actual times of use and will reduce the length of time that the restricted area is in effect, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.31 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; 14 CFR 11.69.

§ 73.31 [Amended]

2. Section 73.31 is amended as follows:

R-3101 PMRFAC FOUR, HI [Amended]

By removing the present time of designation and substituting the following:
Time of designation. 0600-1800 local time daily; other times by NOTAM.

Issued in Washington, DC, on September 29, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and
Aeronautical Information Division.

[FR Doc. 88-23011 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 205

Clarification of Definition of Employee Representative

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends Part 205 to clarify the definition of an employee representative, to identify the factors considered in determining whether an individual meets the definition of an employee representative, to clarify the legal significance of a determination that an individual is an employee representative, and to explain the procedure for reporting and crediting compensation and service under the Railroad Retirement Act for an employee representative.

EFFECTIVE DATE: October 6, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act (45 U.S.C. 231 *et seq.*) provides a system of retirement and disability benefits for railroad employees, their spouses, children, and survivors, who meet certain eligibility requirements under that Act. These benefits are financed by payroll taxes levied under the Railroad Retirement Tax Act (26 U.S.C. 3201 *et seq.*) on covered employers and employees. The Railroad Retirement Tax Act administered by the Internal Revenue Service. In order to receive benefits under the Railroad Retirement Act an

individual must perform railroad service as an employee or an employee representative. Service as an employee representative is reported to the Board pursuant to section 9 of the Railroad Retirement Act (45 U.S.C. 231h) and is used by the Board to determine benefits under that Act.

Part 205 has been revised to provide a more complete explanation of factors to be considered in determining whether an individual is an employee representative, and to explain how that individual must report his or her service and compensation to the Board.

On June 2, 1988, the Board published Part 205 as a proposed rule (53 FR 20136) and invited comments to be submitted by August 1, 1988. No comments were received.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, the information collections imposed by this rule have been approved by the Office of Management and Budget under control number 3220-0014.

List of Subjects in 20 CFR Part 205

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Chapter II, Title 20, Part 205 of the Code of Federal Regulations is revised to read as follows:

PART 205—EMPLOYEE REPRESENTATIVE

Sec.

205.1 Introduction.

205.2 Definition of employee representative.

205.3 Factors considered in determining employee representative status.

205.4 Claiming status as an employee representative.

205.5 Reports of an employee representative.

205.6 Service of an employee representative.

205.7 Termination of employee representative status.

Authority: 45 U.S.C. 231, 45 U.S.C. 231f, 45 U.S.C. 231h.

§ 205.1 Introduction.

This part sets out the various factors considered in determining an individual's status as an employee representative under section 1(b)(1) of the Railroad Retirement Act, and discusses the procedure for reporting and crediting of compensation and service as an employee representative under that Act. An employee representative is considered to be a covered employee under the provisions of the Railroad Retirement Act.

§ 205.2 Definition of employee representative.

(a) An individual shall be an employee representative within the meaning of the Railroad Retirement Act if he or she is an officer or official representative of a railway labor organization, other than a labor organization included in the term "employer" within the meaning of Part 202 of these regulations, who before or after August 29, 1935, was in the service of an "employer" within the meaning of Part 202 of these regulations and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, as amended.

(b) An individual is also considered to be an employee representative within the meaning of the Act if he or she is regularly assigned to or regularly employed by an individual described in paragraph (a) of this section in connection with the duties of the office of employee representative of said individual.

(c) *Example.* A is employed by railroad R as a carman. He is also employed as recording secretary for the local chapter of union U, which has been recognized as the collective bargaining representative of the carmen of R. Although U represents some railroad employees, it is not a railway labor organization as described in Part 202 of these regulations. A is an employee representative. His service for U is treated as employee service under the Railroad Retirement Act.

§ 205.3 Factors considered in determining employee representative status.

The following factors, among others, are considered by the Board in determining an individual's status as an employee representative:

(a) The name of the last railroad or other employer under the Act by which the individual was employed, and the period of employment;

(b) The present official name of the organization by which the individual is employed, as well as any other name(s) under which that organization operated previously;

(c) The date on which the organization was founded;

(d) The title of the position held by the individual within the organization, and the duties of said position;

(e) The method by which the individual, or the person to whom he or she is regularly assigned or by whom he or she is regularly employed, was authorized to represent members of the organization in negotiating with their employers, the date on which the individual was so authorized, and the

time period covered by said authorization;

(f) The purpose or business of the organization as reflected by its constitution and by-laws;

(g) The extent to which the organization is, and has been recognized as, representative of crafts or classes of employees in the railroad industry;

(h) The extent to which the purposes and businesses of the organization are and have been to promote the interests of employees in the railroad industry as indicated by:

(1) The specific employee group(s) represented; and

(2) The proportion of members that are employed by railroad employers in relation to those members that are employed by non-railroad employers;

(i) Whether the organization has been certified by the National Mediation Board as a representative of any class of employees of any company;

(j) If the organization has not been certified as representative of any class of employees, the manner and method by which the organization determined that it was the duly authorized representative of such employees;

(k) Whether the organization participates or is authorized to participate in the selection of labor members of the National Railroad Adjustment Board; and

(l) Whether the organization was assisted by any carrier by railroad, express company, or sleeping car company, directly or indirectly, in its formation, in influencing employees to join the organization, financially, or in the collection of dues, fees, assessments, or any contributions payable to the organization.

§ 205.4 Claiming status as an employee representative.

An individual who claims status as an employee representative shall file a report in accordance with § 209.10 of this chapter.

(Approved by the Office of Management and Budget under control number 3220-0014)

§ 205.5 Reports of an employee representative.

An annual report of creditable compensation shall be made by an employee representative in accordance with § 209.10 of this chapter.

(Approved by the Office of Management and Budget under control number 3220-0014)

§ 205.6 Service of an employee representative.

Service rendered as an employee representative is creditable in the same manner and to the same extent as though the organization by which the

employee representative was employed were an employer under the Railroad Retirement Act. (Creditable railroad service is discussed under Part 210 of the Board's regulations.)

§ 205.7 Termination of employee representative status.

The employee representative status of any individual shall terminate whenever the individual or the organization by whom he or she is employed loses any of the characteristics essential to the existence of employee representative status.

Dated: September 29, 1988.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-23094 Filed 10-5-88; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Syntex Agribusiness, Inc., to Syntex Animal Health, Inc.

EFFECTIVE DATE: October 6, 1988.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2871.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, advised FDA of a change of corporate name from Syntex Agribusiness, Inc., to Syntex Animal Health, Inc. The agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Syntex Agribusiness, Inc." and in paragraph (c)(2) in the entry for "000033" by revising the sponsor name to read "Syntex Animal Health, Inc."

Dated: September 29, 1988.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 88-22988 Filed 10-5-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nystatin, Neomycin, Thiostrepton, Triamcinolone Acetonide Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by Altana, Inc. The NADA provides for the use of nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment on dogs and cats for the treatment of acute and chronic otitis, interdigital cysts, and management of dermatologic disorders; also for the treatment of anal gland infections in dogs.

EFFECTIVE DATE: October 6, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Altana, Inc., 60 Baylis Rd., Melville, NY 11747, filed NADA 140-847 which provides for the use of a nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment for the treatment of acute and chronic otitis of varied etiologies, in interdigital cysts in cats and dogs, and in anal gland infections in dogs, and for the management of dermatologic disorders characterized by inflammation and dry or exudative

dermatitis, particularly those caused, complicated or threatened by bacterial or candidal (*Candida albicans*) infections. It is also of value in exzematous dermatitis, contact dermatitis, and seborrheic dermatitis, and as an adjunct in the treatment of dermatitis due to parasitic infestation.

This product is similar to one in § 524.1600a (21 CFR 524.1600a), originally approved June 9, 1960. That product was reviewed by the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) Panel (35 FR 13609; August 26, 1970) and found to be effective with certain labeling modifications. A supplement reflecting compliance with the NAS/NRC review was published in the Federal Register of April 22, 1971 (36 FR 7583). This NADA is approved and the regulations are amended to reflect the approval by adding a new sponsor to 21 CFR 524.1600a(b). The basis of approval is described in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.1600a [Amended]

2. Section 524.1600a *Nystatin, neomycin, thiostrepton, and triamcinolone acetonide ointment* is amended in paragraph (b) by revising the phrase "See No. 053501" to read "See Nos. 025463 and 053501".

Dated: September 30, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-23046 Filed 10-5-88; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Tiamulin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fermenta Animal Health Co. The supplement provides for expanded use of a Type C medicated swine feed containing 10 grams of tiamulin per ton. The existing weight limit of 125 pounds body weight for the claim of increased rate of weight gain is being raised to 250 pounds. A production claim for improved feed efficiency is also being added.

EFFECTIVE DATE: October 6, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 7410 NW. Tiffany Springs Parkway, P.O. Box 901350, Kansas City, MO 64190-1350, is the sponsor of NADA 139-472 which was approved (52 FR 26955; July 17, 1987) for the use of Denagard® (tiamulin) Type A medicated articles in the preparation of two concentrations of Type C medicated swine feeds. As first approved, the feed containing 35 grams of tiamulin per ton could be used to control swine dysentery; the feed containing 10 grams of tiamulin per ton could be used for increased rate of weight gain from weaning to 125 pounds body weight. The sponsor has submitted a supplemental NADA providing for expanding the existing production claim to include swine weighing up to 250 pounds. The supplement also provides for the addition of a new production claim, at the level of 10 grams of tiamulin per ton, for improved feed efficiency.

The supplement is approved and 21 CFR 558.600 is amended in paragraphs (c)(2)(i) and (c)(2)(ii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.600 is amended by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 558.600 Tiamulin.

* * * * *

(c) * * *

(2) * * *

(i) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(ii) *Limitations.* Feed continuously as the sole ration. Not for use in swine weighing over 250 pounds. Use as sole source of tiamulin. Swine being treated with tiamulin should not have access to feeds containing polyether ionophores (e.g., lasalocid, monensin, narasin, or salinomycin) as adverse reactions may occur.

Dated: September 30, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-23045 Filed 10-5-88; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Change in Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment notifies the public of a change in the interest rate applicable to late premium payments and employer liability underpayments and overpayments beginning October 1, 1988. The interest rate is established by the Internal Revenue Service and is computed quarterly. This amendment is needed to notify pension plan administrators of the new interest rate.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT:

John Foster, Attorney, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from on-going plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate.

Section 6601(a) of the Code imposes interest on the underpayment of taxes at the "underpayment rate established under section 6621." Section 6621(a)(2) prescribes this rate: The sum of the short-term Federal rate (average interest rate on Federal securities with a maturity of three years or less) plus

three percentage points. This rate is computed quarterly by the Internal Revenue Service.

On September 27, 1988, the Internal Revenue Service announced that for the calendar quarter beginning October 1, 1988, the interest charged on the underpayment of taxes will be at the rate of 11 percent. Accordingly, Appendix A to 29 CFR Part 2610 and Appendix A to 29 CFR Part 2622 are being amended to set forth this rate for the period beginning on October 1, 1988. This rate will be in effect for at least the three-month period ending on December 31, 1988, and will continue in effect after that time if the Internal Revenue Service, in its next quarterly review, determines that no change is needed.

The appendices to 29 CFR Part 2610 and 29 CFR Part 2622 do not prescribe the interest rates under these regulations; the rates prescribed by those parts are the rates under section 6601(a) of the Code. The appendices merely collect and republish the rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that neither of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of \$100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, Appendix A to Part 2610 and Appendix A to Part 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100-203, 101 Stat. 1330.

2. Appendix A to Part 2610 is amended by revising the April 1, 1988, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
Apr. 1, 1988	Sept. 30, 1988	10
Oct. 1, 1988		11

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

3. The authority citation for Part 2622 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362-1364, 1367-68, as amended by secs. 9312, 9313, Pub. L. 100-203, 101 Stat. 1330.

4. Appendix A to Part 2622 is amended by revising the April 1, 1988, entry and adding a new entry to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
Apr. 1, 1988	Sept. 30, 1988	10
Oct. 1, 1988		11

Issued in Washington, DC, the 3rd day of October, 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-23090 Filed 10-5-88; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Approval in Part and Disapproval in Part of Amendment

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

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval in part and disapproval in part of a proposed amendment submitted by the Commonwealth of Kentucky as a modification to its permanent regulatory program [hereinafter referred to as the Kentucky program] under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment restructures Kentucky's preliminary hearing process to eliminate the requirement that hearings automatically be scheduled for all violations, orders and proposed penalties.

EFFECTIVE DATE: October 6, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

- I. Background on the Kentucky Program
- II. Submission of Amendment
- III. Director's Findings
- IV. Public and Agency Comments
- V. Director's Decision
- VI. Procedural Determinations

I. Background on the Kentucky Program

The Kentucky program was conditionally approved by the Secretary of the Interior effective upon publication of the approval notice in the May 18, 1982 *Federal Register* (47 FR 21404-21435). 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 Kentucky program, can be found in the May 18,

1982 *Federal Register*. Other actions concerning program approval, subsequent program amendments and required amendments are identified at 30 CFR 917.13, 917.15, 917.16 and 917.17.

II. Submission of Amendment

By letter dated April 27, 1988 (Administrative Record No. KY-799), Kentucky submitted a proposed amendment specifying that a preliminary hearing on any notice or order of the Natural Resources and Environmental Protection Cabinet ("the Cabinet") need be scheduled only if requested in writing by the permittee or operator. This proposed amendment also contains numerous editorial revisions and clarifications of other related provisions of the Kentucky Administrative Regulations (KAR) at 405 KAR 7:090. OSMRE announced receipt of the proposed amendment in the July 1, 1988 *Federal Register* (53 FR 24957), and invited public comments on its adequacy.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Kentucky program.

1. Preliminary Hearings

(a) *General.* Prior to the amendment now under consideration, 405 KAR 7:090 section 4 required the Cabinet to schedule a preliminary hearing for every violation notice, order or proposed penalty issued. These preliminary hearings are analogous to the informal public hearings and assessment conferences required by the Federal regulations at 30 CFR 843.15 and 845.18, respectively. However, the Federal regulations only require that informal public hearings and assessment conferences be held if requested by the operator. As revised by the proposed amendment, sections 3 and 4 of the Kentucky rule likewise will require the recipient of a notice or order to request a preliminary hearing before one will be scheduled. Therefore, except as discussed in paragraph (b) below, the Director finds that Kentucky's revised preliminary hearing procedures are similar to and no less effective than the corresponding Federal requirements.

(b) *Final assessment orders.* Kentucky also has revised section 3(4)(a) to provide that a person who chooses not to contest the fact of the *abated* violation or the assessment shall pay the assessment in full within 30 days of the date of mailing of the final assessment order. The previous version of this rule did not require that the violation be

abated before its provision took effect, nor does the corresponding Federal rule at 30 CFR 845.20(a) contain a similar restriction. The question of whether a violation is abated should not be a consideration in determining when an assessment becomes payable. Therefore, the Director finds that addition of the word "abated" to 405 KAR 7:090 section 3(4)(a) renders the State rule less effective than its Federal counterpart, and he is not approving this addition.

(c) *Ex parte communications.* Kentucky also has added paragraph (12) to 405 KAR 7:090 section 4 to prohibit and *ex parte* communications between the hearing officer and the parties to a preliminary hearing or their representatives. The corresponding Federal regulations at 30 CFR 843.15 and 845.18 concerning informal public hearings and assessment conferences lack a similar provision. However, since this addition provides an added safeguard for the integrity of the hearing process, the Director finds that it is not inconsistent with the corresponding Federal requirements.

2. Miscellaneous Revisions

As submitted, 405 KAR 7:090 contains numerous editorial and organizational revisions to improve clarity and consistency. References to surface coal mining operations have been revised to include reclamation and coal exploration operations. Similarly, references to violations of the State statute and regulations have been revised to include violations of permit conditions. Also, section 5 has been revised to specifically address formal hearings concerning blaster certification suspension and revocation. Although Kentucky has always interpreted 405 KAR 7:090 as applying to these types of operations and violations, the revisions remove potential ambiguities. For this reason and since these revisions do not alter the meaning or intent of the regulations, the Director finds that they are not inconsistent with any requirements of SMCRA or the Federal regulations concerning hearing rights and procedures.

IV. Public and Agency Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the July 1, 1988 *Federal Register* ended July 31, 1988. No one requested an opportunity to testify at the scheduled public hearing; therefore, no hearing was held. The Kentucky Resources Council submitted comments

supporting the amendment. The nature and disposition of other comments received are summarized below:

1. The Kentucky Coal Association recommended numerous editorial clarifications and suggested that the Cabinet provide a pre-addressed postcard for operator use in requesting a hearing. While the Director recognizes that some of these suggestions have merit, none would alter the meaning or effectiveness of the State rules. Therefore, he is not requiring that these changes be made.

2. The Kentucky Coal Association stated that the operator should be allowed 30 days from the date of receipt of the notice, order or penalty assessment to request a hearing, as in the Federal rules, rather than 30 days from the date of mailing as currently provided in paragraphs (1) and (6) of section 4 of the amendment. Sections 518(i) and 521(d) of SMCRA require that State programs include enforcement and penalty assessment procedures that are the same as or similar to the corresponding procedures contained in these sections of SMCRA. Nothing in these sections specifies the timeframe within which a hearing must be requested. States may deviate from the timeframes established in the Federal regulations provided such deviations are not unreasonable or an effective deprivation of rights.

3. The Kentucky Coal Association and Coal Operators and Associates, Inc. stated that section 4(6) of the amendment should be revised to clarify that prepayment of the penalty is not a condition of obtaining a formal hearing when only the fact of violation is being appealed. In response, the Director notes that section 518(c) of SMCRA provides that a person charged with a penalty who wishes to contest either the amount of the penalty or the fact of violation must place the penalty amount into escrow pending the outcome of the formal hearing. The Kentucky amendment is thus in accordance with the requirements of SMCRA.

4. The Kentucky Coal Association recommended that section 5(2)(a)(1) of the amendment, which allows the Cabinet to seek a formal hearing for permit suspension or revocation and bond forfeiture if it has reason to believe that a violation has occurred or is occurring, be deleted since there is no corresponding Federal provision. Since section 521(d) of SMCRA authorizes States to retain and develop additional enforcement rights and procedures not specifically enumerated within SMCRA, the Director does not agree that deletion is necessary.

5. The Kentucky Coal Association objected to the revisions to paragraphs (5) and (8) of section 5 of the amendment, which provide that a final order of the Cabinet shall be conclusive between all parties to the preliminary hearing and all persons in privity with such parties, and that the issues so resolved shall not be readjudicated at any subsequent formal hearing. Under section 3(4)(c) and paragraphs (8) and (10) of section 5, the Cabinet may issue such a final order only as part of a settlement agreement or when there is no timely request for a hearing. These provisions are similar to the corresponding Federal rules at 30 CFR 845.18(d)(1) and 845.20(a). Also the Federal rules use the term "person" rather than "parties" as in the Kentucky rule. As defined in 30 CFR 700.5, "person" would include all persons in privity with the parties, as specified in the Kentucky amendment. Therefore, the Director finds that the Kentucky amendment is consistent with Federal requirements.

6. The Kentucky Coal Association objected to removal of the sentence previously contained in section 5(8) which stated that the hearing officer shall permit any party to represent himself. The Association contended that this eliminated a party's right to self-representation.

The Director finds that the Association's concern is unfounded in that deletion of this sentence merely removes a redundancy; it does not translate into the alleged prohibition. Section 5(8) continues to state that "any party to a hearing may be represented by counsel" (emphasis added), not that all parties shall be represented by counsel.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Kentucky program. Only one agency provided substantive comments.

The Bureau of Land Management suggested that the owners of surface and mineral rights be given direct written notice of an impending permit revocation hearing. The Bureau stated that the public notice required under 405 KAR 7:090 section 4(2) did not seem to afford proper or sufficient notice to interested third parties such as the Bureau.

In response, the Director notes that since neither SMCRA nor the Federal regulations require that surface and mineral owners be given direct notice of enforcement actions and procedures

such as permit revocation, Kentucky cannot be required to do so. Furthermore, 405 KAR 7:090 Section 4 does not apply to permit revocation hearings. The Bureau's concern appears to relate principally to lands where it owns the surface or mineral rights. Under SMCRA, all such lands are considered Federal lands. Since Kentucky has not entered into a cooperative agreement allowing it to regulate mining on Federal lands, all such operations are regulated by OSMRE. Therefore, Federal enforcement and hearing procedures (30 CFR 843.13 and 43 CFR Part 4) would apply in place of those at 405 KAR 7:090.

V. Director's Decision

Based on the above findings, the Director is approving the amendment as submitted on April 27, 1988, with the exception of the provision noted in Finding 1(b). Approval of this amendment will enable the Cabinet to reduce its workload while fully maintaining its ability to implement its program in a manner no less stringent than SMCRA and no less effective than the Federal regulations. The Federal rules at 30 CFR Part 917 concerning the Kentucky program are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

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.

Compliance With Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE 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.

Compliance With the Regulatory Flexibility Act

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.

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 917

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

Robert E. Boldt,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

Date: September 29, 1988.

Therefore, for the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 917.15, a new paragraph (aa) is added to read as follows:

§ 917.15 Approval of regulatory program amendments.

(aa) The following amendment submitted to OSMRE on April 29, 1988, is approved in the form submitted on that date effective October 6, 1988: Revisions to the hearing procedures and requirements of the Kentucky Administrative Regulations at 405 KAR 7:090, except that portion of section 3(4)(a) disapproved in paragraph (d) of § 917.17 of this chapter.

3. In § 917.17, the language of the heading is revised and a new paragraph (d) is added to read as follows:

§ 917.17 State regulatory program amendments disapproved.

(d) The addition of the word "abated" to modify the term "violation" in paragraph (4)(a) of section 3 of Chapter 7:090 of Title 405 of the Kentucky Administrative Regulations, as submitted to OSMRE by letter dated April 27, 1988, is hereby disapproved. The effect of the disapproval is to continue the requirement that any person who chooses not to contest the fact of violation (whether abated or not) or the assessment shall pay the

assessment in full within 30 days of the date the final assessment order was mailed.

[FR Doc. 88-23026 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 934

North Dakota Permanent Regulatory Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: OSMRE is correcting the preamble and codified portions of a final rule (53 FR 2837, February 2, 1988) concerning an amendment submitted by the State of North Dakota as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The corrections pertain to those provisions of the amendment involving performance bonds.

EFFECTIVE DATE: October 6, 1988.

FOR FURTHER INFORMATION CONTACT:

Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 E. "B" Street, Room 2128, Casper, Wyoming 82601-1918; Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION: On February 2, 1988, the Director published a final rule deferring action on North Dakota's proposed revisions to NDAC 69-05.2-12-01 (4), (5), (6), and (7) (53 FR 2837). The Director stated in the notice that with one exception concerning incremental bonding North Dakota addressed all of OSMRE's concerns. The Director declined to approve the proposed revisions at that time since the amended provisions continued to authorize the use of incremental bonding, a practice which the U.S. District Court for the District of Columbia had found to be inconsistent with section 509 of SMCRA (*In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144). However, on January 29, 1988, the U.S. Court of Appeals for the District of Columbia Circuit reversed the finding of the District Court on this issue (*National Wildlife Federation, et al. v. Hodel*, Case No. 84-5743). Because processing of the Federal Register notice concerning the North Dakota amendment had already been completed by the time OSMRE received a copy of the decision, the Director was unable to correct the notice prior to publication to reflect this decision. Therefore, as discussed below, the Director, by this

notice, is correcting the February 2, 1988 Federal Register notice to reflect the January 29, 1988 decision of the U.S. Court of Appeals and approve the State's revisions to its regulations, a decision which OSMRE had previously deferred.

1. On page 2838, second column, first line, delete the phrase "below and."

2. On page 2838, second column, delete the first full paragraph in its entirety.

3. On page 2840, first column, delete the last sentence of the first paragraph of the section entitled "Director's Decision."

In addition, the Director is amending paragraph (j) of 30 CFR 934.15 to remove the deferral and reflect his approval of the proposed editorial revisions to subsections 4, 5, 6, and 7 of NDAC 69-05.2-12-01. No comments were received on any of these proposed revisions. Public comment was invited in the April 14, 1987 Federal Register (52 FR 12002) and on August 18, 1987 (52 FR 35735) and again on December 14, 1987 (52 FR 4903).

List of Subjects in 30 CFR Part 934

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

Dated: September 26, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Paragraph (j) of § 934.15, is amended by revising the sentence which follows the colon to read as follows:

§ 934.15 Approval of regulatory program amendments.

(j) * * *: Modifications to North Dakota Administrative Code (NDAC) Article 69-05.2-12, addressing performance bonds; NDAC 69-05.2-13-04, addressing signs and markers; and NDAC 69-05.2-23, addressing postmining land use.

[FR Doc. 88-22919 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 276 and 277

[DoD Directive 5505.5]

Implementation of the Program Fraud Civil Remedies Act

AGENCY: General Counsel, DoD.

ACTION: Final rule.

SUMMARY: The implementation of the DoD Program Fraud Civil Remedies Act is required by the Program Fraud Civil Remedies Act of 1986 (PFCRA), Pub. L. 99-509, (October 21, 1986), to be codified at 31 U.S.C. 3801 through 3812. This part implements PFCRA by establishing an administrative process within the Department of Defense and Departments of the Army, Navy, and Air Force (hereinafter referred to as the "authorities" for the adjudication of fraudulent claims of less change \$150,000 or false statements. It establishes a process for imposing liability of up to \$5,000 per claim or statement and double damages on anyone who, with knowledge or reason to know submits a false, fictitious or fraudulent claim or statement to an authority. Procedurally, this Part provides for the referral of matters, involving possible violation of PFCRA, from the Inspector General, DoD (the "investigating official") to a reviewing official in each authority for evaluation and transmission of written notice, to the Attorney General, Department of Justice, of intent to refer presiding officer for adjudication. The Attorney General will provide written approval or disapproval for the referral of the allegations to a presiding officer for a formal hearing on the record. This Part establishes procedures for an appeal of the presiding officer's decision to the authority head. On Thursday, July 16, 1987, the Department of Defense published proposed rule 32 CFR Parts 276 and 277. Numerous comments were received from the public. Those comments were carefully considered and, where appropriate, adopted in whole or in part in this final rule. This Part has incorporated the material of Parts 276 and 277, therefore Part 276 is no longer necessary.

EFFECTIVE DATE: August 30, 1988.

ADDRESSES: Assistant General Counsel (Legal Counsel), Room 3E988, the Pentagon, Washington, DC 20301-1600.

FOR FURTHER INFORMATION CONTACT: Michael A. Sterlacci, telephone (202) 697-2714.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12291

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for customers, individual industries, Government Agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have determined that these final regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In general, the proposed rule would establish procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements to the Department. As such, this final rule would have no direct effect on the economy on Federal or State expenditures. Consequently, we have concluded that an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Analysis

Consistent with Regulatory Flexibility Act of 1980 (Pub. L. 96-453, 5 U.S.C. 604(a)), DoD prepares and publishes an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small business entities. The analysis is intended to explain what effect the regulatory action by the agency would have on small business and other small entities and to develop lower cost or burden alternatives. As indicated above, these final regulations would not have a significant economic impact. While some of the penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities would be significantly affected by this rulemaking. Therefore, the Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 (Pub. L. 96-511), all Departments

are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirements contained in both proposed and final rules. It has been determined that this rulemaking does not contain specific information collection requirements and would not increase the Federal paperwork burden on the public and private sector.

List of Subjects in 32 CFR Parts 276 and 277

Fraud.

Accordingly, Title 32, Chapter I is amended as follows:

PART 276—[REMOVED]

1. Part 276 is removed.
2. Part 277 is added to read as follows:

PART 277—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

- 277.1 Purpose.
 - 277.2 Applicability.
 - 277.3 Policy.
 - 277.4 Responsibilities.
- Appendix—Program Fraud Civil Remedies
Authority: 31 U.S.C. 3807.

§ 277.1 Purpose.

This part establishes uniform policies, assigns responsibilities, and prescribes procedures for implementation of Pub. L. 99-509.

§ 277.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Office of the Inspector General, Department of Defense (OIG, DoD); the Defense Agencies; and the DoD Field Activities (hereinafter referred to collectively as "DoD Components").

§ 277.3 Policy.

It is DoD policy to redress fraud in DoD programs and operations through the nonexclusive use of Pub. L. 99-509. All DoD Components shall comply with the requirements of this part in using this new remedy. Changes or modifications to this part by implementing organizations are prohibited. Implementing regulations are authorized only to the extent necessary to effectively carry out the requirements of this part.

§ 277.4 Responsibilities.

(a) The Inspector General, Department of Defense (IG, DoD), shall establish procedures for carrying out the duties and responsibilities of the "investigating official" as outlined in the Appendix of this part.

(b) The *General Counsel, Department of Defense* (GC, DoD), shall:

(1) Establish procedures for carrying out the duties and responsibilities of the authority head, Department of Defense, which have been delegated to the GC, DoD, as set forth in Appendix of this part.

(2) Establish procedures for carrying out the duties and responsibilities for appointment and support of presiding officers, as set forth in Appendix of this part; and

(3) Review and approve the regulations and instructions required by this section to be submitted for approval by the GC, DoD.

(c) The *Secretaries of the Military Departments* shall:

(1) Establish procedures for carrying out the duties and responsibilities of the "authority head" and of the "reviewing officials" for their respective Departments, and for obtaining and supporting presiding officers from other Agencies as specified in Office of Personnel Management (OPM) regulations; (see Appendix of this part).

(2) Make all regulations or instructions promulgated subject to the approval of the GC, DoD; and

(3) Delegate duties as appropriate.

(d) The *General Counsel of the National Security Agency* (GC, NSA) and the *General Counsel of the Defense Logistics Agency* (GC, DLA) shall be responsible for establishing procedures for carrying out the duties and responsibilities of the reviewing officials that have been delegated to them, as stated in Appendix of this part. All Regulations or Instructions promulgated pursuant to this part shall be submitted to the GC, DoD.

Appendix—Program Fraud Civil Remedies

A. Scope and Purpose

1. The Department of Defense has the authority to impose civil penalties and assessments against persons who make, submit or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents.

2. This Appendix:

a. Establishes administrative policies and procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents;

b. Specifies the hearing and appeal rights of persons subject to allegations

of liability for such penalties and assessments.

3. The uniform policies and procedures established by this enclosure are binding on the authorities and authority heads in the Department of Defense and Military Departments. Additional administrative regulations necessary to carry out the requirements of the PFCRA and this part may be written by the authority heads. Any such regulations shall be consistent with the provisions of this Appendix.

B. Definitions

1. Adequate Evidence

Information sufficient to support the reasonable belief that a particular act or omission has occurred.

2. Authority

a. The Department of Defense, which includes OSD, Organization of the Joint Chiefs of Staff (OJCS), Unified and Specified Commands, Defense Agencies, and DoD Field Activities.

b. The Department of the Army.

c. The Department of the Navy.

d. The Department of the Air Force.

3. Authority Head

a. For the Department of Defense, the Deputy Secretary of the Department of Defense or an official or employee of the Department of Defense or the Military Departments designated in writing by the Deputy Secretary of Defense.

b. For the respective Military Departments, the Secretary of the Military Department or an official or employee of the Military Department designated in regulations promulgated by the Secretary to act on behalf of the Secretary.

4. Benefit

In the context of statements, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling status, or loan guarantee.

5. Claim

Any request, demand, or submission made as follows:

a. To the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

b. To a recipient of property, services, or money from the authority or to a party to a contract with the authority:

(1) For property or services if the United States:

(a) Provided such property or services;

(b) Provided any portion of the funds for the purchase of such property or services; or

(c) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States:

(a) Provided any portion of the money requested or demanded; or

(b) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the authority that has the effect of decreasing an obligation to pay or account for property, services, or money.

6. Complaint

The administrative complaint served by the reviewing official on the defendant under section G., below.

7. Defendant

Any person alleged in a complaint under section G., below, to be liable for a civil penalty or assessment under Section C., below.

8. DoD Criminal Investigative Organizations

The U.S. Army Criminal Investigative Command, Naval Security and Investigative Command, U.S. Air Force Office of Special Investigations, and the Defense Criminal Investigative Service.

9. Government

The U.S. Government.

10. Individual

A natural person.

11. Initial Decision

The Written decision of the presiding officer required by section J. or KK., below. This includes a revised initial decision issued following a remand or a motion of reconsideration.

12. Investigating Official

a. The IG, DoD; or

b. An officer or employee of the OIG designated by the IG;

c. Who, if a member of the Armed Forces of the United States on active duty, is serving in Grade 0-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for Grade GS-16 under the General Schedule.

13. Knows or Has Reason to Know

A person who, with respect to a claim or statement:

a. Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

b. Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

c. Acts in reckless disregard of the truth or falsity of the claim or statement.

14. Makes

Includes the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, making or made shall likewise include the corresponding forms of such terms.

15. Person

Any individual, partnership, corporation, association or private organization, and includes the plural of that term.

16. Preponderance of the Evidence

The evidence necessary to support a presiding officer's decision that a violation of the PFCRA has occurred. Evidence that leads to the belief that what is sought to be proved is more likely true than not true.

17. Presiding Officer

An officer or employee of the Department of Defense or an employee detailed to the Department of Defense from another agency who:

a. Is selected under 5 U.S.C., Chapter 33, pursuant to the competitive examination process applicable to administrative law judges;

b. Is appointed by the authority head of DoD to conduct hearings under this Part for cases arising in the Department of Defense or the Military Departments;

c. Is assigned to cases in rotation so far as practicable;

d. May not perform duties inconsistent with the duties and responsibilities of a presiding officer;

e. Is entitled to pay prescribed by the Office of Personnel Management (OPM) independently of ratings and recommendations made by the authority and in accordance with 5 U.S.C., Chapters 51 and 53, Subchapter III;

f. Is not subject to a performance appraisal pursuant to 5 U.S.C., Chapter 43; and

g. May be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board (MSPB) on the record after opportunity for hearing by such Board.

18. Representative

An Attorney-at-law duly licensed in any State, commonwealth, territory, the District of Columbia, or foreign country, who enters his or her appearance in writing to represent a party in a proceeding under this part, or an officer,

director, or employee of a defendant or of its affiliate.

19. Reviewing Official

a. In all cases arising in the Department of Defense and any of the Military Departments, the reviewing official shall be an officer or employee of an authority as follows:

(1) Who is designated by the authority head to make the determination required under section E., below, of this enclosure;

(2) Who, if a member of the Armed Forces of the United States on active duty, is serving in Grade 0-7 or above or, if a civilian employee, is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for Grade GS-16 under the General Schedule; and

(3) Who is as follows:

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(c) Not an official designated to make suspension or debarment decisions.

b. The General Counsel, Defense Logistics Agency (GC, DLA), shall be the reviewing official for all cases involving a claim or statement made to the DLA or any other part of the Department of Defense other than a Military Department or the National Security Agency (NSA). The General Counsel, National Security Agency (GC, NSA), shall be the reviewing official for all cases involving claims or statements made to that Agency. The General Counsel, Defense Logistics Agency (GC, DLA), and GC, NSA, may redelegate their authority to act as reviewing officials to any individual(s) meeting the criteria set out in subparagraph (1) of this section.

c. The authority head of each Military Department shall select a reviewing official, who shall review all cases involving a claim or statement that was made to their Department.

20. Statement

Any written representation, certification, affirmation, document, record, accounting, or bookkeeping entry made:

a. With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

b. With respect to (including relating to eligibility for):

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from the authority, or any State, political

subdivision of a State, or other party; if the U.S. Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the U.S. Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

C. Basis for Civil Penalties and Assessments

1. Claims

a. Any person who makes a claim that the person knows or has reason to know:

(1) Is false, fictitious, or fraudulent;

(2) Includes or is supported by a written statement that asserts a material fact that is false, fictitious, or fraudulent;

(3) Includes or is supported by any written statement that:

(a) Omits a material fact;

(b) Is false, fictitious, or fraudulent as a result of such omission; and

(c) Is a statement in which the person making such statement has a duty to include such material fact; or

(4) Is for payment for the provision of property or services that the person had not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each such claim.

b. Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

c. A claim shall be considered made to an authority, recipient, or party when such claim is received by an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

d. Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, service, or money is actually delivered or paid.

e. If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under subparagraph a.(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of subparagraph a.(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

2. Statements

a. Any person who makes a written statement that:

(1) The person knows or has reason to know the following:

(a) Asserts a material fact that is false, fictitious, or fraudulent; or

(b) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(2) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$5,000 for each statement.

b. Each written representation, certification, or affirmation constitutes a separate statement.

c. A statement shall be considered made to an authority when such statement is received by an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

3. No proof of specific intent to defraud is required to establish liability under this section.

4. In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held jointly and severally liable for a civil penalty with respect to such claims or statements.

5. In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services) an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

D. Investigation

1. If the investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted, then:

a. The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

b. The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

c. The person receiving such subpoena shall be required to tender to the investigating official, or to the person designated to receive the documents, a

certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

2. If the investigating official concludes that an action under the PFCRA may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the appropriate reviewing official(s). In instances where the false claim or false statement involves more than one authority within the Department of Defense, or where the investigating official finds that more than one case has arisen from the same set of facts, the investigating official may, at his or her sole discretion, refer the case(s) to the reviewing official of one of the affected authorities. That reviewing official shall consolidate the claims and statements and act for all. Nothing in this subsection confers any right in any party to the consolidation or severance of any case(s), although presiding officers may, at their sole discretion, entertain motions to consolidate or sever.

3. Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under 18 U.S.C. 287 or 31 U.S.C. 3729 and 3730, False Claims Act, or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

4. Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

5. Nothing in this section shall preclude or limit the investigating official's authority to obtain the assistance of any investigative units of the Department of Defense, including those of the Military Departments. In this regard, appropriate investigation may be conducted by the Defense criminal investigative organizations and other investigative elements of the Military Departments and Defense Agencies.

E. Review by the Reviewing Official

1. If, based on the report of the investigating official under subsection D.2., above, the reviewing official determines that there is adequate evidence to believe that a person is liable under section C., above, the reviewing official shall transmit to the Attorney General or his or her

designated point of coordination within the Department of Justice a written notice of the reviewing official's intention to issue a complaint under section G., below.

2. Such notice shall include the following:

a. A statement of the reviewing official's reasons for issuing a complaint;

b. A statement specifying the evidence that supports the allegations of liability;

c. A description of the claims or statements upon which the allegations of liability are based;

d. An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of section C., above.

e. A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

f. A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

F. Prerequisites for Issuing a Complaint

1. The reviewing official may issue a complaint under section G., below, only if:

a. The Attorney General or an Assistant Attorney General designated by the Attorney General approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

b. In the case of allegations of liability under subsection C.1., above, with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in subsection 2. of this section), the amount of money or the value of property or services demanded or requested in violation of subsection C.1., above, does not exceed \$150,000.00;

2. For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

3. Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

4. In any case that involves claims or statements made to more than one entity within the Department of Defense or the Military Departments, or the reviewing officials having responsibility for each such entity, as stated in subsection D.2., above, shall have concurrent jurisdiction to make the required determinations under this section. In any such case, the responsible reviewing officials shall coordinate with each other prior to making any determination under this section. Where more than one case arises from the same set of facts, such cases shall be consolidated to the degree practicable, although the reviewing official shall have absolute discretion to make such determination. The requirements of this paragraph do not confer any procedural or substantive rights upon individuals, associations, corporations, or other persons or entities who might become defendants under the PFCRA.

G. Complaint

1. On or after the date the Attorney General or an Assistant Attorney General designated by the Attorney General approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in section H., below.

2. The complaint shall state the following:

a. The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

b. The maximum amount of penalties and assessments for which the defendant may be held liable;

c. Instructions for filing an answer to a request including a specific statement of the defendant's right to request a hearing, by filing an answer and to be represented by a representative; and

d. That failure to file an answer within 30 days of service of the complaint shall result in the imposition of penalties and assessments without right to appeal, consistent with the provisions of section J., below.

3. At the same time the reviewing official serves the complaint, he or she shall notify the defendant with a copy of this Part and any applicable implementing regulations.

H. Service of Complaint

1. Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil

Procedure. Service is complete upon receipt.

2. Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service may be made by the following:

a. Affidavit of the individual serving the complaint by delivery;

b. A United States Postal Service return receipt card acknowledging receipt; or

c. Written acknowledgement of receipt by the defendant or his or her representative.

I. Answer

1. The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

2. In the answer, the defendant:

a. Shall admit or deny each of the allegations of liability made in the complaint;

b. Shall state any defense on which the defendant intends to rely;

c. May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

d. Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

3. If the defendant is unable to file an answer meeting the requirements of paragraph 2.b of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of subsection 2. of this section. The reviewing official shall, in such event, file promptly with the presiding officer the complaint, the general answer denying liability, and the request for an extension of time as provided in section K., below. For good cause shown, the presiding officer may grant the defendant additional time within which to file an answer meeting the requirements of subsection 2. of this section.

4. The 30-day limitation for filing an answer may be tolled for a reasonable period of time by written agreement of the parties and approval of the authority head to allow time for settlement.

J. Default Upon Failure to File an Answer

1. If the defendant does not file an answer within the time prescribed in

subsection I.1., above, and there is no approved written agreement as in subsection I.4., above, tolling the time prescribed, the reviewing official may then refer the complaint to the presiding officer.

2. Upon referral of the complaint pursuant to this section, the presiding officer shall promptly serve on defendant, in the manner prescribed in section H., above, a notice that an initial decision will be issued under this section.

3. Upon referral of the complaint pursuant to this section, the presiding officer shall assume the facts alleged in the complaint to be true and, if such facts establish liability under section C., above, the presiding officer shall issue an initial decision imposing penalties and assessments under the statute.

4. Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under subsection 3. of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

5. If, before such an initial decision becomes final, the defendant files a motion with the presiding officer seeking to reopen on the grounds that good cause prevented the defendant from filing an answer, the initial decision shall be stayed pending the presiding officer's decision on the motion.

6. If, on a motion brought under subsection J.5., above, the defendant can demonstrate good cause excusing the failure to file a timely answer, the presiding officer shall withdraw the initial decision in subsection 3. of this section if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

7. A decision of the presiding officer denying a defendant's motion under subsections 5. and 6. of this section is not subject to reconsideration under section LL., below.

8. The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the presiding officer denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

9. If the defendant files a timely notice of appeal with the authority head, the presiding officer shall forward the record of the proceeding to the authority head.

10. The authority head shall decide expeditiously whether good cause excused the defendant's failure to file a

timely answer based solely on the record before the presiding officer.

11. If the authority head decides that good cause excused the defendant's failure to file a timely answer, the authority head shall remand the case to the presiding officer with instructions to grant the defendant an opportunity to answer.

12. If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall approve the initial decision of the presiding officer, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

K. Referral of Complaint and Answer to the Presiding Officer

1. Upon receipt of an answer, the reviewing official shall file the complaint and answer with the presiding officer.

2. To allow time for settlement, referral of complaint and answer to the presiding officer may be delayed for a reasonable period of time if there is a written agreement of the parties, approved by the authority head, in favor of such delay.

L. Notice of Hearing

1. When the presiding officer receives the complaint and answer, the presiding officer shall promptly serve a notice of hearing upon the defendant in the manner prescribed by section H., above. At the same time, the presiding officer shall send a copy of such notice to the representative for the Government.

2. Such notice shall include:

- a. The tentative time and place, and the nature of the hearing;
- b. The legal authority and jurisdiction under which the hearing is to be held;
- c. The matters of fact and law to be asserted;
- d. A description of the procedures for the conduct of the hearing;
- e. The name, address, and telephone number of the representative of the Government, the defendant, and other parties, if any; and
- f. Such other matters as the presiding officer deems appropriate.

M. Parties to the Hearing

The parties to the hearing shall be the defendant and the authority. The reviewing official of each authority shall, with the concurrence of the DoD Component head, designate attorneys within that authority to represent the authority in hearings conducted under this part. Attorneys appointed as authority representatives shall remain under the supervision of their DoD Component.

N. Separation of Functions

1. The investigating official and the reviewing official, for any particular case or factually related case, may not do the following:

- a. Participate in the hearing as the presiding officer;
- b. Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in a public proceeding; or
- c. Make the collecting of penalties and assessments under 31 U.S.C. 3806.

2. The presiding officer shall not be responsible to, or subject to the supervision or direction of, the investigating official or the reviewing official.

3. Except as provided in subsection 1. of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

O. Ex parte Contacts

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case unless on notice and there is an opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

P. Disqualification of Presiding Officer and Reviewing Official

1. A reviewing official or presiding officer in a particular case may disqualify himself or herself at any time.

2. A party may file a motion for disqualification of the presiding officer or the reviewing official. Such motion, to be filed with the presiding officer, shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

3. Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification or such objections shall be deemed waived.

4. Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

5. Upon the filing of such a motion and affidavit, the presiding officer shall proceed no further in the case until he or she resolves the matter of

disqualification by taking one of the following actions:

- a. If the presiding officer determines that a reviewing official is disqualified, the presiding officer shall dismiss the complaint without prejudice;
- b. If the presiding officer disqualifies himself or herself, the case shall be reassigned promptly to another presiding officer;
- c. The presiding officer may deny a motion to disqualify. In such event, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

Q. Rights of Parties

Except as otherwise limited by this enclosure, all parties may:

1. Be accompanied, represented, and advised by a representative;
2. Participate in any conference held by the presiding officer;
3. Conduct discovery;
4. Agree to stipulations of fact or law, which shall be made part of the record;
5. Present evidence relevant to the issues at the hearing;
6. Present and cross-examine witnesses;
7. Present oral arguments at the hearing, as permitted by the presiding officer; and
8. Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

R. Authority of the Presiding Officer

1. The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

2. The presiding officer has the authority to do the following:

- a. Set and change the date, time, and place of the hearing upon reasonable notice to the parties;
- b. Continue or recess the hearing in whole or in part for a reasonable period of time;
- c. Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- d. Administer oaths and affirmations;
- e. Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;
- f. Rule on motions and other procedural matters;
- g. Regulate the scope and timing of discovery;
- h. Regulate the course of the hearing and the conduct of representatives and parties;
- i. Examine witnesses;

j. Receive, rule on, exclude, or limit evidence;

k. Upon motion of a party, take official notice of facts;

l. Upon motion of a party, decide cases, in whole or in part by summary judgment where there is no disputed issue of material fact;

m. Conduct any conference, argument, or hearing on motions in person or by telephone; and

n. Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this Directive.

3. The presiding officer does not have the authority to find Federal statutes or regulations invalid.

S. Prehearing Conferences

1. The presiding officer may schedule prehearing conferences as appropriate.

2. Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

3. The presiding officer may use prehearing conferences to discuss the following:

a. Simplification of the issues;
b. The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
c. Stipulations and admissions of fact or as to the contents and authenticity of documents;

d. Whether the parties can agree to submission of the case on a stipulated record;

e. Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objections of other parties) and written argument;

f. Limitation of the number of witnesses;

g. Scheduling dates for the exchange of witness lists and of proposed exhibits;

h. Discovery;

i. The time and place for the hearing; and

j. Such other matters as may tend to expedite the fair and just disposition of the proceedings.

4. The presiding officer may issue an order containing all matters agreed upon by the parties or ordered by the presiding officer at a prehearing conference.

T. Disclosure of Documents

1. Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and

upon which the findings and conclusions of the investigating official under subsection D.2., above, are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

2. Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed, except if disclosure would violate Rule 6(e) of the Federal Rules of Criminal Procedure.

3. The notice sent to the Attorney General from the reviewing official as described in section E., above, is not discoverable under any circumstances.

4. The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section at any time after service of the complaint.

U. Discovery

1. The following types of discovery are authorized:

a. Requests for production of documents for inspection and copying;
b. Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;
c. Written interrogatories; and
d. Depositions.

2. For the purpose of this section and sections V. and W., below, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence contained in a form contemplated by the definition of "document" set forth in the Federal Rules of Civil Procedure, Rule 34. Nothing contained herein shall be interpreted to require the creation of a document.

3. Unless mutually agreed to by the parties, discovery is available only as ordered by the presiding officer. The presiding officer shall regulate the timing of discovery.

4. Motions for discovery may be filed with the presiding officer by the party seeking discovery.

a. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

b. Within 10 days of service, a party may file an opposition to the motion

and/or a motion for protective order as provided in section X., below.

c. The presiding officer may grant a motion of discovery only if he finds that the discovery sought:

(1) Is necessary for the expeditious, fair, and reasonable consideration of the issue;

(2) Is not unduly costly or burdensome;

(3) Will not unduly delay the proceeding; and

(4) Does not seek privileged information.

d. The burden of showing that discovery should be allowed is on the party seeking discovery.

e. The presiding officer may grant discovery subject to a protective order under section X., below.

5. Depositions

a. If a motion for deposition is granted, the presiding officer shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held. The presiding officer may order that parties produce deponents and/or documents without the need for subpoena.

b. The party seeking to depose shall serve the subpoena in the manner prescribed in section H., above.

c. The deponent may file with the presiding officer a motion to quash the subpoena or a motion for a protective order within 10 days of service.

d. The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all parties for inspection and copying.

6. Each party shall bear its own costs of discovery.

V. Exchange of Witness Lists, Statements, and Exhibits

1. At least 15 days before the hearing or at such other time as may be ordered by the presiding officer, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with subsection GG.2., below. At the time the above documents are exchanged, any party that intends to rely upon the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the presiding officer, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

2. If a party objects, the presiding officer shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the presiding officer finds good cause for the failure or that there is no prejudice to the objecting party.

3. Unless another party objects within the time set by the presiding officer, documents exchanged in accordance with subsection 1. of this section shall be admitted into evidence at the hearing. Later challenges to admissibility at the hearing shall be permitted only upon a showing of good cause for the lateness.

W. Subpoenas for Attendance at Hearing

1. A party wishing to procure the appearance and testimony of any individual at the hearing may request that the presiding officer issue a subpoena.

2. A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

3. A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing, unless otherwise allowed by the presiding officer for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

4. The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

5. The party seeking the subpoena shall serve it in the manner prescribed in section H., above. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

6. A party or a representative of the individual to whom the subpoena is directed may file with the presiding officer a motion to quash the subpoena with 10 days after service or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

X. Protective Order

1. A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

2. In issuing a protective order, the presiding officer may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including one or more of the following:

a. That the discovery not be had;

b. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

c. That the discovery may be had only through a method of discovery other than that requested;

d. That classified information not be released unless prior notice and arrangements reasonably acceptable to the representative of the authority are made in coordination with the Defense Investigative Service, and the presiding officer agrees to the use;

e. That certain matters not be inquired into or that the scope of discovery be limited to certain matters;

f. That discovery be conducted with no person except persons designated by the presiding officer;

g. That the contents of discovery or evidence be sealed;

h. That the defendant comply with 32 CFR Part 97 concerning official witnesses;

i. That a deposition after being sealed be opened only upon order of the presiding officer;

j. That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

k. That the parties simultaneously file specified documents of information enclosed in sealed envelopes to be opened as directed by the presiding officer.

Y. Fees

The party requesting a subpoena shall pay the cost of the witness fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in the United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority a check for witness fees and mileage need not accompany the subpoena.

Z. Form, Filing, and Service of Papers

1. Form

a. Documents filed with the presiding officer shall include an original and two copies.

b. Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the presiding officer, and a designation of the paper (e.g., motion to quash subpoena).

c. Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

d. Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

2. *Service.* A party filing a document with the presiding officer shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in section H., above, shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

3. *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

AA. Computation of Time

1. In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

2. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

3. Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

BB. Motions

1. Any application to the presiding officer for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, the facts alleged, and shall be filed with the presiding officer and served on all other parties.

2. Except for motions made during a prehearing conference or at the hearing,

all motions shall be in writing. The presiding officer may require the oral motions be put in writing.

3. Within 15 days after a written motion is served, or such other time as may be fixed by the presiding officer, any party may file a response to such motion.

4. The presiding officer may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

5. The presiding officer shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

6. Failure by a party to raise defenses or objections or to make requests that must be made prior to the beginning of the hearing shall constitute waiver thereof, but the presiding officer may grant relief from the waiver for good cause shown.

CC. Sanctions

1. The presiding officer may sanction a person, including any party or representative, for the following:

- a. Failing to comply with an order, rule, or procedure governing the proceeding;
- b. Failing to prosecute or defend an action; or
- c. Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

2. Any such sanction, including but not limited to those listed in subsections 3., 4., and 5. of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

3. When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the presiding officer may:

- a. Draw an inference in favor of the requesting party with regard to the information sought;
- b. In the case of requests for admission, deem each matter of which an admission is requested to be admitted;
- c. Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and
- d. Strike any part of the pleadings or other submission of the party failing to comply with such request.

4. If a party fails to prosecute or defend an action under this Part commenced by service of a notice of hearing, the presiding officer may dismiss the action or may issue an

initial decision imposing penalties and assessments.

5. The presiding officer may refuse to consider any motion, request, response, brief, or other document that is not filed in a timely fashion.

DD. The Hearing and Burden of Proof

1. The presiding officer shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under section C., above, and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

2. The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

3. The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

4. The hearing shall be open to the public unless otherwise ordered by the presiding officer for good cause shown.

EE. Determining the Amount of Penalties and Assessments

In determining an appropriate amount of civil penalties and assessments, the presiding officer and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose.

FF. Location of Hearing

1. The hearing may be held as follows:

- a. In any judicial district of the United States in which the defendant resides or transacts business;
- b. In any judicial district of the United States in which the claim or statement at issue was made; or
- c. In such other place, including foreign countries, as may be agreed upon by the defendant and the presiding officer.

2. Each party shall have the opportunity to petition the presiding officer with respect to the location of the hearing.

3. The hearing shall be held at the place and at the time ordered by the presiding officer.

GG. Witnesses

1. Except as provided in subsection 2. of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

2. At the discretion of the presiding officer, testimony may be admitted in the form of a written or videotaped statement or deposition. Any such

written or videotaped statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for deposition or cross-examination at the hearing. Prior written or videotaped statements of witnesses proposed to testify at the hearings and deposition transcripts shall be exchanged as provided in subsection V.1., above.

3. The presiding officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

- a. Make the interrogation and presentation effective for the ascertainment of the truth;
- b. Avoid needless consumption of time; and
- c. Protect witnesses from harassment or undue embarrassment.

4. The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

5. At the discretion of the presiding officer, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination.

6. Upon motion of any party, the presiding officer shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of the following:

- a. A party who is an individual;
- b. In the case of a party that is not an individual, an officer or employee of the party appearing for the party as its representative, or designated by the party's representative; or
- c. An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

HH. Evidence

1. The presiding officer shall determine the admissibility of evidence.

2. Except as provided herein, the presiding officer shall not be bound by the Federal Rules of Evidence. However, the presiding officer may apply the Federal Rules of Evidence where appropriate; e.g., to exclude unreliable evidence.

3. The presiding officer shall exclude irrelevant and immaterial evidence.

4. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by consideration of undue

delay or needless presentation of cumulative evidence.

5. Evidence shall be excluded if it is privileged under Federal law and the holder of the privilege asserts it.

6. Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

7. The presiding officer shall permit the parties to introduce rebuttal witnesses and evidence.

8. All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to section X., above.

II. The Record and Finding

1. The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the presiding officer at a cost not to exceed the actual cost of duplication.

2. The transcript of testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the presiding officer and the authority head.

3. The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the presiding officer.

4. Funding for the hearing and record, except for the cost of the presiding officer, shall be the responsibility of the authority in which the case arose.

JJ. Post-hearing Briefs

The presiding officer may require or permit the parties to file post-hearing briefs. The presiding officer shall fix the time for filing any such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file reply briefs.

KK. Initial Decision

1. The presiding officer shall issue an initial decision based only on the record that shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

2. The findings of fact shall include a finding on each of the following issues:

a. Whether the claims or statements identified in the complaint, or any portions thereof, violate section C., above; and

b. If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments.

3. The presiding officer shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The presiding officer shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the presiding officer or a notice of appeal with the authority head. If the presiding officer fails to meet the deadline contained in this subsection, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

4. Unless the initial decision of the presiding officer is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision of the presiding officer shall be final and binding on the parties 30 days after it is issued by the presiding officer.

LL. Reconsideration of Initial Decision

1. Except as provided in subsection 4. of this section, any party may file a motion for reconsideration of the initial decision within 20 days of service of the initial decision in the manner set forth in section H., above, for service of the complaint. Service shall be proved in the manner provided in subsection H.2., above.

2. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

3. Responses to such motions shall be allowed only upon request of the presiding officer; however, the presiding officer shall not issue a revised initial determination without affording both parties an opportunity to be heard on the motion for reconsideration.

4. No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

5. The presiding officer may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

6. If the presiding officer denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the presiding officer denies the motion, unless the initial decision is timely appealed to the authority head in accordance with section MM., below.

7. If the presiding officer issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is

issued, unless it is timely appealed to the authority head in accordance with section MM., below.

MM. Appeal to Authority Head

1. Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

2. A notice of appeal:

a. May be filed at any time within 30 days after the presiding officer issues an initial or a revised initial decision. If another party files a motion for reconsideration under section LL., above, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration, until the time period for filing a motion for reconsideration under section LL., above, has expired or the motion is resolved;

b. If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the presiding officer denies the motion or issues a revised initial decision, whichever applies;

c. The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

3. If the defendant files a timely notice of appeal with the authority head, the presiding officer shall forward the record of the proceeding to the authority head when:

a. The time for filing a motion for reconsideration expires without the filing of such a motion, or

b. The motion for reconsideration is denied. Issuance of a revised initial decision upon motion for reconsideration shall require filing of a new notice of appeal.

4. A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

5. The representative for the Government may file a brief in opposition to the exceptions within 30 days of receiving the notice of appeal and accompanying brief.

6. There is no right to appear personally before the authority head, although the authority head may at his or her discretion require the parties to appear for an oral hearing on appeal.

7. There is no right to appeal any interlocutory ruling by the presiding officer.

8. In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the presiding officer, unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

9. If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the presiding officer for consideration of such additional evidence.

10. The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the presiding officer in any initial decision.

11. The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

12. Unless a petition for review is filed as provided in 32 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under section C., above, is final and is not subject to judicial review.

13. The authority heads (or their designees) may designate an officer or employee of the authority, who is serving in the grade of GS-17 or above under the General Schedule, or in the Senior Executive Service, to carry out these appellate responsibilities; however, the authority to compromise, settle, or otherwise discretionarily dispose of the case on appeal provided pursuant to subsection MM.10, hereof, may not be so redelegated pursuant to this subsection.

NN. Stays Ordered by the Department of Justice

If at any time, the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this Directive with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed

only upon receipt of the written authorization of the Attorney General.

OO. Stay Pending Appeal

1. An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

2. No administrative stay is available following a final decision of the authority head.

PP. Judicial Review.

31 U.S.C. 3805 authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessment under this Part and specifies the procedures for such review.

QQ. Collection of Civil Penalties and Assessments

31 U.S.C. 3806 and 3808(b) authorize actions for collection of civil penalties and assessments imposed under this Part and specify the procedures for such actions.

RR. Right to Administrative Offset

The amount of any penalty or assessment that has become final, or for which a judgment has been entered under section QQ., above, or any amount agreed upon in a compromise or settlement under section TT., below, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of Federal taxes then or later owing by the United States to the defendant.

SS. Deposit in Treasury of United States

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

TT. Compromise or Settlement

1. Parties may make offers of compromise or settlement at any time.

2. The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the presiding officer issues an initial decision.

3. The authority head has exclusive authority to compromise or settle a case under this Directive at any time after the date on which the presiding officer issues an initial decision, except during the pendency of any review under section PP., above, or during the pendency of any action to collect

penalties as assessments under section QQ., above.

4. The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under section PP., above, of any action to recover penalties and assessments under 31 U.S.C. 3806.

5. The investigating official may recommend settlement terms to the reviewing official or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Attorney General, as appropriate.

6. Any compromise or settlement must be in writing.

UU. Limitations

1. The notice of hearing with respect to a claim or settlement must be served in the manner specified in section H., above, within 6 years after the date on which such claim or statement is made.

2. If the defendant fails to file a timely answer, service of a notice under subsection J.2., above, shall be deemed a notice of hearing for purposes of this section.

3. If at any time during the course of proceedings brought pursuant to this section, the authority head receives or discovers any specific information concerning bribery, gratuities, conflict of interest, or other corruption or similar activity in relation to a false claim or statement, the authority head shall immediately report such information to the Attorney General and to the Inspector General, Department of Defense.

VV. Delegations

The General Counsel for the Department of Defense is designated to carry out the responsibilities of the authority head of the Department of Defense for the issuance of additional implementing regulations that are necessary to implement PFCRA and this Part to decide cases upon appeal, and to hire or designate employees of the Department of Defense to decide cases on appeal. The General Counsel, Department of Defense, is also designated to appoint presiding officers for the Department of Defense, and may assist in the appointment of presiding officers on detail from other Agencies for all authorities within the Department of Defense.

September 30, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88-22959 Filed 10-5-88; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 88-035]

Head of the Connecticut Regatta;
Middletown, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the Head of the Connecticut Regatta. The Head of the Connecticut Regatta is an annual event on the Connecticut River that attracts some 2500 participants and the congestion on the river is such that special local regulations are necessary to provide for the safety of life on the navigable waters of the United States. Public notice of the exact dates of the regatta will be published each year in the local Coast Guard Notice to Mariners.

DATES: These regulations are effective from 9:00 a.m. to 6:00 p.m. on October 9, 1988 and each year thereafter during the same time period on the second Saturday of October or as published in the local Coast Guard Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

SUPPLEMENTARY INFORMATION: On July 12, 1988, the Coast Guard published a notice of proposed rulemaking in the *Federal Register* (53 FR 26281) for this regulation. Interested parties were requested to submit comments and no comments were received. Accordingly, no changes are being made to the regulation as proposed. These regulations are being made effective in less than 30 days from the date of publication as there was not sufficient time in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LT L. Brown, project officer, First Coast Guard District Boating Affairs Branch and CDR R.A. Brunell, project attorney, First Coast Guard District Legal Officer.

Discussion of Regulations

The Head of the Connecticut regatta consists of approximately 550 racing shells and 2500 participants racing in heats throughout the day. During each heat, the shells will race against the clock and start in staggered intervals of 15 seconds. The purpose of the regulation is to close the portion of the Connecticut River off the towns of

Cromwell, Portland, and Middletown to all traffic except participants, official regatta vessels, and patrol craft. Vessels under 20 meters will be allowed to transit the regulated area between each heat (approximately 15 to 18 times during the effective period of regulation); and vessels over 20 meters in length will be allowed to transit the regulated area during the lunch break between 12:30 p.m. and 1:45 p.m., or as directed by the Coast Guard patrol commander. The regulations are needed to provide for the safety of participants and spectators due to the traffic density and the swamping hazards inherent to the low freeboard racing shells. The regulated area and immediately adjacent waters will be patrolled by Coast Guard vessels and state and local law enforcement authorities. The Coast Guard Auxiliary may be patrolling to advise nearby traffic of the content of these regulations.

Economic Assessment and Certification

This regulation is considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The event will draw a large number of spectators into the area that will easily compensate area merchants for the slight inconvenience of having navigation restricted. Larger commercial traffic will be given the opportunity to transit the area during the afternoon break (12:30 p.m. to 1:45 p.m.). There is minimal commercial traffic at this point in the Connecticut River and advance coordination between the Coast Guard and the oil facilities upriver of the regulated area will minimize or eliminate any potential inconvenience to the commercial users of the waterway. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that there will not be a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.105 is added to read as follows:

§ 100.105 Head of the Connecticut Regatta.

(a) *Regulated Area.* The regulated area is that section of the Connecticut River between the southern tip of Gildersleeve Island and Light Number 87.

(b) *Special Local Regulations.* (1) The regulated area is closed to all transiting vessel traffic between 9:00 a.m. and 6:00 p.m. except for escorted passages as described in (2) and (3) below. All transiting vessel movement will be done at the direction of the Coast Guard patrol commander.

(2) Vessels less than 20 meters in length will be allowed to transit the regulated area, under escort, between each of the approximately 18 heats.

(3) Vessels over 20 meters in length will be allowed to transit the regulated area, under escort, from 12:30 p.m. to 1:45 p.m. or as directed by the Coast Guard patrol commander.

(4) All transiting vessels shall operate at "No Wake" speed or five (5) knots whichever is slower.

(5) Southbound vessels awaiting escort through the regulated area will be held in the vicinity of the southern tip of Gildersleeve Island. Northbound vessels awaiting escort will be held at Light Number 87.

(6) All vessels shall immediately follow any specific instructions given by Coast Guard patrol craft and exercise extreme caution while operating in or near the regulated area.

(7) No person shall enter or remain in the regulated area unless participating in the event or authorized by the event sponsor or Coast Guard patrol commander.

(8) The sponsor shall ensure that the event is concluded by 6:00 p.m. on the day of the event.

(c) *Effective Dates.* These regulations are effective from 9:00 a.m. to 6:00 p.m. on October 9, 1988 and each year thereafter during the same time period on the second Saturday of October or as published in the local Coast Guard Notice to Mariners.

Dated: September 30, 1988.

R.O. Buttrick,

Captain, U.S. Coast Guard, Acting
Commander, First Coast Guard District.

[FR Doc. 88-23112 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 88-088]

Special Local Regulations; Classic Connecticut Cup Ultimate Yacht Race**AGENCY:** Coast Guard, DOT.**ACTION:** Final rule.

SUMMARY: The Coast Guard is adopting special local regulations for several hour periods each day between October 10, 1988 and October 16, 1988 for the Classic Connecticut Cup Ultimate Yacht Race. The event will be held on the waters of Long Island Sound south of New London, Connecticut. The Ultimate Yacht Race is part of a professional yacht racing circuit; competitors will be racing in boats ranging from 21 to 30 feet, including one class of catamarans. These regulations are needed to provide for the safety of life on the navigable waters of the United States.

EFFECTIVE DATES: These regulations will be effective from 12:30 p.m. to 3:30 p.m. on October 10 and 11, 1988 and from 10:00 a.m. to 5:30 p.m. from October 12, 1988 to October 16, 1988.

FOR FURTHER INFORMATION CONTACT: Lieutenant Luke Brown, (617) 223-8311.

SUPPLEMENTARY INFORMATION:

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The Coast Guard was involved in negotiations with the sponsor until September 22, 1988 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are LT L. Brown, project officer, First Coast Guard District Boating Affairs Branch and CDR R.A. Brunell, project attorney, First Coast Guard District Legal Officer.

Discussion of Regulations

The Classic Connecticut Cup Ultimate Yacht Race is part of a series of professional sailboat races. Racing will be held in three different classes of yachts; J-24's (24 foot monohulls); Hobie 21's (21 foot catamarans); and Ultimate 30's (30 foot monohulls). The races will be held on the Long Island coastal waters south of New London roughly bounded to the east by the Dumping Grounds and to the west by Bartlett Reef. No vessel other than participants

or those vessels authorized by either the sponsor or the Coast Guard patrol commander shall enter the regulated area. The course will be marked by inflatable drop buoys. The spectator area will be to the south of the regulated area and sponsor provided vessels will form a spectator barrier to prevent vessels from entering the race course. Buoys marking both the course and the edge of the spectator area will be put in place each day one hour prior to the effective time of regulation and will be removed at the conclusion of the day's racing. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor-provided patrols, and state and local law enforcement officials.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-01-88 is added to read as follows:

§ 100.35-01-88 Classic Connecticut Cup Ultimate Yacht Race.

(a) *Regulated Area.* The regulated area, located in the Long Island Sound waters south of New London, Connecticut, is bounded to the north by the New London shore and extends seaward in a rectangular shape and is specifically bounded as follows:

(1) Northwest Corner; The New London shore at Seaside Point at 41-18-00 North; 072-08-00 West.

(2) Northeast Corner; The New London shore near Long Rock at 41-18-33 North; 072-05-43 West.

(3) Southeast Corner; a point within the New London Dumping Grounds approximately three quarters (3/4) of a mile miles north of Yellow Buoy "NL" at 41-16-30 North; 072-04-50 West.

(4) Southwest Corner; a point approximately three quarters (3/4) of a mile southeast of Bartlett Reef at 41-16-08 North; 072-07-30 West.

(b) *Special Local Regulations.* (1) The sponsor shall be responsible for proper marking of the course. The buoys marking the course shall be in position no later than one hour prior to the start of the each race and the buoys shall be removed no later than one hour after the completion of the race. The sponsor

shall report to the Coast Guard patrol commander both when the marks are in place and again when they are removed.

(2) No person or vessel may transit through, or remain in, the regulated area during the effective period of regulation unless participating in the event or as authorized by the sponsor or Coast Guard patrol personnel. The patrol commander may authorize vessels use of the general anchorage within the regulated area.

(3) The spectator area shall be to the south of the regulated area. Sponsor provided patrol boats shall set up a spectator barrier along the southern edge of the regulated area. The patrol boats shall display a distinct and visible banner that identifies them as the edge of the spectator area. All spectating vessels shall observe the racing from the spectator area.

(4) The sponsor shall establish, and advise the Coast Guard patrol commander of, a readily identifiable color coding system to differentiate between sponsor patrol vessels, spectator area vessels, and VIP/Race Official boats. The color coding will enable the patrol commander to identify the purpose of each vessel operating in, or near, the regulated area.

(5) Any violations of these regulations, by either the sponsor or participants, shall be sufficient grounds for the Coast Guard patrol commander to terminate the event.

(c) *Effective Dates.* These regulations will be effective from 12:30 p.m. to 3:30 p.m. on October 10th and 11th, 1988 and from 10:00 a.m. to 5:30 p.m. from October 12, 1988 to October 16, 1988.

Dated: September 30, 1988.

R.O. Buttrick,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 88-23113 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management****43 CFR Public Land Order 6687**

[NV-943-08-4220-10; N-42415, N-42735, N-43342, N-43390]

Withdrawal of Public Land for Four Federal Aviation Administration VORTAC Air Navigation Sites; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 399.10 acres of public lands from surface entry

and mining for a period of 20 years for the Federal Aviation Administration to protect four VORTAC air navigation sites. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: October 6, 1988.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-784-5481.

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. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect four Federal Aviation Administration VORTAC air navigation sites:

Mount Diablo Meridian

T. 26 N., R. 30 E.,

Sec. 14, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 41 N., R. 35 E.,

Sec. 27, NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ S W $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 13 S., R. 47 E.,

Sec. 17, W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ N W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 20, S $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 13 S., R. 69 E.,

Sec. 27, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 28, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The areas described aggregate 399.10 acres in Clark, Humboldt, Nye, and Pershing Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: September 21, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-23038 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-HC-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. FE-88-01; Notice 3]

RIN No. 2127-AB75

Passenger Automobile Average Fuel Economy Standards for Model Year 1989

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

ACTION: Final rule.

SUMMARY: The Department of Transportation's National Highway Traffic Safety Administration is setting the passenger automobile average fuel economy standard for Model Year (MY) 1989 at 26.5 miles per gallon (mpg), an increase of 0.5 mpg over the 1988 level. NHTSA is taking this action because it has determined that 26.5 mpg is the "maximum feasible average fuel economy level," after balancing the statutory criteria of economic practicability, technological feasibility, the effect of other Federal motor vehicle standards, and the need of the nation to conserve energy. The standard is a decrease of 1.0 mpg from the statutory level.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective November 7, 1988. The standard is applicable to the 1989 model year. Petitions for reconsideration must be received by November 7, 1988.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202) 366-0846.

SUPPLEMENTARY INFORMATION:

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- XIII. Department of Energy Review

I. Overview of Decision

In each of the last three years, the Department of Transportation has closely examined the effects of the corporate average fuel economy (CAFE) standard on the U.S. auto industry. We concluded that a standard of 27.5 mpg for MYs 1986-1988 posed a threat to the jobs of U.S. auto workers, workers in industries that supply parts and equipment to the auto industry, and employees of auto dealerships. On the other hand, we concluded that the energy conservation benefits of a higher standard were speculative and small. After balancing these and other considerations, we set the standard for each of those years at 26.0 mpg.

Those rulemaking actions as well as

this one should be considered in light of the fact that the fleet of new cars sold in the United States has never been more fuel efficient. Congress' statutory goal of reaching an average fuel economy of 27.5 mpg for new cars has been met and exceeded. In MY 1988, the average fuel economy of the combined new car fleet of all manufacturers was 28.7 mpg. The domestic automobile industry has spent billions of dollars to achieve this goal, while continuing to provide a wide variety of vehicles to meet consumer demands. Yet, despite this remarkable industrywide improvement in fuel economy, a CAFE standard of 27.5 mpg for MY 1989 poses significant threats to the competitiveness of U.S. manufacturers, which in turn, raises serious, continuing concerns about retaining jobs at those companies.

The threat to American jobs arises primarily because of two provisions of the CAFE law: First, the requirement that compliance be demonstrated on a corporate fleet average basis, and second, the requirement that U.S. manufacturers separate their fleets into two categories—domestic and "not domestically manufactured," or imported.

The first of these, the fleet averaging requirement, was originally intended to ensure that manufacturers could continue to offer consumers a wide choice of makes and models, because compliance with the standard would be measured on a fleet average basis. In other words, a manufacturer could continue to offer models that achieved fuel economy levels below the standard, as long as it sold a sufficient number of models that exceeded the standard. While intended as a means to preserve consumer choice, the provision gives a real advantage to Asian and some European manufacturers that generally have not been manufacturing large, family-size or luxury vehicles. The setting of the standards largely based on the capabilities of the major domestic manufacturers results in standards that are well below the capabilities of these foreign manufacturers, giving them substantial latitude in designing and introducing new models to take advantage of changing consumer preferences. While the full-line U.S. manufacturers must struggle to adjust their fleet mixes to meet the standard on a fleet average basis, these other companies are manufacturing fleets that are automatically more fuel efficient by virtue of their sales mix, but not by virtue of any inherent fuel efficiency superiority of their individual models.

Thus, they need not be concerned with the adverse CAFE effects of their new, higher performing, less fuel-efficient models that the market now demands. And, as discussed below, they are actively entering the larger and luxury car markets in the U.S., posing a real competitive threat to the U.S. manufacturers in this segment.

The second provision that seriously threatens U.S. competitiveness is the "domestic content" provision, also known as the "two-fleet rule." This provision was originally intended to protect U.S. jobs, but now perversely threatens them by providing a positive incentive to ship U.S. jobs out of the country. As noted briefly above, the law requires U.S. manufacturers to separate their fleets into two categories for compliance purposes: A "domestic" fleet and a "not domestically manufactured" (or, import) fleet. In fact, the law's definition of "domestically manufactured" is so strict that many cars assembled in the U.S. (including all U.S.-built Japanese models and all models built at U.S.-Asian joint venture plants) fail to qualify as "domestically manufactured." The result is that each Asian and European manufacturer has only one CAFE fleet (an imported fleet), while each U.S. manufacturer has a domestic fleet and an imported fleet, each of which has to meet the CAFE standard separately. Thus, while two-fleet rule theoretically applies to all manufacturers, as a practical matter, only the U.S. manufacturers are subject to the two-fleet rule and suffer its perverse consequences.

As we have noted in several previous CAFE rulemaking proceedings, this "domestic content" provision encourages auto makers to move production of their larger models, or parts of those cars, out of the U.S. in order to average those models with their smaller models. This action is known as "outsourcing." In his comments to us on this proceeding, Mr. Owen Bieber, the President of the United Auto Workers, characterized this incentive to outsource as the statute "stood on its head." He urged us to consider that outsourcing threatens "good paying jobs * * * for American workers with no improvements in overall fuel economy or environmental benefits." NHTSA concurs with Mr. Bieber's assessment of the adverse impact of outsourcing due to the two-fleet rule. However, the agency is unable to change the practice, because it is mandated by the statute.

The adverse competitive effects of the two-fleet rule are all the harder to

accept when one observes that GM would exceed the 27.5 mpg level if it could combine its domestic and import fleets. However, the agency has no authority to permit it to do so, since the two-fleet rule is statutorily mandated. Nevertheless, it is important to remember that this entire proceeding is focusing on a statutorily created, artificial subset of the new car fleet: the domestic fleet of the two largest U.S. manufacturers.

After separating the fleets, each manufacturer's fleet must meet the CAFE standard separately. However, for the reasons described above, the U.S. manufacturers cannot average together their own imported cars (which are generally more fuel-efficient than the average U.S.-made cars) with their U.S.-made cars, although GM would easily comply with the standard if it could do so. As an example, the Chevrolet Sprint (Geo Metro) is rated by the Environmental Protection Agency as the most fuel-efficient car sold in the United States, but GM cannot average its fuel economy with larger domestic cars because the Sprint (Geo Metro) must be classified as part of GM's import fleet.

The Japanese manufacturers, however, can average together their smallest, most fuel-efficient models (e.g., the Honda CRX, Toyota Corolla or Nissan Sentra) with their higher-performance or luxury models (such as the Acura Legend and the upcoming Infiniti and Lexus) because the two-fleet rule does not affect them except to the extent that one of their models exceeds 75 percent domestic content. This places U.S. manufacturers at a relative disadvantage. As Congressman Bob Carr testified during the public hearing in this proceeding, "If I were a Japanese auto manufacturer, and I wanted to write a law in the United States that would help me and hinder American automobile manufacturers, I couldn't have written a better law than the CAFE law that we have today."

Since the Japanese and other Asian manufacturers can freely introduce new, higher-performance large or luxury models (with lower fuel economy) without fear of CAFE noncompliance, they are free to adopt strategies that attempt to secure their position in the marketplace for these luxury cars. According to the comments submitted by the Department of Commerce, it is likely that the Japanese will aggressively seek to expand market share in the segments in which they compete. And the wave of new introductions into this market segment is expected to continue.

The trade press is widely reporting that Nissan and Toyota are planning to introduce new luxury car models in the next few years, some of which are planned to be larger than the full-size Oldsmobile 98 offered today by General Motors. Based on the past practices of these companies, it is likely that they will seek to capture a significant portion of the market segment for these new models.

The comments of the Department of Commerce, Bureau of Economics at the Federal Trade Commission, and the Council of Economic Advisors explain that when the U.S. manufacturers are forced to respond to high CAFE standards, they must consider adopting pricing and marketing strategies on their models which distort consumer demand, in order to discourage buyers from the larger or luxury models with lower fuel economy and encourage the purchase of the smaller, more fuel-efficient models. The Commerce Department notes that CAFE-induced price increases on larger (or higher performance) domestic cars may well result in further market share loss for U.S. manufacturers because it will tend to shift consumers toward competing models from foreign manufacturers who are not forced to impose CAFE price hikes. Perversely, the CAFE law affirmatively encourages consumers to buy foreign models and discourages them from buying U.S.-made cars. As a result, the competitiveness of American manufacturers is harmed and jobs in domestic auto manufacturing are reduced.

Based on its concerns about adverse competitive effects, the Department has recommended repeal of the CAFE law. However, unless and until Congress acts, NHTSA must and will continue to administer the CAFE law in its current form and to be faithful to the intent of Congress.

As discussed above, we have closely studied the adverse effects of the CAFE program on the U.S. auto industry. We have attempted to administer the statute entrusted to our care by taking seriously the Congressional directive to ensure that the program does not threaten U.S. jobs or the health of the U.S. auto industry while still meeting the needs of energy conservation. After balancing these concerns, we set the standard for MYs 1986-1988 at 26.0 mpg. We did this in accordance with a methodology that we believe is faithful to the statutory purposes. As noted herein, this methodology includes a review of whether the manufacturers had made "reasonable efforts" to reach the statutorily set level of 27.5 mpg, and a

review of what the "maximum feasible" CAFE level is, taking into account the four statutory criteria. This methodology also includes analyzing the technological and economic capabilities of the manufacturers, considering the effects of major changes in consumer demand, and weighing the outcome of that analysis against the need of the nation to conserve energy. This methodology was affirmed in general by the U.S. Circuit Court of Appeals for the DC Circuit when it recently upheld our decision to set the 1986 standard at 26.0 mpg. The court noted that Congress had provided no "precise balancing formula for the agency to apply" to the four statutory criteria, leaving that balancing to the agency's judgment. *Public Citizen v. NHTSA*, 848 F.2d 256, 265 (D.C.Cir. 1988). See Section II-A *infra*.

The U.S. auto industry, and GM in particular, continues to be faced with the significant competitive threat of foreign, particularly Asian, manufacturers. The Department of Commerce estimates that U.S. producer sales in the small car segment of the market will decline from an estimated 590,000 vehicles in 1988 to 350,000 in 1990, with the Asian manufacturers gaining the difference with small cars they plan to build in the United States. Further, the Department of Commerce estimates that U.S. auto manufacturers will face growing foreign competition in the mid-size car segment and large/luxury car segment during 1989 and 1990. At the same time, it appears that the larger car segment of the market is shrinking in absolute terms, due in part to the growth of demand for luxury mid-size and compact models. As a result of a shrinking larger car market overall, and a shrinking share of small car sales for U.S. manufacturers, it appears that the U.S. manufacturers must increase their share of the compact and mid-size segments if they are to remain fully competitive in the total automotive market. Of course, these are the market segments where the Asian manufacturers have either recently demonstrated considerable strength, or where they plan additional market penetration with new luxury, "high" performance models (which generally have low fuel efficiency). Although U.S. manufacturers plan new products in this market segment, they will face significantly more competitive pressure than they anticipated when the models were first conceived several years ago. Accordingly, the manufacturers must be able to accommodate consumer demand for such attributes as larger engines, better performance and larger interior space. These actions come at a CAFE

price, however, since they generally reduce the fuel efficiency of the model.

At the same time that the domestic manufacturers must gear up for this increased pressure from the foreign manufacturers in a market segment now dominated by the Asians, GM is entering this period after losing substantial market share in most market segments. GM argues strenuously that much of its lost market share is attributable to the CAFE law. In order to generate enough fuel economy credits to offset a substantial shortfall from MY 1985, GM argues that it had to exceed substantially the applicable CAFE standard in each of MYs 1986-1988. GM believes that many of its product decisions for those years to improve their overall fuel economy went beyond the bounds of what should be considered "reasonable."

Although U.S. auto employment in the aggregate remained approximately the same from 1986-1988, a closer look reveals a significant trend in the U.S. employment picture: The workers are now being employed in larger and larger numbers by the U.S. outposts of Asian companies, and the number of auto workers employed by U.S. auto makers (particularly GM) is shrinking. At the same time, those workers remaining in the U.S. industry are being told by their employers that their jobs are threatened by the CAFE program. GM has revealed in this proceeding that the jobs of workers at the GM plant in Arlington, Texas, among other plants, may be in danger if the CAFE standard is set at 27.5 mpg. GM has stated that the Arlington plant, which makes the largest cars sold by GM, might be targeted for product restriction or possible closure, if GM is compelled to achieve a 27.5 mpg standard for MY 1989. Several thousand workers, retirees and family members from that plant have written to the agency, urging that the standard be set at 26.5 mpg in order to let them keep their jobs.

It is significant that GM's achievement of 27.6 mpg in MY 1988 can be traced in part to its smaller share of the large car market. While the market share loss may have occurred for a variety of reasons, the results were nonetheless dramatic. The decline in market share led both to a high CAFE last year and to the laying off thousands of workers, estimated by GM to be a loss of 75,000 workers in the past three years.

In contrast, as GM lost market share in the larger car segment, Ford Motor Company stood ready with the capacity to pick up some substantial amount of the mid/large car market segment. Although it is true that the segment is

shrinking overall, it is growing substantially as a share of Ford's domestic fleet. Ford's comment noted that while mid/large cars as a percentage of GM's fleet fell from 65.4 percent in 1986 to 59.7 percent in 1988, Ford's fleet showed an increase in those cars from 49.6 percent to 56.3 percent over the same time period. However, just as GM's market loss produced a CAFE gain, Ford's market gain prevented CAFE improvement: Ford projects a CAFE of only 26.4 mpg for MY 1988 and 26.5 mpg for MY 1989.

In point of fact, it is likely that GM plant closings and the other GM product decisions over the past few years are due in part to overcapacity in the auto industry generally and in part to the market converging on the medium, "compact" car. It is widely reported in the trade press that the Arlington, Texas plant (and other GM plants that make larger cars) are also slated for closure or cutbacks as a result of overcapacity in the larger car market segment. That is, any decisions to close plants may be independent of CAFE concerns. But, the larger car market, while shrinking, is not disappearing in the short term, and it is clear from Ford's experience that the CAFE of a company that serves that market segment will be lower than if the company does not serve that market. This is the segment where the U.S. manufacturers have traditionally been the strongest, but the experience of both Ford and GM over the last few years proves that there is a CAFE price to pay for serving that market, and a price in reduced competitiveness for not serving that market.

This year, we are faced with the possibility of significant erosion in the U.S. industrial base as the manufacturers must compete on the unlevel playing field of an auto market in which U.S. manufacturers, but few foreign manufacturers, must price and market their cars against their own interests, just to achieve a particular CAFE level.

Although NHTSA has been concerned about the competitiveness issues raised by the CAFE program for several years, this concern was underscored by Congress in the recent enactment of the Omnibus Trade and Competitiveness Act of 1988, a bill characterized as the "most comprehensive restructuring of basic U.S. trade policy since * * * 1974." (House Report 100-40, 100th Cong., 1st Sess., 1987.) There, Congress directed that Federal agencies place the highest priority on considering the trade and competitiveness implications of its programs. The House report describes the law as a "response to the serious

decline in United States competitiveness." The Committee noted the serious damage that has already been done to our economy as a result of shrinking markets for American products and rapid increases in imports of products into the U.S. In this regard, the Committee stated that—

Even more troubling is the apparent decline in the international competitiveness of American products. * * * This reflects a number of disturbing developments—ranging from domestic policy failures to foreign trade barriers and distortions—but its ramifications for the future are indeed disturbing. If the United States is unsuccessful in restoring its international competitiveness, we will almost certainly experience a dramatic decline in our living standards and a lessening of our influence throughout the globe to promote American free market values.

House Report at page 3.

Although the Committee was mindful of the generally good condition of the U.S. economy—noting as examples the low interest rates and inflation rate of the past several years—the report states that "these positive signs belie a clear and present danger confronting this country." The danger, the Committee said, is that today's trade deficit must be repaid through future trade surpluses of significant size, and the current competitive posture of the U.S. industrial sector is so weak that it will be difficult or impossible to generate a trade surplus. On this point, the Committee noted,

Many of the markets already lost to U.S. firms will be jealously protected by our foreign competitors—protected, if necessary, with the help of government resources. Most of our trading partners are now accustomed to running large and persistent trade surpluses with the United States, and they may invoke extreme measures to protect that advantage even in the face of a weakened dollar.

House Report at page 5.

The Committee Report concludes with these observations:

Ultimately, the trade policy of this country should be designed to ensure economic prosperity, to guarantee a stable industrial and agricultural base, to promote a competitive world economy in which American workers and firms have fair opportunities to compete. * * * This legislation is a recognition of the fact that our Federal Government bears an obligation to protect the rights of its industries and workers in a highly mercantilist world economy. That obligation cannot be discharged by ignoring the difficult decisions. It must be met through assertive but fair actions which will guarantee reciprocal trade around the world.

House Report at page 6.

In the first section of the legislation itself, the Congress found that—

* * * it is essential, and should be the highest priority of the United States Government, to pursue a broad array of domestic and international policies—

(A) to prevent future declines in the United States economy and standards of living,

(B) to ensure future stability in external trade of the United States, and

(C) to guarantee the continued vitality of the technological, industrial, and agricultural base of the United States.

Section 1001(a)(4), emphasis supplied.

We have taken this Congressional guidance seriously and believe it is consistent with Congress' intentions in enacting the trade law that we redouble our efforts to ensure that the CAFE program does not have adverse consequences for American competitiveness. We also believe that our consideration of the competitiveness effects is entirely consistent with our treatment of this issue in the past several years, which has been to evaluate it in the context of "economic practicability." We believe that a standard of 26.5 mpg strikes the proper balance, pursuing energy conservation while taking into account the anti-competitive effects of a higher standard, consistent with our past practice and the newest Congressional guidance.

II. Background

II-A. Corporate Average Fuel Economy Statutory Provisions

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA). One provision of EPCA established an automotive fuel economy regulatory program and was added as a new Title V to the existing Motor Vehicle Information and Cost Savings Act (the Act, 15 U.S.C. 2001 *et seq.*). The program includes corporate average fuel economy (CAFE) standards for passenger automobiles.

Title V specified CAFE standards for passenger automobiles of 18, 19, and 20 mpg, for MY 1978, 1979, and 1980, respectively. The Secretary of Transportation (as delegated to the NHTSA Administrator) was required to establish standards for MYs 1981-1984. For MY 1985 and thereafter, Title V specifies a standard of 27.5 mpg.

However, the Act specifically authorizes the Secretary to amend the CAFE standard "to a level which he determines is the maximum feasible average fuel economy level" for each model year. 15 U.S.C. 2002(a)(4) (emphasis added). In determining the "maximum feasible average fuel economy level," the agency is required by section 503(e) of the Act to consider the following four factors: (1) Technological feasibility; (2) economic

practicability; (3) the effect of other Federal motor vehicle standards on fuel economy; and (4) the need of the Nation to conserve energy.

The statute contains no guidance about whether or how the agency should amend a CAFE standard, except that the newly set level must satisfy the four statutory criteria. However, it is clear that the statute vests wide discretion in the Department to set a CAFE standard at a level other than 27.5 mpg. As the United States Court of Appeals for the District of Columbia Circuit stated in upholding the agency's MY 1985 light truck fuel economy standard, "(t)he agency's interpretation of the statutory requirements is due considerable deference and must be found adequate if it falls within the range of permissible constructions." *Center for Auto Safety v. NHTSA*, 793 F.2d 1322, 1338 (D.C. Cir. 1986). The court described the setting of the standard as "the result of a balancing process specifically committed to the agency by Congress." 793 F.2d at 1341.

Again in its recent opinion upholding the Department's passenger car CAFE standard for MY 1986, the court stated:

Congress "specifically delegated the process of setting . . . fuel economy standards with broad guidelines concerning the factors that the agency must consider." (emphasis in original). Had Congress offered a more precise balancing formula for the agency to apply to the four § 202(e) factors, we could more confidently discern the agency's compliance with the congressional mandate. In the absence of a sharper congressional delineation, we are unable to conclude that NHTSA's decision did not represent a "reasonable accommodation of conflicting policies that were committed to the agency's care by the statute" or was "not one that Congress would have sanctioned." *Public Citizen v. NHTSA*, 848 F.2d 256, 265 (D.C. Cir. 1988) (citations omitted).

While compliance with fuel economy standards is determined by averaging the various models produced by each manufacturer, enabling them to produce vehicles with fuel economy below the level of the standard if they produce sufficient numbers of vehicles with fuel economy above the level of the standard, manufacturers may not average their imported cars together with their domestically manufactured cars. Instead, as noted above, manufacturers must meet fuel economy standards separately for their imported and domestically manufactured fleets. (See section 503 of the Act.) Cars are considered to be domestically manufactured if they have at least 75 percent domestic content. Conversely, cars are considered to be imports, or as the statute characterizes them, "not domestically manufactured," if they

have less than 75 percent domestic content. One result of this provision is that domestic automakers are unable to take advantage of the higher fuel economy of smaller imported vehicles which they sell, for purposes of CAFE compliance of their domestic fleets.

While a separate fuel economy standard is set for each model year, the Cost Savings Act does not require absolute achievement of the standard by manufacturers within each year. Instead, it allows a shortfall in one year (or years) to be offset if a manufacturer exceeds the standard for another year (or years). Under the Act, as amended by the Automobile Fuel Efficiency Act of 1980, manufacturers earn credits for exceeding average fuel economy standards which may be carried back for three model years or carried forward for three model years. If a manufacturer still does not meet the standard, after taking credits into account, it has committed "unlawful conduct" under section 508 of the Act, and is liable to the Federal government for civil penalties.

In recent years, the Department increasingly has become aware of—and concerned by—the discriminatory effects and adverse impacts of the CAFE program, and of its limited effect on *real* fuel economy. On August 5, 1987, the Secretary of Transportation submitted to Congress draft legislation that would repeal the corporate average fuel economy standards for new model years. The bill would also retain and update the Environmental Protection Agency's (EPA) fuel economy labeling requirements, and revise EPA's automotive fuel economy testing procedures to require that results simulate conditions of actual use.

The Congress has not yet taken any action on the Department's legislative proposal. Unless and until the draft legislation becomes law, NHTSA must continue to administer the law as it is currently written and as it has been construed by the courts. Thus, today's notice is based on that existing law.

II-B. Setting and Implementing the MY 1981-84 Standards

On June 30, 1977, NHTSA published in the *Federal Register* (42 FR 33534) a final rule establishing the MY 1981-1984 passenger automobile CAFE standards. The selected standards were 22.0 mpg for 1981, 24.0 mpg for 1982, 26.0 mpg for MY 1983 and 27.0 mpg for MY 1984. For a description of the analysis underlying those standards, see the August 1988 NPRM, 53 FR 33080, August 29, 1988.

Between January and May of 1979, NHTSA received a number of submissions from Ford and General

Motors on the 1981-1984 fuel economy standards for passenger automobiles asserting that those standards should be reduced. In response to these submissions, the agency published a document entitled "Report on Requests by General Motors and Ford to Reduce Fuel Economy Standards for MY 1981-85 Passenger Automobiles." DOT HS-804 731, June 1979. The report concluded that the standards were technologically feasible and economically practicable and noted that both companies had submitted product plans for meeting the standards. Report, p. 14.

One year later, the nation was in the midst of another energy crisis, brought on by events in Iran. Gasoline prices were rising rapidly, creating significantly increased consumer demand for small cars. The U.S. city average retail price for gasoline rose from 88 cents per gallon in 1979 to \$1.22 in 1980. (In 1986 dollars, this increase was from \$1.33 in 1979 to \$1.63 in 1980.) In light of these changed conditions, the industry announced plans to significantly exceed the 27.5 mpg standard for 1985. Both Ford and GM, as well as Chrysler and American Motors (now a part of Chrysler), indicated that they expected to achieve average fuel economy in excess of 30 mpg for that model year. Product plans submitted to NHTSA by those companies indicated that the projections assumed significant mix shifts toward smaller cars and rapid introduction of new technology.

Conditions affecting fuel economy changed dramatically in the early 1980's, following completion of decontrol of domestic oil and other external factors increasing available supplies. Gasoline prices did not continue to rise but instead declined over time. This, combined with economic recovery, caused consumer demand to shift back toward larger cars and larger engines. Data submitted to the agency by GM and Ford in mid-1983 indicated that instead of achieving fuel economy well in excess of the 27.5 mpg standard for MY 1985, they would be unable to meet the level prescribed by the standard.

II-C. Rulemakings to Amend the MYs 1986-1988 CAFE Standards

In response to petitions from GM and Ford, the agency exercised its statutory discretion and in two separate rulemakings set the MY 1986 and MY 1987-88 passenger automobile CAFE standards at the maximum feasible level, 26.0 mpg. (For MY 1986, see 50 FR 40528, October 4, 1985; for MY 1987-88, see 51 FR 35594, October 6, 1986.) (The agency denied petitions by Mercedes-Benz and GM to amend retroactively the

MYs 1984-85 passenger automobile CAFE standards. (See 53 FR 15241, April 28, 1988))

The rulemakings reducing the MY 1986-1988 CAFE standards were consistent with the Cost Savings Act and its legislative history, both of which clearly indicate that NHTSA has the authority to reduce fuel economy standards. The determination of maximum feasible average fuel economy level is made as of the time of the amendment. The agency has emphasized, however, that it could not reduce a standard under the Act if a current inability to meet the standard resulted from manufacturers previously declining to take reasonable steps to improve their average fuel economy as required by the Act.

For MY 1986, the agency evaluated the manufacturers' past efforts to achieve higher levels of fuel economy as well as their immediate capabilities. Based on the information received, the agency concluded that Ford and GM, constituting a substantial part of the industry, had taken or planned appropriate steps to meet the 27.5 mpg standard in MY 1986 and made significant progress toward doing so, but were prevented from fully implementing those steps by unforeseen events. The decline in gasoline prices, which began in 1982, had been expected to be temporary and quickly reverse, but instead continued. The agency concluded that, among other things, there had been a substantial shift in expected consumer demand toward larger cars and engines, and away from the more fuel-efficient sales mixes previously anticipated by GM and Ford. The agency's analysis indicated that this shift was largely attributable to the continuing decline in gasoline prices and that the only actions available to those manufacturers to improve their fuel economy in the remaining time for MY 1986 would have involved product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into the tens of thousands, and unreasonable restrictions on consumer choice. That action was recently upheld by the DC Circuit Court of Appeals as consistent with the provisions of the Act and within the agency's discretion. *Public Citizen v. NHTSA*, 848 F.2d 256, 264 (D.C.Cir. 1988).

For MY 1987-88, the agency set the standards at 26.0 mpg. The agency determined that manufacturers had made reasonable efforts at compliance, but that these efforts had been overtaken by unforeseen events, whose

effects could not be overcome by available means within the time available. NHTSA stated:

[B]oth GM and Ford have continued to make significant technological improvements in their fleets and have had reasonable plans to meet CAFE standards. In a situation where unforeseen events, including changes in consumer demand or changes in the competition's product offerings, overtake a manufacturer's reasonable product plan, the agency does not consider it consistent with the Act to "hold" the manufacturer to carrying out a product plan that has become economically impracticable. (51 FR 35611)

In evaluating the reasons for GM's and Ford's declining MY 1987-88 CAFE projections, the agency noted that the companies appeared to be applying the same technologies as planned in late 1983. In the case of GM, NHTSA stated that the two major reasons for the decline in GM's CAFE projections were net engine and model mix shifts and engine and transmission improvement programs not yielding projected gains. The great majority of the factors reducing Ford's CAFE projections were due to net shifts in projected sales for models and engines, engine efficiency improvements not yielding projected gains, and new models not meeting initial weight targets. The agency thus concluded that the major reasons for the decline in both GM's and Ford's MY 1987-88 CAFE projections were largely beyond those companies' control. (51 FR 35610) NHTSA's analysis further indicated that the only actions then available to those manufacturers to raise the fuel economy of their domestic fleets to 27.5 mpg in MY 1987-88 would involve a combination of (1) product restrictions likely resulting in significant adverse economic impacts, including substantial job losses and sales losses and unreasonable restrictions on consumer choice, and (2) transfer of the production of large cars outside of the United States, thereby costing American jobs, while having no energy conservation benefits. (51 FR 35594)

II-D. Petitions To Amend the MY 1989-90 CAFE Standards

The agency received five petitions to amend the passenger car CAFE standards for MY 1989-90. The petitioners included the Automobile Importers of America, Inc. (AIA), GM, Mercedes-Benz, Austin Rover, and the Competitive Enterprise Institute (CEI). All of the petitioners sought rulemaking to set those CAFE standards below 27.5 mpg, with four of them requesting a lower standard based on the reported prospective inability of automobile manufacturers to meet the statutorily set standard of 27.5 mpg. The fifth petitioner

requested a lower standard based on the contention that the CAFE program has caused an increase in motor vehicle fatalities.

III. NPRM for MY 1989-90

On August 29, 1988, NHTSA published in the Federal Register (53 FR 33080) an NPRM to amend the MY 1989-90 passenger automobile average fuel economy standards, within a range of 26.5 mpg to 27.5 mpg for each model year. The agency invited and received both written and oral comments on the proposal. A public meeting was held on September 14, 1988, in Washington, DC, to receive the oral comments. Among other things, the NPRM summarized, and responded to, the five petitions cited above.

Due to limited remaining time for amending the MY 1989 standard following its receipt of important additional manufacturer submissions in early August, NHTSA provided an abbreviated comment period for the proposed MY 1989 standard, which closed on September 15, 1988. The agency provided a 60-day comment period for the proposed MY 1990 standard, which closes on October 28, 1988.

IV. Public Comments

Comments were received from numerous commenters, including Federal agencies, vehicle manufacturers, vehicle dealers, manufacturer associations, unions, members of Congress and State legislatures and members of the general public. Some parties strongly supported a reduction in the MY 1989 passenger automobile CAFE standard, while others strongly opposed such action.

Petitioner GM urged the agency to amend the MY 1989 CAFE standard to 26.5 mpg "so as to lessen the competitive distortions and inevitably severe consequences for American workers that would accompany attaining the statutory 27.5 mpg level." GM said that market conditions it faces today are more intractable than in earlier years. According to GM, it has become an "overachiever" in response to the competitive distortions caused by the CAFE program, which has resulted in loss of market share and volume to competitors. GM emphasized that, while it improved the fuel efficiency of its fleet during MY 1986-88, its continued CAFE progress results from "random testing benefits on top of 'ultra-reasonable' efforts" which GM stated cannot be sustained indefinitely without further jeopardizing GM production and jobs. GM urged the agency to realize that

GM's CAFE improvements during recent years do not disprove the reasonableness of its competitors' efforts. In discussing the potential impact of retaining a standard of 27.5 mpg, GM drew a distinction between "compliance" with the statute, which may involve the use of credits to make up the difference between the CAFE of a manufacturer's fleet of cars and the standard, and "meeting the standard," which necessitates producing a fleet that year whose CAFE at least equals the standard without reference to credits. GM noted that while its compliance plan was based in part on applying credits, but not on closing any plants, its producing a fleet of cars that actually achieved 27.5 mpg in MY 1989 would necessitate such closings. GM stated that even without plant closings, jobs losses were possible to the extent that its compliance plan included measures that resulted in "competitive distortions."

In its comment supporting a lowering of the CAFE standard, Ford said that it projects its 1989 CAFE level to be about 26.5 mpg. Ford said its inability to meet the 27.5 mpg CAFE standard for 1989 is not because of lack of effort, but instead is due to substantial market and economic changes. According to Ford, it did not anticipate the market conditions, i.e., lower gasoline prices and interest rates, that have contributed to today's popularity of larger cars and higher-performance engines. Ford said that the company realized in 1986 that it might not be able to achieve the 27.5 mpg standard for MY 1989. However, Ford stated that the actions necessary to raise its projected 26.5 mpg CAFE level did not accord with its product development lead time requirements, nor were such actions economically practical. Ford emphasized that the CAFE standard limits the company's ability to improve customer satisfaction and meet market demand. Ford said that exercise of this ability, which is responsible for much of the company's recent success, could be constrained so that foreign manufacturers will gain competitive advantages in the large and luxury car market.

The Automobile Importers of America (AIA) urged NHTSA to expand the scope of its inquiry in determining whether manufacturers made reasonable efforts to meet the CAFE standard. In particular, AIA asked that NHTSA consider "the significant market segment which encompasses larger, better performing cars" in the agency's assessment of reasonable efforts, instead of only that market segment that represents a substantial share of the

industry. AIA also said that the agency should provide "adequate notice" to manufacturers of any changes in the reasonable efforts test so that they can conform their actions to the agency's expectations.

AIA's belief that NHTSA should consider the efforts of limited line manufacturers to meet the CAFE standard was shared by several European manufacturers. In urging NHTSA to set the standard at 26.0 mpg in this rulemaking, BMW said that limited line European manufacturers such as itself have "particular * * * compliance difficulties" in meeting the CAFE standards due to the demand for high performance vehicles in BMW's market "niche" in this country. Volvo supported a reduction of the standard to 26.5 mpg. It said that it has already introduced almost all the fuel economy-related improvements envisioned by Congress in 1975, and that it is not possible to make major changes that could significantly improve the fuel economy of its MY 1989 vehicles given the relatively long lead times that are needed to create or significantly alter its product lines. Volvo also noted its fuel economy was affected by the weight not only of the safety features added in compliance with the Federal motor vehicle safety standards, but also of the safety features voluntarily added.

In its comments, Mercedes-Benz stated that NHTSA has misinterpreted the term "industrywide considerations." Mercedes said that Congress "did not intend * * * that the Agency's assessment of technological and economic capability should turn on a model mix analysis that is inherently biased in favor of a few large manufacturers." Instead, stated Mercedes, NHTSA is obliged to consider the capabilities of "the entire universe of manufacturers" when setting an "industrywide" standard. Mercedes said that NHTSA did not adequately explain why the agency would decline to base a determination of reasonable efforts or maximum feasible level solely on a market segment that does not represent a substantial share of the market. Mercedes argued that unless NHTSA imposes a standard that is attainable by limited line manufacturers, the agency will be acting in an arbitrary and capricious manner in penalizing those manufacturers that have no small cars to balance against their large cars.

The National Automobile Dealers Association (NADA) supported a reduction in the 1989 standard to a level that will "assure continued consumer choice through unimpeded product availability." While NADA did not

recommend a particular level at which NHTSA should set the 1989 standard, NADA stated that the CAFE level should "preserve the ability of consumers to purchase and dealers to sell those large or more powerful vehicles demanded by consumers." Mr. William Hancock of Autochoice shared the view expressed by many other commenters that customers today are more interested in comfort and performance than in fuel economy, and that consumer demand has made it difficult for the domestic automobile industry to meet a 27.5 mpg standard.

The Recreational Vehicle Industry Association (RVIA) and several other commenters stated that continuation of the 27.5 mpg standard could create a lack of tow vehicles to safely pull travel trailers and other items of equipment. The American Motorcyclist Association believed that a lowering of the standard could facilitate the manufacture of a "modestly priced, decently powered" automobile suitable for towing motorcycles on trailers.

The Department of Energy's (DOE) comments focused on whether General Motors could achieve the 27.5 mpg standard in MY 1989. However, DOE also said it "remains unconvinced that the [CAFE] standards are useful in actually achieving energy savings in today's market." DOE analyzed GM's 1989 fuel economy capability. GM achieved a CAFE of 27.6 mpg in 1988. Since GM is continuing to improve its products, DOE expected GM's CAFE to reach or exceed 27.6 mpg in 1989. DOE noted that GM's projected inability to meet even the 27.5 mpg standard in 1989 appeared to be largely a result of decreasing projected fuel economy at the detail level of model/engine/transmission. Based on the information presented in the NPRM, DOE commented that it appeared that although the majority of the projected CAFE decline is due to decreasing CAFE estimates for existing makes and engines, the reasons for this phenomenon were not explained in the NPRM.

DOE disagreed with NHTSA's analysis of fuel economy technology that had concluded that "no great amount of new technologies is expected to be available between now and 1990." DOE stated that there are proven technologies in widespread use not considered in the NPRM that could have been used by GM to improve fuel economy beyond present levels. Two important technologies are the four valve engine and engine friction reduction. DOE estimated that these two technologies alone can improve

automotive fuel economy by an estimated 20 percent. In any event, according to DOE, the fact that GM will exceed 27.5 mpg by 0.1 mpg in 1988 demonstrates the technological feasibility of the MY 1989 standard.

DOE further noted that the trade-off between fuel economy and vehicle performance is germane to the NPRM, but the information and analysis presented are insufficient to determine the impact of increased consumer demand for performance on fuel economy. DOE cited an analysis of the Environmental Protection Agency showing that with technology remaining constant, a 10% increase in horsepower will cause a 2-3% loss of fuel economy. DOE said that it needs to be shown how much impact increased horsepower will have on GM's capability to meet the existing standard for MY 1989. A second important issue is whether vehicles with slightly lower performance and slightly higher MPG would cause a significant loss in market share or sales for GM.

DOE also commented on transportation's role in U.S. oil use and the importance of rising fuel efficiency. DOE noted that the transportation sector is crucial to the Nation's energy security problem since its petroleum use exceeds total domestic production. Excluding petroleum used as an industrial feedstock, the 11 mmB/D of motor fuel use comprises 80% of total U.S. oil use and 90% of light product use. Oil demand forecasts referenced in the NPRM assume continued new car and light truck fuel economy improvement. Without this improvement, DOE said that future oil consumption and the problems of oil import dependence will be greater.

While the Council of Economic Advisers (CEA) indicated its support for the Secretary's proposal to repeal the CAFE standards for all new model years, the CEA recognized that NHTSA is required to administer the CAFE statute as it currently exists. CEA accordingly recommended that NHTSA set the MY 1989 CAFE standard at 26.5 mpg since the commenter believed setting the standard at this level would "reduce the aggregate economic cost." CEA argued that a CAFE standard of 27.5 mpg would have an economically impracticable impact on the productivity and competitiveness of the U.S. automobile industry and on the level of employment in that industry. CEA also emphasized its belief that safety is adversely affected by shifts to smaller, more fuel-efficient automobiles. It cited an article by Robert Crandall and John Graham (*see*, discussion of CEI petition, *infra*) to support CEA's contention that

increased fatalities and injuries result from manufacturers' responses to CAFE standards. CEA argued that the increased fatalities and injuries make the standards economically impracticable. CEA said this was particularly so since fuel savings and any associated emissions reductions are of questionable magnitude. CEA said that NHTSA should make clear what economic value NHTSA is imputing to the alleged adverse safety consequences in the agency's analysis of economic practicability. CEA noted that setting the standard at 26.5 mpg instead of 27.5 mpg "would, if Crandall and Graham are correct, result in between 600 and 1,100 fewer deaths and between 3,100 and 5,600 fewer serious injuries over" the lifetime of the MY 1989 autos.

The Bureau of Economics of the Federal Trade Commission (FTC Staff) submitted a theoretical model that estimates the production shifts, price changes, employment and fuel consumption effects that would result from a 27.5 mpg CAFE standard. The FTC Staff analysis concluded the following:

We estimate that imposing a 27.5 MPG standard instead of a 26.6 MPG standard in MY 1989 would cost consumers almost \$650 million (because of increased prices for large cars with low MPG ratings) in MY 1989. Domestic auto industry profits would fall by about \$1.553 billion that same year. Total employment in domestic auto and auto-related industries would likely decline about 11,500 jobs. Meanwhile, we estimate that the higher standard would, by decreasing the retirement rate for existing large cars and increasing the rates of production and utilization of new small cars, actually increase gasoline consumption by a total of approximately 245 million gallons over the next 15 year period following the imposition of the standard.

NHTSA notes that one of the assumptions of the FTC staff analysis was that "(a)bsent the standard, GM expects to reach 26.86 mpg in MY 1989 * * *." That agency also stated that "(s)hould GM prevail in its current court challenge, and win additional CAFE mileage credits, it expects to reach 27.1 mpg in MY 1989 * * *." NHTSA notes that the difference between the 26.86 mpg and 27.1 mpg figures cited by FTC appears to be the Environmental Protection Agency test adjustment credits. As discussed below, the test adjustment credits are provided to compensate for the effects of past test procedure changes. The credits for MY 1989 were not dependent on GM prevailing in its court challenge, which NHTSA assumes refers to the case of *Center for Auto Safety v. Thomas*. GM's current MY 1989 projection is in fact 27.2

mpg, a figure which includes the test adjustment credits. NHTSA also notes that it is not correct to characterize GM's projection as what it would achieve "absent the standard," since GM's projection reflects a product plan that was devised in response to the 27.5 mpg standard. A further discussion of this issue is provided below.

The U.S. Department of Commerce (DOC) believed that the 1989 MY standard should be set at 26.5 mpg, stating that retaining a 27.5 mpg standard would have a significant adverse effect on the competitiveness of the U.S. auto industry and on employment in this country. DOC said that its analysis showed that a large part of the U.S. automobile industry will be unable to produce a fleet of cars that achieves the 27.5 mpg standard unless it reduces its domestic fleet product offerings and adjusts its output mix, which in turn would have economically damaging consequences for U.S. automobile producers, workers and consumers. DOC said that these compliance difficulties arise in part from the fact that the manufacturers "face a market strongly influenced by significantly reduced gasoline prices. Today's real price of gasoline is lower than at any time since the mid-1970's." DOC estimates that severe competition in the small car market will cause U.S. producer sales to decline from an estimated 590,000 vehicles in 1988 to 350,000 in 1990, and will limit the ability of full-line U.S. producers to use price incentives to stimulate small car sales to meet a 27.5 mpg standard for their domestic fleet. Further, DOC said that U.S. manufacturers will also face increasing foreign competition in the mid-size/intermediate and large/luxury car markets during 1989 and 1990, and it will become increasingly difficult for full-line manufacturers to use price discounting of their smaller cars to shift effective consumer demand in the direction of small, domestically-manufactured cars. DOC believes U.S. producers need greater freedom to compete in the extremely competitive automobile market that it forecasts than would be permitted by a 27.5 mpg standard. That department also believes that maintaining a 27.5 mpg CAFE standard would not produce important benefits for the country's energy security.

A variety of other groups urged that the MY 1989 CAFE standard be reduced. Consumer Alert urged relaxation of CAFE standards, although it did not suggest any specific level. That group's primary concern was that higher CAFE standards lead to smaller cars, which

inevitably lead to increased highway fatalities. They urged NHTSA to disclose the number of fatalities resulting from the imposition of 26.5 mpg or 27.5 mpg for MY 1989.

The National Safety Council did not state an opinion whether the CAFE standard should be amended. Expressing concern about the effect of CAFE standards on car weight and safety and about the possibility that a lower CAFE standard would lead to more high performance, high speed cars, that group urged NHTSA to conduct a comprehensive analysis of the safety question.

The Competitive Enterprise Institute (CEI) cited reports and safety literature to support its assertion that large cars are safer than small cars. Particular reliance was placed on the work of Robert Crandall and John Graham. The CEI argued that CAFE standards produce a reduction in weight of the vehicle population and thereby increase the number of highway deaths and injuries. That group dismissed as speculative the possibility that less stringent CAFE standards would lead to a resurgence of "performance" cars which will adversely affect safety. The CEI further commented that the fleet of performance cars was too small to serve as an offsetting factor in discussing CAFE's net impact on traffic safety.

Testimony was presented by Robert W. Crandall of the Brookings Institution, and John D. Graham, Associate Professor at the Harvard School of Public Health, who coauthored an often-cited study that found excessive fuel economy standards can adversely affect automobile safety. Their study was submitted as an attachment to CEI's rulemaking petition earlier this year and is part of the record of this rulemaking.

Robert Crandall testified in opposition to any CAFE standard other than one at the level of CAFE which would be produced by a free market. He summarized his research with Graham, which suggested that a 1989 CAFE standard of 27.5 mpg would increase occupant fatalities by 14 to 27 percent, assuming 1985 gasoline price expectations were fulfilled. In contrast, a 26.5 mpg CAFE standard would lead to an increase in occupant fatalities of 8 to 16 percent, assuming that vehicle producers have sufficient time to adjust their vehicle designs. Crandall noted that designs for 1989-1990 passenger car weights were already locked into place, but argued that adoption of the higher CAFE standard would lead manufacturers to raise prices on large cars and reduce prices on small cars in order to meet the standard. He said that such government-imposed distortion in

vehicle offerings would lower new car sales, while drivers of older gas guzzlers, unaffected by CAFE, would continue to buy more gasoline. Finally, Crandall said that the Nation's need to conserve energy was declining and said that the Secretary of Transportation may reduce CAFE standards if he makes such a determination about the national need to conserve.

John D. Graham spoke as a public health professional with concerns about the adverse effects of fuel economy standards on the incidence and severity of crash-related injuries. He supplemented Crandall's comments with three points. First, he recommended that DOT use this rulemaking proceeding to publicly acknowledge the adverse effects of CAFE standards on vehicle safety. If DOT does not believe CAFE adversely affects safety, he said that it should publish the rationale for that conviction. Second, safety is an important consideration in determining the proper standards for 1989 and 1990. He asserted that a stricter standard will force manufacturers to manipulate marketing and pricing programs in favor of lighter, less crashworthy vehicles. Third, he argued that there is no scientific basis for believing that CAFE will make beneficial contributions to vehicle safety. Finally, he noted that the Crandall-Graham study predicts that CAFE will be responsible for 2,200 to 3,900 additional fatalities over the life of 1989 models.

The Insurance Institute for Highway Safety (IIHS) examined the relationship between CAFE standards and vehicle safety. The IIHS urged NHTSA to evaluate the overall safety effect of CAFE requirements, and not, as was done in the past, assume that these requirements had no significant effect on future deaths and injuries in motor vehicle crashes. The IIHS comments concluded that the present CAFE standard imposes constraints on car manufacturers, and these constraints affect safety. To the extent that these constraints increase the production of cars that are small (in terms of size, not weight), that effect is negative, but if the standard also restricts the production of high performance cars, that effect is positive. IIHS did not express a judgment as to which effect would be greater.

Two staff members of the Heritage Foundation, writing to express their personal opinions, urged NHTSA not to allow the CAFE standard to rise to 27.5 mpg. In addition to generally restricting consumer choice, they stated that the higher standard could trigger a loss of tens of thousands of jobs in the U.S. automobile industry. In determining

"maximum feasible" average fuel economy, they argued NHTSA should consider safety in considering technological feasibility and economic practicability. They felt it NHTSA's duty to estimate the likely safety effect of any CAFE level selected, including, if possible, the number of lives placed at risk. Although this did not mean NHTSA could not adopt a standard with a negative effect on safety, they said that the agency should, in such a case, describe why safety would be outweighed by other considerations.

The United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) supported continued efforts to conserve non-renewable resources such as fossil fuels. At the same time, it expressed concern about the employment implications of requiring compliance with the statutory 27.5 mpg standard for MY 1989. (See the discussion above of the testimony of UAW President Bieber regarding the incentive created by the law for the domestic manufacturers to outsource production of their larger cars.)

Other groups opposed any reduction in the MY 1989 standard from the 27.5 mpg statutory level. The American Council for an Energy-Efficient Economy (ACEEE) opposed any rollback in the CAFE standard. ACEEE argued that reducing CAFE standards would lead to higher oil consumption and imports, which in turn would reduce national security, increase the trade deficit, increase air pollution levels and generate more climatic change. Because of recent experience and developments within the auto industry, ACEEE said that there is no reason why GM and other domestic manufacturers could not meet a 27.5 mpg CAFE standard in MY 1989, given reasonable efforts. The organization stated that maintaining a 27.5 mpg CAFE standard could help protect jobs in the United States, and would not have to be at the expense of auto safety.

The Center for Auto Safety (CFAS) argued that strong CAFE standards save American jobs and that relaxation of the 27.5 mpg CAFE standard would cost jobs. The Center estimated that when CAFE standards were set at 26.0 mpg for 1986-1988, GM and Ford exported production of over 500,000 small cars annually at a loss of 175,000 jobs in the U.S.

The Americans for Energy Independence (AEI) argued that a reduction in CAFE standards is bad policy. Their major concern was that oil consumption levels in the U.S. thwarted energy independence. As the transportation sector accounted for 60%

of American oil consumption, the AEI argued that conservation gains in transportation could be enough to offset oil production losses in the 1990's. Because cars account for most of the oil consumption in transportation, AEI said that more must be done to conserve oil consumption in cars.

The Energy Conservation Coalition (ECC) strongly opposed any reduction of the CAFE standards. The ECC questioned NHTSA's determination that a standard below 27.5 mpg would be the "maximum feasible" level.

The Natural Resources Defense Council (NRDC) strongly urged that the CAFE standard for MY 1989 remain at the 27.5 mpg level. They expressed strong disagreement with NHTSA's determination that the proposed action will result in "insignificant" environmental impacts, and that no Environmental Impact Statement was necessary. Most of NRDC's comment focused on NHTSA's alleged failure to comply with the National Environmental Policy Act and on the perceived inadequacies of the Environmental Assessment.

The Fossil Fuels Policy Action Institute endorsed the comments of NRDC, ECC and CFAS, while noting concern for the safety arguments raised by CEI.

Congressional correspondents were divided on the proposal. Senate Majority Leader Byrd, House Speaker Wright and more than 50 other members of Congress wrote letters in support of lowering the CAFE standard for MY 1989, stating that the CAFE program has created some serious problems for domestic manufacturers of full-line automobiles. Congressman Carr testified at the public hearing in this proceeding, and Congressman Oxley submitted written testimony, in support of reducing the standard. These members believe that CAFE is jeopardizing the production of many popular American-made, family-size sedans and station wagons, threatens the loss of American jobs, restricts consumer choices, and can also adversely affect automotive safety. In addition, Congressman Dingell, Chairman of the House Committee on Energy and Commerce, supported reduction of the MY 1989 standard, saying that such action would "help preserve U.S. jobs in the auto industry and its suppliers consistent with the Congressional objectives of the U.S. Trade legislation recently enacted into law, particularly section 1001(a)(4)." Chairman Dingell raised several other issues, noting reports that large cars are generally safer than small ones and suggesting that any possible contribution of this fuel economy

rulemaking to the greenhouse phenomenon was too remote and small to be relevant.

Senator Wirth submitted written testimony opposing the proposed lowering of the fuel economy standard, citing a need to promote the efficient use of fuels in order to trim this country's growing dependence on oil imports and begin addressing major environmental problems facing our nation and the rest of the world. Approximately 20 other members of Congress expressed strong opposition to lower CAFE standards for MY 1989. In light of rising oil imports, a severe trade deficit, and the threat of catastrophic global climactic change due to the burning of fossil fuels, several members urged this agency to raise CAFE standards above 27.5 mpg, not lower them.

Sixty-four state legislators, eight mayors, eight state officials, and the Governors of Indiana, Michigan, Missouri, Tennessee, and Wisconsin also wrote to Secretary Burnley urging a CAFE standard of 26.5 mpg for MY 1989.

Finally, thousands of letters were received from the general public and from GM employees, the majority of them supporting a 26.5 mpg standard.

V. Agency's Analytic Approach

The agency is following the same basic analytic approach it used in the MY 1986 and MY 1987-88 rulemaking proceedings when it also considered setting the standard below 27.5 mpg. This approach can be described as a two-prong analysis. First, the agency assesses whether the industry (or a company representing a substantial share of the industry) has taken reasonable steps to achieve the statutory goal of 27.5 mpg, the standard that would apply in the absence of an amendment by this agency. This assessment, which GM describes in its comments as "an auditing device," is used by the agency to help it determine whether there is any reason why it should exercise its discretion to amend the statutory standard. If the agency is satisfied that manufacturers did make reasonable efforts to achieve 27.5 mpg, then the agency focuses on the second prong of the analysis: Setting the standard at the "maximum feasible" fuel economy level, taking into account the four statutory criteria: Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy and the need of the nation to conserve energy. To the extent that the "reasonable efforts" test is met, and the "maximum feasible" level is below 27.5 mpg, the standard would be reduced to the new, maximum feasible level. This methodology and

comments specifically addressing the methodology will be discussed in this section. Comments directed to the application of the methodology (such as opinions about the sufficiency of manufacturer efforts to achieve 27.5 mpg or views regarding the maximum feasible level) will be addressed elsewhere in this decision.

V-A. The "Reasonable Efforts" Test

In the model year 1986 proceeding, the agency described the "reasonable efforts" test as follows:

* * * Since the Cost Savings Act imposed a long-term obligation on manufacturers to achieve a 27.5 mpg fuel economy level, it would be inappropriate to reduce the standard if a current inability to meet the standard simply resulted from manufacturers previously declining to take appropriate steps to improve their average fuel economy as required by the Act. Therefore, the agency must evaluate the manufacturers' past efforts to achieve higher levels of fuel economy as well as their current capabilities.

On the other hand, the agency does not consider it appropriate to judge each and every manufacturer product action by 20-20 hindsight. In assessing the sufficiency of manufacturers' fuel economy efforts, it is necessary to take account of the information available to manufacturers at the time product decisions were being made.

Manufacturers had an obligation to take whatever steps were necessary, consistent with the factors of section 502(e), to meet the 27.5 mpg standard. To the extent that manufacturers had plans to meet the standard which subsequently became infeasible due to unforeseen events, NHTSA does not believe the manufacturers should be charged with a failure to make a sufficient effort.

50 FR 40533 (October 4, 1985; quoted in MY 87-88 rule at 51 FR 35599 (October 6, 1986)).

As noted above, this approach was affirmed recently by the U.S. Court of Appeals (D.C. Cir). *Public Citizen v. NHTSA*, op. cit.

Several commenters addressed the methodology of the agency's "reasonable efforts" test. GM urges the agency to take account of the four statutory criteria, including "economic practicability", when assessing whether manufacturers have made reasonable efforts. GM also believes that a manufacturer's declining CAFE performance does not, by itself, dictate a conclusion that the manufacturer failed to make reasonable efforts to achieve 27.5 mpg. In GM's view, the agency should consider the reasonableness of the manufacturers efforts over the long term, taking into account the enormous improvements in automobile fuel efficiency of the past decade, because these large improvements make it more difficult for manufacturers to continue to

make further improvements. GM specifically urged NHTSA to "take care not to abandon the methodology that was developed in its first passenger car amendment proceeding."

GM emphasizes that it has focused on the "sequencing" of the two steps of NHTSA's analysis as articulated in the first passenger car amendment proceeding. In other words, GM placed great importance on the order in which NHTSA conducts the two prong analysis, noting that the "reasonable efforts test" should not be a "threshold condition that presumes the validity of a standard whose maximum feasibility has never been determined." GM urges NHTSA to conclude that "reasonable efforts" to improve fuel economy do not become unreasonable simply due to the passage of time." GM also urges NHTSA to conclude that, once manufacturer efforts are found to be reasonable, "no additional actions should be expected of them," regardless of the timing of the manufacturer's identification of compliance difficulties. GM expresses puzzlement about the agency's references to a "second round of investments or product decisions." In sum, GM urges NHTSA to remain faithful to the analytic approach it articulated in the MY 1986 proceeding.

Ford's comments imply a continuing fundamental disagreement with the application of the "reasonable efforts" test, noting that such a requirement "is not found in the statute." Ford argues that setting a standard above the capacity of a manufacturer in a given model year could violate Congressional intent, whether or not the capacity is affected by the prior efforts of that manufacturer. Ford analogizes the "reasonable efforts" test to an "exercise in second guessing based on hindsight," which Ford believes is inappropriate. Ford also complains that there are "no stated guidelines used in applying this test," rendering the test "undefined" and "subjective."

The Automobile Importers of America complain that the "reasonable efforts" test as articulated in the NPRM for MY 1989-1990 departed in some material way from the "sufficient efforts" test described in the agency's first rulemaking proceeding to reduce a passenger car CAFE standard (MY 1986). AIA argues that there is no requirement in the statute or the legislative history for NHTSA to examine manufacturers' efforts under a "reasonable efforts" test. AIA also complains about the lack of an "articulate standard of what constitutes reasonable efforts." AIA also objects that NHTSA appears to have elevated

the "reasonable efforts" test to a "threshold question" that would govern "even the institution of a Model Year 1989 rulemaking." This, maintains AIA, would be a change from prior year proceedings. AIA would like the agency to define the test as "reasonable efforts to improve the fuel efficiency of a vehicle in light of consumer demand and normal business considerations."

Responding first to the general comment of GM and AIA that NHTSA may have changed its view of the "reasonable efforts" test since the MY 1986 proceeding, NHTSA assures the commenters that it neither changed its methodology, nor did intend to signal any change in it. In that regard, NHTSA agrees with both GM and AIA that the original methodology need not be changed, since in our view, it has served well. While we acknowledge that some terminology has shifted, that is due as much to others (such as the D.C. Circuit Court of Appeals) using different words as it is to NHTSA's own differing terminology. The agency neither sees nor intends any difference among terms such as "reasonable efforts," "sufficient efforts," or "reasonable plans to achieve 27.5 mpg." The agency means no difference by the different terms, and does not intend to imply any change in the methodology it articulated in the MY 1986 proceeding.

With respect to GM and AIA's concerns about the sequencing of the two prongs of the analysis, the agency does not agree that there is any substantive significance to the sequence of the analyses, and therefore does not agree that there is any importance to be attached to the apparent "elevation" of the "reasonable efforts" test in this proceeding. In fact, the agency continues to place great importance on both prongs of the analytic approach, and notes that the sequence of conducting the two analyses should make no difference at all in the outcome of the proceeding. On the other hand, there is potentially a significant savings in NHTSA resources as well as resources of the public that elects to comment on our proceedings, if we first conduct the analysis that appears less likely to support an amendment of the standard. Then, if the analysis turns out to support an amendment, the second prong of the analytic approach is conducted. Under some factual settings, the "reasonable efforts" test may appear at first glance to be the one less likely to yield a result that supports amendments; in other cases, the "maximum feasible" evaluation may appear to be less likely to support a value different from 27.5 mpg. In any event, NHTSA intended no

substantive change by suggesting that the sequence of the analyses could be reversed, since our traditional approach has always made clear that a negative result under either prong of the analysis would result in no amendment to the standard.

GM specifically, and Ford implicitly, seek a judgment by the agency that it is sufficient to have once made "reasonable efforts" to achieve 27.5 mpg. The agency cannot agree with this suggestion stated as broadly as GM would have it; however, the agency does agree with both companies that there are limits to the doctrine of "reasonable efforts." For example, the levels of investment which manufacturers must make to remain in compliance with the 27.5 mpg level is limited by "economic practicability." With respect to the notion that a single "reasonable effort" is all that is required by the law, the agency simply does not agree. As we have consistently observed since first articulating the "reasonable efforts" test, we believe that the statute imposes a long-term obligation on manufacturers to attempt to comply with the statute, including its prescribed level of 27.5 mpg for model years 1985 and thereafter.

We do agree with GM that the "reasonableness" of a manufacturer's plans to comply must be judged with consideration of factors such as the economic practicability of the elements of the plan. Clearly, the agency does not intend to impose an obligation on a manufacturer to carry out a compliance plan, no matter how costly. However, the agency does believe that the statute compels the manufacturers to have a compliance plan and, if it is not to be implemented for reasons of cost or feasibility, the manufacturer must pursue additional compliance plans, unless there is no reasonable, alternative compliance plan available in the same time period. And, given the agency's obligation to review (or audit) the compliance plans of the manufacturers, there may be instances when the agency will not agree with a manufacturer about the reasonableness of the compliance plan, either because it projected compliance on the basis of unreasonable assumptions, or because it would not have achieved compliance, even if carried out. Also, the agency may disagree with the manufacturer about the reasonableness of its decision to drop the plan. We do not believe that such disagreements are tantamount to "20-20 hindsight," which we agree is inappropriate in the CAFE regulatory context. However, there is a middle ground between the inappropriate exercise of "20-20 hindsight," and the

mere "rubber stamping" of a manufacturer's statement of its previous intentions to comply. We believe that we have correctly discerned that middle ground in our previous articulation of our view of the "reasonable efforts" test, and we reaffirm that position today.

As to GM's suggestion that a one-time-only compliance plan is sufficient, we do not agree for the reasons stated above. If that plan is stale or overtaken by changing events, and sufficient time reasonably remains for the manufacturer to develop a new compliance plan to achieve the statutory 27.5 mpg goal, we believe that the statute contemplates that the manufacturer will do so.

This view, that manufacturers must continue to make efforts to reach 27.5 mpg, is entirely consistent with the approach described in the MY 1986 decision. In that rule, the agency observed:

While the agency believes that [certain] product plan changes * * * are consistent with statutory criteria, since they reflect changes in what is economically practicable, manufacturers continue to have an obligation to make all necessary efforts consistent with those statutory criteria to meet CAFE standards. To the extent that changes in product plans result in manufacturers not being able to meet a standard, the manufacturers *must pursue additional means*, consistent with the factors of section 502(e) to meet the standard.

(Emphasis supplied). 50 FR 40542, October 4, 1985.

A similar discussion was included in the preamble to the final rule amending the MY 1987-1988 standard, and today's decision reiterates this principle, consistent with the language as it was articulated in 1985.

The agency does not agree with AIA that the agency should examine only the efforts made by a company to improve the fuel efficiency of its vehicles without regard to the target fuel economy of that company. Since the rule reducing the MY 86 standard, we have clearly articulated our view that the agency's assessment of reasonable efforts is viewed in terms of the company's efforts to achieve the statutory target of 27.5 mpg. We do not believe that we could reasonably exercise our discretion to amend the 27.5 mpg standard, if we could not find a company with a lower CAFE projection that was reasonably trying to achieve the 27.5 standard. NHTSA recognizes that several AIA member companies (e.g., limited-line European manufacturers) face severe obstacles in achieving the 27.5 level, not unlike the problems of full-line U.S. manufacturers. That is the result of the fleet averaging requirement, which the

agency believes is a fundamental flaw of the statute. However, NHTSA has no choice but to carry out the law as it is written.

Both Ford and AIA object to the subjectivity of the "reasonable efforts" test, suggesting that there are no standards to govern the manufacturers' decisions. Ford suggests that such standards could be developed in a rulemaking proceeding, while AIA makes a similar suggestion that manufacturers should be given some notice of the agency's expectations. However, AIA also acknowledged during the public meeting on this rulemaking proceeding that manufacturers have an obligation— independent of NHTSA's "reasonable efforts" test—to try to comply with the statute, which sets the standard at 27.5 mpg in the absence of regulatory amendment. AIA also agreed that they have had notice at least since 1985 of NHTSA's intention to review the sufficiency of the manufacturers' plans for reaching 27.5 mpg, which is just another way of describing the "reasonable efforts" test.

As to objective standards for such an audit, NHTSA does not agree that it is desirable or necessary (or even practical) to articulate such standards, since the product decisions under review will, in the first place, have been made by the manufacturer. A decision to delete a product or add a less fuel-efficient option may be reasonable for one manufacturer that needs to respond to certain competitive demands, and be unreasonable for another manufacturer. The agency fully agrees with the commenters that the agency should conduct the "reasonable efforts" test by placing itself in the shoes of the manufacturer at the time the product decisions were made, and making a judgment about whether those decisions were reasonable at the time. That is not 20-20 hindsight; however, it does involve a judgment that, as noted above, could differ from the judgment made by the manufacturer about the reasonableness of the product action. But, this "test" is reviewing nothing more than the manufacturer's progress toward trying to meet the statutory standard, an obligation that existed prior to NHTSA's articulation of a "reasonable efforts" test. It is important to keep in mind that NHTSA's "reasonable efforts" test is conducted for a very limited purpose: To decide whether to exercise our discretion to amend the statutorily-set standard. We do this in order to demonstrate to the public and a reviewing court that we exercised our limited discretion under the statute rationally and reasonably.

V-B. The Maximum Feasible Determination

The second prong of the agency's analysis is the determination of "maximum feasible" fuel economy. The agency has always followed the same approach of considering separately each of the four statutory criteria: Economic practicability, technological feasibility, the effect of other federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. The factors will have different influences on the outcome. Some factors tend to suggest a higher "maximum feasible" level, while others tend to suggest a lower level. Since Congress provided no guidance on the weight to be given any of the factors, we have exercised judgment in order to accommodate the conflicting policies of the statute. And, the weight we give any factor will depend on the circumstances in the nation at the time the decision is made, both with respect to economic health and energy conservation needs. Although many commenters offered opinions about the weight to be given one or more of the factors, no commenter offered substantive opinions about the manner in which the agency has conducted this prong of its analysis. The comments that discuss the weighting of the factors will be addressed in another section of this decision.

In the NPRM, the agency requested comments on the possible situation involving one company that made reasonable efforts, and another company (that had not made reasonable efforts) that has a lower current CAFE capability than the company that did make reasonable efforts. GM suggested that NHTSA should determine the CAFE level that would have been achievable by the company that did not make reasonable efforts, calculated as if it had made reasonable efforts, and compare that level to the level achievable by the company that did make reasonable efforts. GM suggests that the CAFE level should then be set at the lower of the two levels. Ford commented that the agency could violate Congressional intent if it set a standard above the capacity of a major manufacturer, without regard to the question of whether that company made reasonable efforts. Since it happens that we will not be setting the standard higher than the capability of a substantial share manufacturer, we need not resolve here the methodological question.

VI. Manufacturer Capabilities for MY 1989

As part of its consideration of technological feasibility and economic practicability, NHTSA has evaluated the manufacturers' fuel economy capabilities for MY 1989. In past fuel economy rulemakings, the agency has focused on the manufacturers' current projections and underlying product plans, using the CAFE levels actually achieved in the most recent model year(s) as a baseline. The agency has then considered what, if any, additional economically practicable actions the manufacturers could take to improve their fuel economy, given the available leadtime.

While NHTSA believes that this type of analysis should be part of the evaluation of manufacturer capabilities, it believes that a focus on current CAFE projections and recent CAFE achievements can be overly narrow in some circumstances. In particular, as discussed below, NHTSA is concerned that too narrow a focus on GM's MY 1988 CAFE achievement could have the effect of casting in concrete a significant loss in market share which that company has experienced over the past several years, and the significant job losses which accompanied that market loss. The same result could occur from too narrow a focus on GM's MY 1989 CAFE projection, which reflects a product plan devised in light of a 27.5 mpg CAFE standard. The agency believes that it should also look at the broader picture of how the standard could affect product availability, jobs and the competitiveness of U.S. manufacturers.

VI-A. Manufacturer Projections

GM and Ford have submitted a number of different projections of their MY 1989 CAFE levels over the past several years, reflecting changing product plans and market conditions. This section addresses the manufacturers' latest projections, since those projections reflect the manufacturers' current product plans. The current MY 1989 projections of both GM and Ford are lower than earlier projections. The reasons for the change are discussed below in the section entitled "Manufacturer Compliance Efforts."

The agency notes that one factor that complicates a discussion of manufacturer projections is Environmental Protection Agency (EPA) test adjustment credits. Between 1983 and 1985, EPA engaged in rulemaking to provide CAFE adjustments to compensate for the effects of past test procedure changes, ultimately adopting

a formula approach for calculating CAFE adjustments. While the CAFE adjustment differs among manufacturers due to their different vehicle mixes, a typical adjustment for MY 1989 is 0.2 or 0.3 mpg. In the discussion of manufacturer projections in this notice, the projections include the EPA test credit adjustment unless it is noted otherwise.

1. General Motors

GM indicated in its September 1988 comment that its current product plan is expected to result in a MY 1989 CAFE level of 27.2 mpg. GM's projection is the same as that provided to the agency in April 1988.

GM's comment, as well as its mid-model year report for 1988, indicates that its MY 1988 CAFE will be 27.6 mpg. Thus, that company expects its CAFE to decline by 0.4 mpg between MY 1988 and MY 1989. GM provided detailed information explaining the expected decline. The information showed that much of the decline is due to the uncertain effects on fuel economy of new hardware introduced to improve customer satisfaction with that company's 2.8 and 2.5L engines in MY 1989. The information also showed that another reason for the decline is that GM does not expect to replicate better-than-expected 1988 test results on its 2.8L and 3.8L engines, which is attributable to test-to-test variability.

The record for this rulemaking indicates that GM's 27.6 mpg CAFE for MY 1988 is in part due to adverse mix shifts, reflecting lower-than-anticipated sales of that company's larger and luxury cars, and a significant loss in overall market share for that company. GM noted in its August 8, 1988, submission that its share of total U.S. passenger car sales fell three points between 1984 to 1986, and another six points between 1986 to 1988. That company also noted that major contributors to this decline came in its traditionally strong luxury and mid-size market segments. GM stated that this loss of market share caused its active hourly workforce to decline by over 75,000 workers between June 1986 and June 1988, and that total jobs lost at GM and its suppliers due to this decline in market share may have been in excess of 200,000.

Between MY 1985 and MY 1988, the time GM was losing market share, that company's CAFE rose from 25.8 mpg to 27.6 mpg. By contrast, Ford's MY 1988 CAFE level is very similar to its MY 1985 level (a period of rising market share), 26.4 mpg versus 26.6 mpg. In the same period, a number of the import manufacturers' CAFE levels also

declined. While the decline in some of the import manufacturers' CAFE levels was relatively small, BMW's CAFE declined from 26.4 mpg in MY 1985 to 21.6 mpg in MY 1988.

GM argued in its August 8, 1988, submission that while the contribution to its lost market share and job losses resulting from efforts to comply with CAFE may be impossible to isolate and quantify, it is no mere coincidence that, during a period when its CAFE performance and projections have been increasing as those of its principal domestic and foreign competitors have been directionally opposite, its percentage of total industry sales has declined. GM stated in its September 1988 comment that as gas prices continued to decline during 1986, the demand for larger cars and for engines with improved performance and driveability continued unabated. That company noted that despite this favorable sales environment, it suffered both an absolute volume decline in full-size and mid-size car production during MY 1986-88 and a substantial loss of market share to its less fuel-efficient competitors. GM observed that its production of full-size cars, which reached more than 1.1 million units in MY 1985, was off by nearly 300,000 units in MY 1988. GM also noted that it introduced two new full-size carlines during this period, among the most fuel-efficient in their class, but sales of its downsized models languished far below projected levels.

GM also suggested that some of its cars, most notably the third-generation E/K models introduced in MY 1986, may have pushed too far in the direction of downsizing and fuel-efficiency at the expense of other attributes considered more important by the consumer. That company added that, ironically, the lost volume of these fuel-efficient larger cars had the effect of improving GM's CAFE still further, while depressing the CAFE of other manufacturers whose share of less fuel-efficient models increased.

NHTSA notes that, for CAFE purposes, GM's MY 1988-88 market behavior does not merely reflect the 26.0 mpg level to which those standards were eventually amended. As indicated above, GM's initial product plans for those model years were made in light of the statutory 27.5 mpg standard expected to be in place. In addition, GM was making every effort during those model years to exceed the 26.0 mpg standard in order to earn sufficient carryback credits to offset a substantial MY 1985 shortfall. Thus, for CAFE compliance purposes, GM did not enjoy the flexibility of being content with

achieving a CAFE of only 26.0 mpg for MYs 1986-88, since that could well have resulted in insufficient carryback credits and thus a final determination of non-compliance and a finding of "unlawful conduct" under section 508 of the Act.

GM's current MY 1989 plan, which would likely result in a CAFE of 27.2 mpg, again reflects the company's expectation of the statutory 27.5 mpg standard that would be in effect unless changed through this rulemaking. That company indicated in its August 1988 submission that, looking to the future, it hopes to increase sales of its midsize, larger and luxury models and restore employment with restylings and driveability improvements, albeit while trying to minimize the CAFE penalty that will occur with those changes. GM also indicated at the September 14, 1988 public hearing that it is doing everything it can to try and get its lost market share back, but that it is seriously constrained by CAFE standards in doing that. While GM's current MY 1989 product plan does reflect some technological improvements to improve customer satisfaction, the agency does not believe that it reflects the kinds of actions GM might wish to take to restore market share and jobs if it were not constrained by the 27.5 mpg standard.

2. Ford

Ford indicated in its September 1988 comment it could achieve a MY 1989 CAFE level of "about 26.5 mpg." As noted in the NPRM, Ford estimated in April 1988 that it could achieve a MY 1989 CAFE level of 26.6 mpg. Thus, Ford currently projects essentially the same CAFE level as it did earlier this year. Ford's mid-model year report for 1988 indicates that its MY 1988 CAFE will be 26.4 mpg, or almost the same as it projects for MY 1989.

While GM's MY 1988 CAFE achievement of 27.6 mpg in part reflects a significant loss in market share since 1985, Ford increased its market share during that time period. Ford's comment indicated that its overall market share in 1988 is 21.4 percent, up from 19.7 percent in 1985.

3. Chrysler

Chrysler projected in April 1988 that it would achieve a CAFE of 27.6 for MY 1989. At that time, Chrysler projected a MY 1988 CAFE of 27.8 mpg. In its July 1988 mid-model year report, however, Chrysler indicated that it will achieve a MY 1988 CAFE of 28.4 mpg. NHTSA notes that, as discussed in the MY 1986 and MY 1987-88 CAFE proceedings, Chrysler's CAFE has been higher than that of GM and Ford in recent years primarily because it does not compete in

all the market segments in which GM and Ford sell cars (i.e., no "large" cars, which have lower fuel economy ratings than other size classes.).

4. Other manufacturers

The Japanese and other Asian manufacturers are expected to easily exceed the current 27.5 mpg standard for MY 1989, in light of their traditional strength in smaller cars. Also, all of these manufacturers' cars, whether more or less fuel-efficient, are considered imports under the statute, since their domestic content is less than 75 percent, even for those models produced at U.S. plants. Therefore, unlike the domestic manufacturers, the least fuel-efficient cars of the Asian manufacturers are not, for CAFE purposes, in a different fleet from their most fuel-efficient cars. Thus, the fleet averaging requirements of the CAFE law allows those companies' to use the higher fuel economy ratings of small cars to offset those with lower ratings.

Nissan projects a MY 1989 CAFE level of 29.5 mpg to 29.7 mpg. While the agency does not have MY 1989 CAFE projections for the other Asian manufacturers, their MY 1988 CAFE levels, as reported in their mid-model year reports, are well above 27.5 mpg. Daihatsu will achieve a MY 1988 CAFE of about 46.5 mpg, Honda 32.0 mpg, Hyundai 35.0 mpg, Isuzu 32.6 mpg, Mazda 28.7 mpg, Mitsubishi 29.8 mpg, Subaru 31.8 mpg, Suzuki 50.3 mpg, and Toyota 32.6 mpg. The agency notes that some of the Japanese manufacturers have experienced decreases in their fuel economy during recent years as they have begun to sell larger, more performance-oriented vehicles, e.g., Honda, which began marketing the Acura Legend in 1986 in the U.S., has dropped from 34.5 mpg in 1985 to 32.0 mpg in 1988.

The import fleets of GM, Ford and Chrysler are also expected to easily exceed 27.5 mpg for MY 1989. GM projects a MY 1989 CAFE level of 39.3 mpg for its import fleet, and Ford projects a CAFE level of 31.6 mpg. While the agency does not have a MY 1989 CAFE projection for Chrysler's import fleet, that company's mid-model year report indicated that its import fleet will achieve a CAFE level of 30.3 mpg for MY 1988. But as noted previously, the two fleet rule of the statute prevents the three U.S. companies from using those higher fuel economy ratings to offset the lower ratings of the rest of their fleets.

Most of the European manufacturers are expected to be below the 27.5 mpg level for MY 1989. Austin Rover projects a MY 1989 CAFE level of 23.5 mpg, BMW 21.9 mpg, Jaguar 21.7 mpg,

Mercedes-Benz 21.0 mpg, Peugeot 24.5 mpg, Porsche 23.5 mpg, Saab 26.6 mpg, and Volvo 25.7 mpg. The agency does not have MY 1989 projections for Alfa-Romeo, Volkswagen or Yugo. Those companies' mid-model year reports indicated that their MY 1988 CAFE levels will be 25.6 mpg, 30.3 mpg, and 33.8 mpg, respectively.

VI-B. Possible Actions to Improve MY 1989 CAFE

The possible additional actions that manufacturers might be able to take to improve their projected CAFE may be divided into four categories: Further technological changes (beyond what is contained in their product plans), increased marketing efforts for their more fuel-efficient cars, restricting the sale of their less fuel-efficient cars and engines, and transferring the production of their less fuel-efficient vehicles, or parts of those vehicles, outside of the United States. GM and Ford have indicated in the past that they might outsource some of their less fuel-efficient cars to enable those cars to be averaged in with their highly fuel-efficient captive imports.

Since the 1989 model year begins this fall, there is insufficient time for the manufacturers to make further significant technological changes in their product plans. For example, once a new design is established and tested as feasible for production, the leadtime necessary to design, tool, and test components such as new body sheet-metal systems for mass production is typically 22 to 29 months. Other potential major changes often take longer.

Similarly, there is insufficient time to transfer the production of less fuel-efficient vehicles, or significant parts of those vehicles, outside the United States before the beginning of MY 1989. However, manufacturers could begin the steps necessary to outsource large car production in a later model year. NHTSA has previously noted that there is a complete absence of energy conservation benefits to the U.S. from outsourcing. In addition, Congress has spoken clearly about its desire that fuel economy standards should not induce manufacturers to increase their importation of foreign-produced cars. Thus, NHTSA has said that it does not consider outsourcing for CAFE purposes to be reasonable and will not require manufacturers to consider outsourcing as part of their "reasonable efforts" to achieve 27.5 mpg. See 51 FR 35604, October 6, 1986.

As to marketing efforts, the agency in the past has concluded that GM and

Ford both have made efforts to promote the sales of fuel-efficient cars and determined that the manufacturers have undertaken extensive and significant marketing efforts to shift consumers toward their more fuel-efficient vehicles and options. The agency also has stated previously that it believes that the ability to improve CAFE by additional marketing efforts is relatively small. As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient cars less expensive or less fuel-efficient cars more expensive. Moreover, the ability to increase sales of fuel-efficient cars largely relates to either increasing market share at the expense of competitors or pulling ahead a manufacturer's own sales from the future. Neither approach produces net energy savings for the U.S. A factor that makes it difficult for the domestic manufacturers to sell domestically produced, fuel-efficient cars is the growing competition of lower-priced small cars from countries such as Yugoslavia and South Korea, which have significant cost advantages.

Another consideration in this area is that the manufacturers' success in improving the fuel efficiency of large cars has itself made it more difficult to sell smaller cars. The reason for this is that there are diminishing returns in terms of greater fuel economy from purchasing small cars as the fuel efficiency of larger cars increases. Similarly, as gasoline prices have declined, there are diminishing returns to the consumer from purchasing more fuel-efficient vehicles. Under current gasoline projections, a one mpg increase in fuel economy from 15 to 16 mpg would decrease lifetime operating costs by about \$371. By contrast, at a CAFE level of 26.5 mpg, the corresponding potential decrease in operating costs is \$122.

There is a problem with pulling ahead sales, as mentioned above, which consists of the manufacturer's CAFE for subsequent years being reduced. For example, if a manufacturer increases its MY 1989 CAFE by pulling ahead sales of fuel-efficient cars from MY 1990, the MY 1990 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

As indicated in the NPRM, Ford and GM have both provided specific information concerning their marketing programs. GM indicated that its total cost for numerous incentive programs

for its fuel-efficient cars during MY 1987-88 was over \$2.0 billion. Ford indicated that its expenditures for its marketing program approaches \$3.0 billion for the years 1982-1988. Ford also stated that its marketing support costs are disproportionately greater for its fuel-efficient models than its large-luxury models.

NHTSA notes that the Department of Commerce (DOC) commented that due to severe competition, it expects U.S. producer sales in the small car segment will decline from an estimated 590,000 vehicles in 1988 to 445,000 in 1989 and 350,000 in 1990. That Department stated that this competition will limit the ability of full-line U.S. manufacturers to use price incentives to stimulate small car sales. DOC commented further that U.S. automobile manufacturers will also face growing foreign competition in the mid-size and large/luxury car markets during 1989 and 1990, and that in this intensely competitive market for larger as well as small cars, profit margins in all lines will be under intense competitive pressure. That Department concluded that it will thus become increasingly difficult for full-line manufacturers to use price discounting of their smaller cars to shift effective consumer demand in that direction.

For all of the reasons discussed above, and in light of the expected market conditions described by DOC, NHTSA does not believe that GM and Ford can significantly improve their CAFE levels by increased marketing efforts of domestic fuel-efficient models beyond what they have already been doing.

Any additional efforts by the manufacturers to increase their MY 1989 CAFE, therefore, would be limited largely to attempts to change product mixes through product restrictions.

In looking at the potential methods for improving CAFE, the agency also has recognized in the past that manufacturers could improve their CAFE by restricting their product offerings, e.g., deleting less fuel-efficient car lines or dropping higher performance engines. However, as discussed in previous rulemakings, such product restrictions undoubtedly will have significant adverse economic impacts on jobs, the industry and the economy as a whole—effects which would run counter to the statutory criterion of economic practicability and the Congressional intent that the CAFE program not unduly limit consumer choice.

VI-C. Manufacturer-Specific CAFE Capabilities

In analyzing manufacturer-specific CAFE capabilities, the agency has

focused on the domestic fleets of GM and Ford, because they have the lowest individual projected MY 1989 CAFE levels among manufacturers with a substantial share of the market, and no combination of manufacturers with lower projected CAFE levels would constitute a substantial share of the market.

1. GM

NHTSA has analyzed GM's MY 1989 CAFE projection and underlying plan. As discussed above, GM indicated in its September 1988 comment that its current product plan is expected to result in a MY 1989 CAFE level of 27.2 mpg. If NHTSA focused narrowly on GM's MY 1989 CAFE projection and its MY 1988 CAFE achievement, it would presumably conclude that GM's MY 1989 capability is above that of Ford. While manufacturer product plans are subject to risks, GM's 27.2 mpg projection reflects that company's best estimate of its MY 1989 CAFE, in light of its current product plan.

As discussed above, however, NHTSA believes that too narrow a focus on GM's MY 1988 CAFE achievement and MY 1989 CAFE projection could have the effect of ratifying the significant loss in market share that company has experienced over the past several years and the significant job losses that accompanied that market loss. The agency believes that its analysis of GM's capability should also consider the CAFE level that company might achieve if it more aggressively seeks to regain, in MY 1989, a portion of its lost market share. As indicated above, GM's current product plan reflects the constraints of a 27.5 mpg standard, and the agency does not believe that it reflects the kinds of actions GM might wish to take to restore market share and jobs if there were a lower MY 1989 CAFE standard.

NHTSA recognizes that it is difficult to estimate what GM's CAFE capability would be under a scenario of seeking to regain lost market share and jobs. Ford's recent CAFE experience suggests that a full line manufacturer can achieve approximately 26.5 mpg, while remaining fully competitive in all market segments. The agency has analyzed GM's product plan and concluded that efforts by that company to restore its market share in less-fuel-efficient market segments could, consistent with its capacity restraints, result in a MY 1989 CAFE of 26.5 mpg or below. These efforts could include pricing and other actions to promote sales of compact, intermediate and luxury cars. In light of Ford's experience and NHTSA's

analysis of the kinds of actions GM might take to restore lost market share and jobs, the agency concludes that 26.5 mpg appropriately represents GM's MY 1989 CAFE capability.

NHTSA notes that the Department of Energy commented that it is its judgment that the 27.5 mpg standard is achievable by GM in MY 1989. This conclusion was largely based on the fact that GM achieved a CAFE of 27.6 mpg in MY 1988. Several other commenters also cited GM's MY 1988 achievement as evidence that GM can achieve 27.5 mpg in MY 1989. DOE suggested that some of the decreases in GM's MY 1989 CAFE were unexplained. However, NHTSA believes that GM's August 1988 and September 1988 submissions fully explain the expected decline in its MY 1989 CAFE, as compared to MY 1988. The agency believes that GM's MY 1989 CAFE projection of 27.2 mpg reasonably reflects that company's current product plan. While NHTSA does not agree that GM could necessarily achieve 27.5 mpg CAFE in MY 1989 without some product restrictions, it does agree with DOE and other commenters that, using GM's MY 1988 experience as a baseline, that company could achieve a CAFE above 26.5 mpg (and might well experience further losses in market share and jobs as well). However, as discussed above, NHTSA believes that the approach of narrowly focusing on GM's MY 1988 CAFE achievement and MY 1989 CAFE projection could have the effect of casting in concrete the significant loss in market share that company has experienced over the past several years, and the significant job losses which accompanied that market loss.

The Natural Resources Defense Council (NRDC) also cited GM's MY 1988 CAFE performance, and argued that GM's claim that its CAFE will drop should be viewed skeptically, especially since that company asserts that its lagging large cars sales are an aberration even though they reflect a nationwide trend toward smaller vehicles. That commenter argued that GM's loss in market share is not due to CAFE.

As discussed above, NHTSA acknowledges that the larger car segment of the market has been shrinking in absolute terms. Between MY 1984 and MY 1987, the share of sales taken by mid-size and larger cars declined from 42.7 percent of the market to 36.4 percent. During this time period, the smallest car segment also declined. The share captured by subcompact and smaller models fell from 29.4 percent in MY 1984 to 23.6 percent in MY 1987. The growth has been in the compact

segment, as its share grew from 27.9 percent to 40.0 percent over the same time period.

However, NHTSA believes that in order for GM to be able to adequately compete in today's intensely competitive market, it must be able to accommodate consumer demand for such attributes as larger engines and larger interior space. These actions come at a CAFE price, however, since they generally reduce the fuel efficiency of a model. To the extent that GM is able to so accommodate consumer demand or otherwise increase the sales of its less fuel-efficient vehicles, including less fuel-efficient compacts as well as larger vehicles, its CAFE will decline, relative to what it achieved in MY 1988. This decline is in addition to that portion of the decline that reflects unexpectedly high EPA test results in MY 1988.

2. Ford

NHTSA has analyzed Ford's MY 1989 CAFE projection and underlying product plan. As indicated above, Ford stated in its September 1988 comment that it projects its 1989 model year CAFE level at about 26.5 mpg. Ford indicated further at the September 14, 1988 public hearing that while there is a set of assumptions with its product plan, it projects achieving the 26.5 mpg level for MY 1989 with some level of confidence.

In light of Ford's statements and the agency's analysis of Ford's product plan, NHTSA has concluded that 26.5 mpg represents Ford's MY 1989 CAFE capability, taking account of possible uncertainties. In reaching this conclusion, the agency notes that Ford achieved a similar level, 26.4 mpg, in model years 1987-88, and that it did so while generally increasing its market share of larger cars and remaining fully competitive in all market segments. Ford was able to hold its CAFE about steady while increasing its market share of large cars, but only by taking a number of offsetting fuel-efficiency enhancing actions.

VII. Manufacturer Compliance Efforts

While there is now insufficient leadtime for GM and Ford to initiate further significant technological improvements to achieve CAFE of 27.5 mpg in MY 1989, the standards have been in existence since 1975. Thus, as part of deciding whether to exercise its discretion to reduce the standards to the maximum feasible average fuel economy level, NHTSA has evaluated whether the manufacturers made sufficient efforts through September 1988 to meet the standard.

As discussed in the MY 1986 and MY 1987-88 proceedings and noted above, the agency does not consider it appropriate to judge each and every manufacturer product action by 20-20 hindsight. Rather, in assessing the sufficiency of the manufacturers' fuel economy efforts, it is necessary to take account of the information available at the time product decisions were being made.

For MY 1986, and again for MY 1987-88, the agency determined that GM and Ford had plans adequate to meet the 27.5 mpg standard, but that these plans were overtaken by unforeseen events in the early 1980's. The agency identified a number of factors which led to lower than expected CAFE levels, including the declining price of gasoline and a related increase in expected consumer demand for larger and more powerful cars. The agency concluded that the manufacturers did not have time to offset the impact of these unexpected events by developing and implementing supplementary or alternate plans for meeting the CAFE standard of 27.5 mpg for MY 1986-88.

NHTSA observed in the NPRM for this proceeding that given the passage of time since those unforeseen events in the early 1980's, coupled with the agency's understanding of traditional auto industry leadtimes to introduce new technologies or new vehicles, the agency could not reasonably base an exercise of its discretion to amend the MY 1989 standard on the same set of facts that supported the reduction of the MY 1986-88 standards. NHTSA explained that it would need to know whether, and to what extent, the industry as a whole made new reasonable plans to comply with the 27.5 mpg standard after the unanticipated events of the early 1980's overtook the previous plans.

As part of evaluating whether GM and Ford made sufficient efforts to achieve a 27.5 mpg CAFE for MY 1989, the agency has evaluated the manufacturer's MY 1989 CAFE projections and product plans submitted to the agency over time.

GM projected in February 1985 that it could achieve a CAFE of 30.1 mpg for MY 1989. Between February 1985 and August 1985, GM lowered its projection by 1.5 mpg, to 28.6 mpg.

Ford projected in February 1985 that it could achieve a CAFE of 28.3 mpg for MY 1989. Between February 1985 and August 1985, Ford lowered its projection by 1.5 mpg, to 26.8 mpg. In October 1985, however, Ford projected that it could achieve 27.6 mpg.

In this proceeding, both GM and Ford cited substantial unforeseen changes in

market conditions which occurred after the early 1980's, including a precipitous unexpected drop in gasoline prices during 1986, as the primary cause for their MY 1989 CAFE projections falling below 27.5 mpg after 1985. Between 1981 and 1985, real gasoline prices dropped a total of 25 percent, from \$1.63 per gallon to \$1.22 (1986 dollars). During 1986, however, gasoline prices unexpectedly dropped another 24 percent, to \$0.93 (1986 dollars), and have remained at a low level.

Ford indicated that it recognized by early 1986 that its earlier product plan to achieve 27.5 mpg for MY 1989 had been overtaken by events. GM indicated that it recognized by mid-1986 that its earlier product plan to achieve 27.5 mpg for MY 1989 had been overtaken by events.

NHTSA believes that the events described by the manufacturers raise three basic issues: (1) Whether GM and Ford had reasonable plans to achieve 27.5 mpg CAFE for MY 1989 prior to 1986, (2) whether the fall in gasoline prices and other events cited by the manufacturers were of a nature that overtook the manufacturers' previous product plans, and (3) whether the manufacturers made sufficient efforts, under the statute, to achieve 27.5 mpg after early to mid-1986. Each of these issues is addressed below.

The first of the three issues is whether GM and Ford had reasonable plans to achieve 27.5 mpg CAFE for MY 1989 prior to 1986, i.e., before the occurrence of the events which the manufacturers assert overtook their plans. Based on its review of GM's August 1985 product plan for MY 1989, the agency believes that GM's plan was reasonably calculated, as of that time, to meet the 27.5 mpg standard. NHTSA notes that GM expected to exceed the 27.5 mpg by more than 1.0 mpg, an amount which, among other things, may be viewed as representing a margin of safety for meeting the standard.

The agency does not have as detailed information regarding Ford's 1985 product plans for MY 1989. Among other things, it does not have detailed information concerning why Ford revised its estimates downward in August 1985 and back upward in October 1985. As always, however, the agency would not be judging any such plan with 20/20 hindsight. Instead, the agency would consider whether the product decisions were reasonable when they were made.

Examination of the reasonableness of manufacturer plans in this proceeding includes consideration of whether the fall in gasoline prices and other events cited by the manufacturers were in fact unexpected, in light of the

manufacturers' reliance on this argument to explain the change in their projections. NHTSA believes that a second drop in gasoline prices of this magnitude was unexpected at the time manufacturers were first developing their MY 1989 product plans. For example, during the fall of 1983, the Energy Information Administration (EIA) was forecasting essentially constant gasoline prices between 1985 and 1986, \$1.22 per gallon in 1985 and \$1.20 in 1986 (1985 dollars). Similarly, during the winter of 1983-84, Data Resources, Inc. (DRI) was forecasting essentially constant gasoline prices between 1985 and 1986, \$1.30 per gallon in 1985 and \$1.31 in 1986 (1985 dollars). While EIA and DRI both expected by the summer of 1985 that gasoline prices would decline between 1985 and 1986, even at that late date they did not anticipate the magnitude of the decline. EIA forecast in July 1985 that gasoline prices would decline from \$1.19 per gallon in 1985 to \$1.11 in 1986 (1985 dollars). DRI forecast in the summer of 1985 that gasoline prices would decline from \$1.20 in 1985 to \$1.14 in 1986 (1985 dollars). By comparison, the actual decline in gasoline prices between 1985 and 1986 was from \$1.20 per gallon to \$0.91 (1985 dollars).

NHTSA also believes it is clear that the magnitude of the changes in the competitive market facing GM was also unexpected. The agency notes that GM's July 1986 product plan for MY 1988 forecast total GM production of nearly 4.6 million cars, while that company now expects to produce fewer than 3.5 million cars. This change in expected volume reflects GM's loss in market share since 1985.

As to Ford, NHTSA believes that company has made significant attempts over time to improve its CAFE. Ford commented that for MY 1987 through 1989, it will have spent \$3 billion on programs that will improve fuel economy. According to that company, this figure exceeds the level submitted to the agency in 1985 by more than \$500 million and includes more than 60 product improvement actions that have had a beneficial effect on fuel economy. Ford also indicated that from 1986 to 1988, it will have spent nearly \$2 billion on marketing actions alone to improve sales of its fuel efficient car lines. The agency notes that Ford's significant attempts to improve CAFE have enabled it to hold its CAFE level essentially constant in recent model years despite experiencing significant mix shifts toward larger, higher performance cars that are less fuel efficient.

The second of the three issues is whether the fall in gasoline prices and

other events cited by the manufacturers were of a nature that overtook the manufacturers' previous product plans. NHTSA agrees that the precipitous fall in gasoline prices during 1986 did result in a substantial shift in consumer demand toward less-fuel efficient vehicles, overtaking GM's and Ford's earlier MY 1989 product plans. As gasoline prices decrease, the costs of operating cars that are larger or have more performance decrease. Therefore, all other things being equal, consumer demand for larger cars and higher performance increases. The Department of Commerce noted that the latest (1987) J.D. Power survey of consumer purchasing attitudes indicated that performance ranks above fuel economy by twelve percentage points. Moreover, both Ford and GM provided data showing an increase in customer satisfaction as performance increases.

GM and Ford also cited other unexpected events which contributed to the decline in their MY 1989 CAFE levels. GM indicated that competitive pressures, affecting both its product and engine lineups as well as capital spending programs also impacted its plan. That company stated that anticipated further increases in consumer demand for improved powertrains led to product changes. GM stated that in substantial part due to the investment needed to accomplish these necessary changes, other previously planned new vehicles and engine programs had to be deferred or cancelled.

NHTSA notes that the Department of Commerce commented that the domestic manufacturers face an intensely competitive market for larger as well as smaller cars and that Japanese manufacturers will be making a strong push into the compact, intermediate and luxury segments during the next five years. A July 4, 1988, *Automotive News* article, cited by GM, indicates that Japanese automakers are preparing a massive onslaught of new products for the U.S. market over the next four years, especially in performance-luxury and other segments traditionally dominated by the domestics.

NHTSA agrees that the competitive pressures facing GM have contributed to the decline in its expected MY 1989 CAFE. In order to be competitive, GM has needed to make some changes in its product plan to increase performance, with some negative impact on CAFE. Also, given those pressures, that company has needed to focus its limited capital resources on meeting the competition.

Ford stated that interest rates have had a negative impact on its MY 1989 CAFE level. That company stated that in 1985 it was forecasted that interest rates would be 11.8 percent in both 1988 and 1989. However, interest rates are now predicted to be 9.4 percent in 1988. Ford stated that lower finance costs shift some additional sales to larger cars.

The last of the three issues is whether the manufacturers made sufficient efforts, under the statute, to achieve 27.5 mpg after early to mid-1986, the times GM and Ford indicated that they recognized their earlier plans had been overtaken by events.

NHTSA believes it is clear that GM made sufficient efforts after mid-1986, the time it recognized its MY 1989 CAFE would be below 27.5 mpg, to meet that standard.

First, GM reexamined its product plans in an effort to identify fuel economy improvements, beyond those already planned, that might be implemented within the available leadtime. GM then made the changes it found feasible. For example, in the fall of 1986, GM made a product plan change to reduce aerodynamic drag of certain cars. In the spring of 1987 and fall of 1988, GM revised certain product plans to obtain lower rolling resistance for tires. Following its July 1986 forecast, GM implemented another technological change to improve fuel economy, but the projected benefit was not obtained. GM also made a number of product plan changes related to engine utilization and powertrains, although one of the changes needed to be rescinded in response to negative press and customer reaction regarding performance.

Second, GM planned a number of market forcing actions to improve CAFE, including plans to increase smaller car sales via incentives and to increase the penetration of 4-cylinder engines and 4-speed automatic transmissions in certain cars. GM implemented its plan until May 1988, the time it submitted its petition for rulemaking, when the combined effects of a number of developments led to further necessary adjustments to its plan.

NHTSA concludes that GM had a plan to meet the 27.5 mpg standard for MY 1988, but that plan was overtaken by events beyond GM's control that occurred during the time period beginning in late 1985 through mid-1986. Among other things, a substantial shift in consumer demand occurred toward cars with better performance. The agency also concludes that after GM recognized in mid-1986 that its plan had been overtaken by events, that company took appropriate compensating actions

in a continuing effort to meet the 27.5 mpg standard.

With respect to whether Ford made reasonable efforts to achieve 27.5 mpg CAFE after early 1986, the time it recognized its MY 1989 CAFE would be below that level, NHTSA notes that the availability of credits makes it difficult to analyze the sufficiency of that manufacturer's efforts. The agency notes that Ford expected during much of the period from 1986 to 1988 to have substantial credits that could be carried forward to MY 1989. (GM's credit situation was much more uncertain during this period.) While the statutory 27.5 mpg CAFE standard for future model years creates a continuing duty for manufacturers to achieve 27.5 mpg CAFE in the long run, the statute also permits manufacturers to use credits to comply with the standard for a particular model year. We note that the obligation under the statute for a particular model year is *compliance*, rather than producing a fleet in that year which achieves the level of the standard for that year and, thus, the existence of credits may influence manufacturer decision about CAFE compliance.

To the extent that Ford expected through most of the 1986 to 1988 time period to be able to meet the MY 1989 standard by using credits, that company in fact had no legal duty to make additional efforts to achieve 27.5 mpg. Since the concept of "reasonable" or "sufficient" efforts ultimately owes its existence to a legal duty, the concept has little meaning where a manufacturer does not have a duty, due to credits.

NHTSA observed in the NPRM that Ford, in an earlier submission, indicated that its compliance with the statute would be achieved by using credits earned by exceeding the standard in other years. The agency noted that if that company decided not to make product-related efforts to achieve 27.5 mpg in MY 1989-90 in light of credits from other years, such a decision would be acceptable under the statute. The agency also observed, however, that if a manufacturer chooses, in light of the flexibility offered by the credit provisions, not to make the efforts necessary to achieve the level of a standard for a particular model year, it would be inconsistent with the statutory scheme for the agency then to exercise its discretion to lower the standard solely on the basis of that manufacturer's inability to meet the standard.

NHTSA is not exercising its discretion to lower the standard solely on the basis of Ford's capability. Therefore, there is no need to resolve the issue of how to analyze the "reasonableness" of a

manufacturer's efforts to achieve 27.5 mpg in light of the availability of credits. NHTSA notes again, however, that Ford has made significant progress in trying to improve its CAFE, especially in the last few years.

VIII. The Effect of Fuel Economy Standards on Safety

One of the petitions filed in this proceeding was from the Competitive Enterprise Institute, asking the agency to reduce the CAFE standards for model years 1989 and 1990 to 24.0 mpg, the fuel economy level CEI asserts would be achieved if there had never been any fuel economy standards and would be none in future years. The basis for this request is CEI's further contention that CAFE standards that exceed 24.0 mpg would have adverse safety consequences.

After the agency's proposal was published for comment, CEI and several other commenters again asked the agency to conclude that CAFE standards result in vehicle downsizing, and that downsizing, in turn, degrades safety. CEI and the other commenters advocate a CAFE standard around 24.0 mpg, which they believe would be the CAFE level of the fleet in the absence of CAFE standards.

CEI's argument is based on finding a direct relationship between vehicle weight and vehicle safety and saying that the CAFE program has caused manufacturers to reduce vehicle size. CEI claims that a standard set at 26.5 mpg will cause 1,500-2,800 excess fatalities in the MY 1989 fleet as compared to the fatalities that would have occurred in the absence of the CAFE standards.

CEI relies on the premise that heavier cars are generally safer for vehicle occupants than smaller cars, other things being equal. CEI then notes that downsizing (reducing vehicle weight and exterior dimensions) has been extensively used by the manufacturers as a means of improving CAFE. CEI states that these reductions in car size and weight have resulted in less protection for occupants of these cars. CEI concludes that the CAFE standards are responsible for current car sizes and weights and thus, the CAFE standards are also responsible for a reduction in the level of safety otherwise available to the vehicle occupants. CEI further concludes that if there were no CAFE standards, or if the standard were set so low as to be the substantial equivalent of no standard, the size and weight of current cars would be significantly greater.

In support for these assertions, CEI attached a copy of a paper entitled "The Effect of Fuel Economy Standards on Automobile Safety" by Robert W. Crandall and John D. Graham (1988). For convenience, this paper is referred to as "Crandall/Graham" throughout the remainder of this discussion. Crandall/Graham estimated that a 27.5 mpg standard for the 1989 model year would result in 2,200 to 3,900 additional occupant fatalities and 11,000 to 19,500 additional serious injuries to occupants, as compared to expected fatalities and serious injuries absent any CAFE standard.

CEI concluded its argument with the following statement of its position:

Neither Congress nor this agency has made any express determination that energy conservation under CAFE should require the loss of human life. It is CEI's position that, absent such a determination, a CAFE standard which *does* result in the loss of life is impracticable and is beyond the "need of the Nation to conserve energy" under [15 U.S.C.] subsection 2002(e). In short, such a standard has no statutory authorization. (Emphasis in original).

Other commenters and participants at the public meeting also addressed the question of whether there would be safety impacts associated with the 1989 model year CAFE standards. Most of the other commenters that addressed the safety issue associated themselves with the Crandall/Graham theory. These commenters included Consumer Alert, the Heritage Foundation, and the Council of Economic Advisors.

Making a similar point, but based on different information, was the Insurance Institute for Highway Safety (IIHS). IIHS claimed that car size (defined as wheelbase length), as opposed to weight, is an important factor in the protection afforded to vehicle occupants, because large cars, due to their larger crush space, offer greater occupant protection than small cars. IIHS asked the agency to carefully evaluate the effects of the CAFE standard for the 1989 model year, to ensure that the CAFE standard will not degrade the level of occupant protection offered in 1989 cars by forcing manufacturers to decrease the size of those cars. The IIHS testimony at the public hearing stated:

... there is a point beyond which weight cannot be reduced without making vehicles smaller and thereby compromising safety. Furthermore, it seems probable that much of the potential weight reduction possible from the use of lighter weight materials has already been accomplished. Therefore, NHTSA must carefully evaluate the regulatory effects of the fuel economy standards to ensure that they do not degrade safety by forcing decreases in car size. At

this time, it seems certain that any toughening of the CAFE requirements would lead to smaller and therefore less safe cars.

Conversely, IIHS suggested that safety could be affected negatively by a lower CAFE standard for 1989, if a lower standard results in larger numbers of larger displacement, high performance engines. IIHS suggested that larger engines would lead to greater performance, and that increases in performance increase the chances of a car being in a crash and the chances of the occupants being killed or injured. The National Safety Council filed comments making points similar to those raised by IIHS.

The Center for Auto Safety (CFAS), on the other hand, stated at the public meeting that there is no evidence that CAFE standards have a negative impact on the safety of vehicle occupants. CFAS stated that, in 1975, when the average fuel economy of the new car fleet was about 14 mpg, there were 3.6 fatalities per 100 million vehicle miles traveled. In 1988, when the average fuel economy of the new car fleet was about 28.4 mpg, fatalities per 100 million vehicle miles traveled had decreased to 2.4. According to CFAS, these statistics suggest that manufacturers can improve both safety and fuel economy at the same time.

CEI's comments on the NPRM for the 1989 model year CAFE standard made two additional points about the safety implications of CAFE standards. First, CEI alleged that smaller cars are less compatible with roadside objects, such as guardrails and break-away light poles, that were designed for a heavier vehicle population. CEI suggested that this poses additional hazards to occupants of smaller cars. Second, CEI stated that it knew of no evidence to suggest that cars with higher performance, because of larger engines, negatively affect the safety of occupants. Moreover, CEI argued that even if high performance cars present a real safety hazard in their own right, such cars would have little impact on overall safety because of their small market share.

In its comments on the NPRM, CFAS stated that it disagreed with CEI's basic thesis that CAFE standards have a negative impact on safety by forcing manufacturer to sell less safe, smaller cars. According to CFAS, fuel-efficient large cars can be and have been built, while small cars with very effective occupant protection can be and have been built. Further, CFAS suggested that any reduction of the CAFE standard for the 1989 model year would result only in higher performance and bigger engines in existing car designs, which would

negatively affect occupant safety, instead of resulting in larger vehicles.

NHTSA notes that it has previously considered and rejected a similar contention by CEI with respect to the safety consequences of the CAFE standards for the 1987-1988 model year CAFE standards. See 51 FR 35612-35613. While the new CEI arguments are very similar to the arguments they made in the previous proceeding, CEI now relies on the Crandall/Graham analysis discussed above.

The Crandall/Graham study relies on the assumption that the CAFE program has forced the downsizing of the fleet and is responsible for the fact that the current fleet of new cars is lighter than it would have been in the absence of CAFE. The agency agrees that cars in the new car fleet are, on average, about 1000 pounds lighter now than they were in 1975. But, as the agency has noted several times in the past, this downsizing occurred primarily as a result of consumer demand for more fuel efficient models, rather than a result of the CAFE standards. See, e.g., the preamble to the final rule for MY 1987-1988, 51 FR 35613. And, most downsizing occurred in the 1970's, when manufacturers were easily exceeding the applicable CAFE standards. The agency also observes that the weight of the new car fleet has not changed appreciably since the early 1980's, although the average fuel economy of the fleet has improved each year. Thus, the agency does not agree that the CAFE program is the primary reason for the fact that the average new car is lighter than it was a decade ago.

On the other hand, NHTSA has noted in the past the possibility that higher CAFE standards could have an adverse effect on safety. For example, the preamble to the final rule for MY 1987-1988, the agency stated,

Moreover, it is possible CAFE standards above 27.5 mpg could have a significant effect on safety, even in the longer run, to the extent that they might "force" consumers into significantly smaller and lighter cars. Thus, were NHTSA to consider setting standards above 27.5 mpg in the future, it agrees that the issue of safety would warrant further attention.

51 FR 35613 (October 6, 1986).

Thus, while we do not agree with Crandall/Graham about the historic influence of the CAFE program on downsizing, we do agree with the assertion that in crashes involving vehicles of different sizes, with everything else being equal, the occupants of the smaller vehicle are at greater risk of serious injury than the occupant of the larger vehicle in multi-

vehicle crashes. The agency also agrees that significant amounts of further downsizing could raise safety implications that should be considered if the agency were to consider higher CAFE standards in the future.

With regard to this proceeding, however, NHTSA concludes, for the reasons discussed below, that there is no evidence demonstrating adverse safety consequences that would be associated with a CAFE standard for the 1989 model year in the range of 26.5 mpg to 27.5 mpg.

First, it is clear that there is not a direct, linear relationship between a manufacturer's CAFE and the average weight of his fleet. For example, in Model Year 1988, the average weight of the GM fleet was 3329 pounds, at a CAFE of 27.6 mpg, while the Ford fleet weighed an average of 3,248 pounds, with a CAFE of 26.5 mpg. This example illustrates the point that not all CAFE gains come at a price of reducing weight. Further, the new car fleet as a whole can illustrate the same point. The overall new car fleet (all domestics and imports combined) had an average fuel economy of 28.2 mpg in MY 1987; yet, the average weight of a new car in MY 1987 was 3100 pounds, a two pound increase in weight over the average weight of a 1982 new car, when the overall fleet average fuel economy was 26.6 mpg. Thus, it is clear that there are methods of improving fuel economy that do not depend on downsizing or weight reduction.

Second, based on the record of this proceeding, NHTSA concludes that the large manufacturers are unlikely to take any actions to add weight to the models already planned for sale during MY 1989. While the agency does anticipate mix shifts as a result of this proceeding, these shifts should occur as a result of the larger manufacturers capturing sales of comparably sized vehicles that would otherwise have been made by other manufacturers. Also, the standard set at 26.5 mpg should permit manufacturers to retain passenger car customers that might otherwise have purchased a light truck or van. This conclusion is consistent with the agency's overall conclusion that this decision will have a negligible effect on energy consumption, because consumers will be shifting their purchases from one car manufacturer to another or from the light truck (minivan) fleet back to the passenger car fleet. So, if the market shifts result in a heavier fleet for the company that gains the sales in the larger/luxury car segment, those shifts would also result in a lighter fleet for the company that loses the sales. The overall net effect on the

average vehicle weight for the new car fleet for MY 1989 should be negligible.

This conclusion is supported in the record by the testimony of the large car manufacturers, both of which testified at the hearing that they would not make design changes (such as adding or deleting weight) to their MY 1989 models as a result of this rulemaking. The manufacturers also strongly agree with the agency's conclusions about mix shifting, because they have experienced such shifts. They believe that consumers who intend to purchase a larger vehicle will do so; they will not be "forced" into a smaller vehicle than wanted. If GM and Ford cannot produce such a vehicle, due to CAFE, then the consumer will buy a large car from another manufacturer, or will buy a minivan, or will keep his older, large car. One of those outcomes is more likely than the possibility that the consumer will buy a smaller car than he wanted to buy.

While the agency generally agrees with the principle that, in multi-vehicle crashes, heavier cars are safer than lighter cars, other things being equal, we also believe that any implications of that principle for the CAFE program are appropriately considered in the longer term, not the short, one-year time frame of this rulemaking proceeding. This agency would closely examine the safety consequences of any regulatory proposal to raise the CAFE standard if the effect of a standard set too high were to force drastic mix shifts for the fleet as a whole toward very small cars. If the agency concluded that such a shift would be adverse to safety, it would not set the standard at that level.

In response to the CEI comment that neither this agency nor Congress have considered the potential safety consequences of the CAFE standards, the agency notes that it has considered the safety impacts of CAFE standards in its rulemaking actions since the beginning of the CAFE program. The agency's first final rule on CAFE established passenger car standards for the 1981-1984 model years included a discussion of the safety impact of the standards. See 42 FR 33534, at 33551, June 30, 1977. The relationship between safety and fuel economy standards was also discussed in the final rule amending the passenger car fuel economy standards for the 1986 model year (50 FR 40547-40548, October 4, 1985), and in the final rule amending the 1987-88 passenger car fuel economy standards (51 FR 35612-35613, October 6, 1986). Hence, the agency does not agree with the contention that it has not considered the safety issue in issuing CAFE standards. As to Congressional

consideration of the safety consequences of CAFE, the agency points to the 1974 report to Congress from the Department of Transportation and the Environmental Protection Agency entitled "Potential for Motor Vehicle Fuel Economy Improvements: Report to the Congress", October 24, 1974. This report, which was considered by Congress during the decision to enact the CAFE program, contained a discussion of the possible trade-offs in the areas of improved fuel economy, lower emissions, and increased occupant safety. The report summary noted that a sustained or increased shift to small cars, without a concurrent upgrading of their occupant protection capability, would likely lead to an increase in the rate of highway deaths and serious injuries. Thus, the agency cannot agree that Congress was unaware of the potential safety consequences of a downsized fleet of cars.

In response to the CFAS comment that there are a number of improved safety technologies that could offer better crash protection to occupants of some small cars than is afforded in some larger cars currently on the road, the agency does not disagree. However, if those same technologies were installed on the larger cars, as well, then the occupants of the larger car would be safer than the occupants of the equally equipped smaller car in a multi-vehicle crash.

In sum, the agency agrees with the commenters that NHTSA should consider whether there would be adverse effects on safety of a CAFE standard that forced manufacturers to do substantial additional downsizing of the passenger car fleet. Consistent with its past regulatory practices, the agency would carefully evaluate whether there were any such adverse effects in future CAFE rulemakings, and would not tolerate any CAFE standard that presented significant threats to safety.

IX. The Effect of Other Federal Standards on Fuel Economy

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses: (a) Other government regulations, both in process and recently completed, that may have an impact on fuel economy capability; and (b) comments received on this issue. As to the latter, the agency notes that this general area generated relatively few comments as compared to other areas addressed by the NPRM. Mercedes commented generally that the

CAFE law can have a significant adverse effect on innovation in vehicle design, including safety aspects. While this commenter said airbags and antilock braking systems "add to vehicle weight and handicap achievement of the required CAFE," Mercedes did not provide specific information in its discussion that would enable the agency to ascertain exactly what those negative effects would be. Ford and GM commented briefly on certain issues in this area.

IX-A. NHTSA Standards

As discussed in the both the FRIA and NPRM, several relatively recent changes in Federal safety and damageability requirements could have an effect on CAFE. These include an amendment to the agency's lighting standard, which permits greater aerodynamic efficiency and implementation of automatic restraint requirements.

1. Lighting

With respect to the amendments to Federal Motor Vehicle Safety Standard 108, *Lamps, Reflective Devices, and Associated Equipment*, to permit the use of replaceable light source headlamps, smaller sealed beam headlamps, and lower headlamp mounting height, the FRIA concludes that the 2 to 3 percent improvement in aerodynamic drag associated with the new headlamp assemblies could produce a 0.4 to 0.9 percent improvement in fuel economy. For a 27.5 mpg fleet, this would equate to a 0.11 mpg to 0.25 mpg improvement in CAFE if all vehicles in that fleet employed the new lamp designs. Both Ford and GM are making extensive use of this new flexibility, and NHTSA estimates that there could be some slight gain (probably less than 0.1 mpg on a fleet average basis) in fuel economy from previous projections.

Related to this issue is the NPRM's reference to an assertion made by GM in its August 1988 docket submission that composite headlamps have been partially responsible for its "C" and "H" carlines moving into a higher EPA test weight category, producing a negative CAFE effect. NHTSA notes that in its September 14, 1988 testimony and in its September 15, 1988 docket submission, GM stated that the aerodynamic improvements made possible by the use of composite headlamps would produce a CAFE benefit in most cases. GM's latter statements accord with the agency's belief (that was formulated based on data supplied in 1983 by Ford relating to the amendment of Standard No. 108) that the new headlamps would produce a CAFE benefit.

2. Automatic Occupant Crash Protection

A July 1984 amendment to Federal Motor Vehicle Safety Standard 208, *Occupant Crash Protection*, specified the phase-in of automatic protection requirements beginning in model year 1987, with 40 percent phased in by MY 1989 and 100 percent implementation by MY 1990. The agency has developed its own estimate of the average incremental weight of automatic restraint systems. As noted in the FRIA, the agency's current best estimates of typical system incremental primary weights over manual belts are as follows: Front seat airbag, approximately 21 pounds; non-motorized automatic belts, approximately 11 pounds; and motorized automatic belts, approximately 15 pounds. Neither GM or Ford claimed during the Standard No. 208 rulemaking a specific weight penalty associated with these 208 requirements. Both stated, however, that there would be weight increases, and depending on the success or failure of weight-reducing efforts, as well as some weight-increasing pressures (options packages), that it is not unlikely that certain vehicles equipped with automatic restraints could result in the vehicle being placed in the next higher EPA test weight class. This would have a negative effect on EPA fuel economy rating for these vehicles and thus on the manufacturer's CAFE levels as well.

In its comment on the present rulemaking, Ford said that passive restraints on its 1987 Escort and 1988 Tempo/Topaz added significant weight (approximately 26-27 pounds). However, Ford did not provide any basis for this estimation that could help explain the marked difference between the agency's estimate of the average weight of a motorized automatic belt system and Ford's estimated weight of its system. Accordingly, since the agency's 15 pound figure is an average based on teardown studies of various motorized belt systems, NHTSA believes it is the best estimate of a typical system and an appropriate measure to use when calculating the average effect of the passive restraint requirement on the weight of the 1989 MY fleet.

Ford did not provide the agency with specific information on the type and quantity of the passive restraints it will use to certify its vehicles to Standard No. 208 in MY 1989. However, since only 40 percent of the 1989 MY fleet need meet the automatic restraint requirements and because information available to the agency indicates that the principal means of compliance with those requirements will be through

automatic belts, the FRIA estimates the fleet average weight effect of Standard No. 208 for the 1989 MY fleet would be approximately 6 pounds (.4 x 15 pounds). That weight penalty is expected to have only a very minor impact on CAFE. For those vehicles equipped with air bags, the penalty will be somewhat higher.

3. Rear Seat Lap/Shoulder Belts

On June 16, 1987, the agency published an advance notice of proposed rulemaking (52 FR 22818) requesting comments on the possible requirement to install lap/shoulder belts in rear seating positions of passenger cars, multipurpose vehicles and small buses. In its Preliminary Regulatory Analysis for the ANPRM, the agency estimated that each single outboard seating position would incur a marginal weight increase of 0.6 pounds for attaching hardware and belt webbing. The marginal weight increase for each center seating position was estimated to be 2.4 pounds since a reinforcement plate and retractor and housing would also be required. However, for models that are near the limit of an EPA test weight class, even this relatively small change could move some vehicles into a higher weight class, decreasing its measured fuel economy. The agency notes that GM expects all of its carlines to have such restraints installed in MY 1989.

4. Side Impact Protection

On January 27, 1988, the agency published a proposed rule (53 FR 2239) to upgrade its test procedures and performance requirements for side impact protection for passenger cars. The agency is focusing on two ways of improving the side impact performance of passenger cars: adding padding on the door and increased structure to reduce intrusion. Specific weight penalties are not known yet, and will depend on such factors as final performance requirements, chosen countermeasure, and baseline vehicle performance. The agency has not considered any negative effect of this proposed standard on CAFE performance, since any final rule on this subject would not apply to the MY 1989 under consideration in this rulemaking.

5. New Car Assessment Program

Title II of the Cost Savings Act requires NHTSA to develop and disseminate comparative information on the crashworthiness, damage susceptibility and ease of diagnosis and repair of motor vehicles. The agency's experimental New Car Assessment

Program (NCAP) addresses the crashworthiness aspect of Title II by providing comparative frontal crashworthiness safety performance information, in the form of dummy injury measurements, on selected vehicles which are crashed head-on into a fixed barrier at 35 mph. Due to the very nature of NCAP that encourages consumers to compare products, and because the vehicles tested in NCAP are subjected to a crash that is approximately 36 percent more severe than the 30 mph crash required by Standard No. 208, the agency believes that the program induces many manufacturers to make voluntary improvements in front end design and occupant compartment protection features. One such feature is the air bags, which has a weight penalty.

6. Voluntarily Installed Safety Features

The agency notes that manufacturers are also increasing the weight of their vehicles, at the cost of losing CAFE, by voluntarily installing safety features in their cars. The use of airbags in place of automatic safety belts and the production of rear seat shoulder belts and anti-lock brakes are items of safety equipment that improve occupant safety while adding weight to the vehicle. GM, for example, is the leader in installing rear seat shoulder belts (all of its MY 1989 cars will have them as standard equipment) and offering anti-lock brakes (offered on 8 carlines in MY 1988). In addition, other safety devices could be added to vehicles were it not for CAFE constraints. For example, GM told the agency it could not offer daytime running lamps on its cars because their CAFE would decline by almost 0.3 mpg as a result. The agency is concerned that overly stringent CAFE standards might discourage manufacturers from these and other voluntary safety actions.

IX-B. EPA standards

1. Noise Standards

The agency is not aware of any plans on the part of the Environmental Protection Agency to promulgate noise regulations during the time period under discussion. Accordingly, no fuel economy penalties from noise regulations have been forecast.

2. Emissions Standards

EPA has not announced any plans to modify its current exhaust emission control requirements for hydrocarbons, carbon monoxide and oxides of nitrogen. Therefore, the agency has not considered any further impacts on fuel economy from control of these pollutants. As discussed in the FRIA, the agency has analyzed previously the

effects of the current requirements on fuel economy.

Also discussed in the FRIA is EPA's tightening control of particulate matter that became effective in MY 1987. While this requirement applies to all vehicles, the only current production powerplant which will have difficulty meeting this requirement is the diesel engine. EPA has indicated that there is a 1 to 2 percent fuel economy penalty for diesel powered vehicles that require a particulate trap to comply with the standard; however, the agency believes that only a very small fraction of the diesel vehicles (those with larger displacement engines) will need traps for compliance. GM and Ford have both discontinued all domestically produced diesels. Thus, the more stringent particulate standard will not have an impact on the CAFE capability of these two manufacturers.

In July 1987, EPA issued a proposed rule on the on-board control of refueling emissions. The proposal would limit gasoline vapor emissions to 0.10 grams of vapor per gallon of dispensed fuel. The agency has not taken this future rulemaking into its estimates of CAFE levels for two reasons. First, it is still only a proposal. NHTSA and others have expressed safety concerns, which must be resolved before a final decision is made on whether to require such systems. Second, the final rule, if and when issued, would not take effect until at least two model years after that point, which is beyond the model years that are the subject of this rulemaking.

The California Air Resources Board (CARB) has adopted a new requirement that will require 50 percent of all MY 1989 light duty passenger cars and 90 percent of MY 1990 passenger cars to meet a 0.4 gm/mi NOx standard. GM has indicated that this requirement will result in a 4 to 5 percent negative impact on the fuel economy of approximately 300,000 of its vehicles. Ford has not claimed specific CAFE losses due to the California NOx requirements. Half of all vehicles certified to the Federal NOx standard are already below the California standard of 0.4 gm/mi level. While they may not be far enough below to ensure compliance, CARB believes that its standard can be met with little or no degradation in fuel economy using refined emission control technology calibrations and higher catalyst loadings. NHTSA has accepted GM's assertion of a CAFE reduction in this area for MY 1989, since more stringent emission standards generally have a more pronounced impact during the first few years following their implementation. The agency notes,

however, that data from CARB and EPA indicate that it is unlikely this penalty will last past a several year period during which manufacturers will be gaining experience certifying at the new CARB level.

3. Fuel Economy Test Procedure

The Environmental Protection Agency published a final rule on July 1, 1985, providing CAFE adjustments to compensate for the effects of past test procedure changes (See 50 FR 27172). The final rule adopted a formula approach for calculating CAFE adjustments. The manufacturer projections discussed above include the effect of the EPA test adjustment credit. Due to the formula approach, the specific value of the credit may vary for different model years and among manufacturers. A typical credit for the model years in questions would be 0.2-0.3 mpg.

X. Need of the Nation to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has changed significantly. Oil markets were deregulated in 1981, permitting consumers to make choices in response to market signals and allowing the market to adjust quickly to changing conditions. The U.S. Strategic Petroleum Reserve (SPR) was built to ensure a supply of oil during any major supply disruption. In July 1983, the SPR contained 551 million barrels of oil, stored principally in underground caverns, that could be pumped back to the surface if needed.

The United States imported 15 percent of its oil needs in 1955. The import share had reached 36.8 percent by 1975, and peaked at 46.4 percent in 1977, at a cost of \$71 billion (stated in 1986 dollars). While the import share of total petroleum supply declined after that year, the cost continued to rise to a 1980 peak level of \$99 billion (1986 dollars). By 1985, the import share had declined to 28.7 percent at a cost of \$52 billion (1986 dollars). In addition, imports from OPEC sources declined through 1985, from a high of 6.2 million barrels per day (MMB/D) and 70.3 percent of all imports in 1977 to 1.8 MMB/D barrels per day and 36.2 percent of imports in 1985.

Since 1985, the import share of petroleum supply has been increasing. Between 1985 and 1986, net imports rose from 28.7 percent of the U.S. petroleum supply to 34.6 percent. In 1987 that figure was 37.1 percent, and for the first six months of 1988, net imports accounted for 38.1 percent of total supply. Due to

sharply lower petroleum prices, however, the value of imports declined from 1985 to 1987, from \$52 billion to \$43 billion (1986 dollars).

Imports from OPEC sources have also increased. Between 1985 and 1986, imports from OPEC rose from 36.2 percent of all imports to 45.6 percent. In 1987 that figure was 45.8 percent, and for the first six months of 1988, imports from OPEC accounted for 47 percent of all imports.

In its comment to the docket, which neither supported nor opposed NHTSA's proposal, the Department of Energy (DOE) expressed concurrence with NHTSA's description of the current energy situation, but DOE emphasized several issues about transportation's role in U.S. oil use and the importance of rising fuel efficiency. DOE said that the 11 mmB/D used by the transportation sector in 1986 is almost 80% of total U.S. fuel use of oil and over 90% of the critical light product use. Thus, DOE wanted NHTSA to consider that any significant moderation in growing oil demand will require large transportation efficiency improvements. DOE also emphasized that the 1987 Energy Information Administration's (EIA) oil demand forecasts used in the NPRM assume that average new car efficiency will continue to improve, which DOE said does not seem likely given fuel economy trends (at least to the levels assumed by EIA), and that even with these projected increases in fuel efficiency U.S. oil demand is projected to increase over 1.5 MMB/D by 2000.

Several other commenters also expressed concerns about the need of the nation to conserve energy. The American Council for an Energy-Efficient Economy (ACEEE) opposed the agency's proposal based on the commenter's concerns that reducing the CAFE standard would lead to higher oil consumption and imports, with an attendant reduction in national security and increases in the trade deficit, air pollution levels and environmental change. The Americans for Energy Independence (AEI) opposed a reduction, stating that oil consumption levels in the U.S. thwarted energy independence and that conservation gains in transportation could be enough to offset oil production losses in the 1990's. The Natural Resources Defense Council (NRDC) said that NHTSA should increase and not decrease the 1989 MY CAFE standard due to an "overriding economic national security and environmental importance."

NHTSA concurs with the commenters that the current energy situation and emerging trends illustrate the continued importance of oil conservation. As

explained in the NPRM, oil continues to account for well over 40 percent of U.S. energy use, and 97 percent of the energy consumed in the transportation sector. While the U.S. is the second-largest oil producer, it contains only three percent of the world's proved oil reserves. Moreover, proved reserves have declined from a peak of 39.0 billion barrels in 1970 to 28.9 billion barrels in 1986. The NPRM also referenced 1987 Energy Information Administration (EIA) projections which found a decline in domestic production of oil and an increase in net imports. (See, 53 FR 33089 and NHTSA's final regulatory impact analysis which has been placed in the agency's docket section.) That discussion of the EIA projections was a subject of concern for DOE, which wanted to make clear NHTSA's understanding that the EIA forecasts assumed continued improvements in average new car efficiency. NHTSA acknowledges DOE's remark and notes that the comment reinforces NHTSA's belief that the level of oil imports, and the nation's need to conserve energy, remains an issue for the nation as a whole.

While the agency has concluded that there is a continuing need for the nation to conserve energy, NHTSA would like to emphasize the following five points in light of their importance for this rulemaking action. First, future projections about petroleum imports are subject to great uncertainty. For example, the EIA's 1977 Annual Report to Congress projected that net oil imports by the U.S. would, in the "reference case," reach 11 MMB/D by 1985. Net imports in 1986 actually were 5.4 MMB/D, less than half the level predicted in 1977.

Second, related to the above, the agency believes that the nation is in a stronger energy position than was the case in the mid-1970's. The nation's sources of oil imports are more diverse and less vulnerable to disruption, the nation's energy efficiency is much higher, and the absence of price controls permit the market to more easily respond to changes in supply and demand.

Third, NHTSA must balance the need to conserve energy with three other factors in determining the maximum feasible level for the 1989 MY fuel economy standard. However, as noted above, Congress has given the Department wide latitude in balancing these conflicting policies. Thus, the agency cannot deem this or any other factor to be the "overriding" one, as suggested implicitly by NRDC. As the court noted in affirming the agency's MY 1985 light truck CAFE standard.

[I]t would clearly be impermissible for NHTSA to rely on consumer demand to such an extent that it ignored the overarching goal of fuel conservation. At the other extreme, a standard with harsh economic consequences for the auto industry also would represent an unreasonable balancing of EPCA's policies. *Center for Auto Safety v. NHTSA*, 793 F.2d at 1340.

Fourth, while NHTSA agrees that the need to conserve energy is important, the agency believes that Congress' quantified goal of energy conservation through improved automotive fuel efficiency has been realized (even though much of that improvement appears to be the result of market forces, instead of the operation of the CAFE law). The FRIA finds that passenger automobile fuel consumption decreased from an estimated 5.13 MMB/D in 1973 to 4.64 MMB/D in 1986, a 10 percent reduction. The passenger automobile share of total highway fuel consumption decreased from 71.2 percent in 1973 to 56.8 percent in 1986. The passenger automobile portion of total transportation oil consumption decreased from 56.7 percent in 1973 to 49.0 percent in 1980 and 45.5 percent in 1986. The passenger automobile fleet's share of total oil consumption declined slightly from 29.6 percent in 1973 to 28.5 percent in 1986. (The fuel economy of the total new car fleet is now even higher than the goal set by Congress 28.7 mpg for MY 1989, compared to the 27.5 mpg target in the statute.) These decreases in actual fuel consumption and in the passenger automobile fleet's share of fuel consumption took place even as the number of passenger automobiles registered increased from 102 million in 1973 to 135 million in 1986, and total travel increased from 1.05 trillion miles to 1.30 trillion miles.

Fifth, to the extent there is still a "need" to stimulate further fuel efficiency and energy conservation, the CAFE mechanism is largely ineffective. As discussed previously, the likely effect of a higher standard in MY 1989 would be to shift sales and jobs away from domestic manufacturers and toward foreign manufacturers, with little or no improvements in actual fuel economy. As the Department of Energy noted in its comments: "the Department is completely unconvinced that the standards are useful in actually achieving energy savings in today's market."

XI. Amending the MY 1989 Standard

As discussed above, section 502(a)(4) gives the Department considerable discretion in setting a CAFE standard below 27.5 mpg. *Public Citizen v. NHTSA*, 848 F.2d 256 (D.C. Cir. 1988);

Center for Auto Safety v. NHTSA, 793 F.2d 1322 (D.C. Cir. 1986). In determining the maximum feasible average fuel economy level, and hence the level of the standard, section 502(e) requires the agency to consider four factors: Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

XI-A. Interpretation of "Feasible" and "Economic Practicability"

In the August NPRM, the agency noted that it has traditionally interpreted "feasible" to refer to "whether something is capable of being done, taking into account the four statutory criteria mentioned above." As discussed several times in this notice, the statute does not elevate any one of these criteria above the others, nor does it provide guidance to the agency in weighing any of these criteria more heavily than any others. Rather, the standard set is "the result of a balancing process specifically committed to the agency by Congress." *Center for Auto Safety v. NHTSA*, 793 F.2d 1322, 1341 (D.C. Cir. 1986). For example, the agency's determination of the "maximum feasible" standard cannot be that level which is merely that maximum technologically feasible without regard to the economic practicability of such a level.

In the final rule reducing the MY 1986 CAFE standard for cars, the agency stated the following about "economic practicability:"

NHTSA has always considered market demand in establishing CAFE standards as that factor is an implicit part of the consideration of economic practicability. In a free market economy, market demand is one of the primary determinants of what manufacturers will be able to sell. As the agency has noted before, consumers need not purchase what they do not want. A standard set without regard to market demand could be overly stringent and economically practicable. 50 FR 40546, October 4, 1985.

And the Circuit Court upheld this view against suggestions that the agency "improperly elevated consideration of market forces and consumer demand, and impermissibly subordinated the statute's 'technology-forcing' design." *Public Citizen v. NHTSA*, 848 F.2d 256, 259 (D.C. Cir. 1988).

Again this year we believe that understanding the significance of market trends in assessing "economic practicability" is crucial to this rulemaking and the current competitive posture of the U.S. auto industry. This concern is underscored by Congress' recent enactment of the Omnibus Trade

and Competitiveness Act discussed above. The major domestic manufacturers are confronting serious competitive forces. Among the most striking aspects of these forces are the decreases in the mid-size and large car size classes, the two classes in which the domestic manufacturers have been strongest and increases in the compact class, largely as a result of increased sales of compact cars manufactured by Asian manufacturers abroad or in this country. The shrinking large car sales jeopardizes one of the domestic manufacturers' principal sources of income and earnings, as well as jobs in that segment. These funds will be needed to help finance the actions necessary to attempt to bolster sales of compact, mid-size and large cars, as well finance research into new technologies for safety, fuel economy, performance, and customer comfort and convenience. It is anticipated that the domestic manufacturers will have to supplement their efforts to accommodate consumer demand and to respond to competitive pressures from foreign manufacturers through new model offerings with increased performance and luxury options. Taking these steps will necessitate that the CAFE standard for MY 1989 provide latitude for the domestic manufacturers since the steps will adversely affect their CAFE (although not overall energy consumption as explained below).

XI-B. Industrywide Considerations

In the NPRM, the agency noted that setting the CAFE standards must be based on "industrywide considerations." As the courts have found, "[s]tandards have an industrywide effect and must take account of industry-wide concerns." *Center for Auto Safety v. NHTSA*, 793 F.2d 1322, 1339 (D.C. Cir. 1986).

The CAFE statute requires that, for each model year, there be a single standard for all passenger automobile manufacturers not exempted under section 502(c). Section 502 does not state expressly whether the concept of feasibility is to be determined in setting passenger automobile standards on a manufacturer-by-manufacturer basis or on an industrywide basis. The agency has therefore long interpreted this section in a manner that is consistent with the legislative history of Title V. The conference report accompanying Title V states, with respect to determining the maximum feasible average fuel economy level:

Such determinations should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be

keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the [Administrator] must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under section 508(b) in situations where competition will suffer significantly if penalties are imposed. (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975))

In the NPRM, the agency explained the term "industrywide considerations," and the conference report discussion cited above, as follows:

This language expresses two themes: first, a Congressional goal of improved fuel economy for the nation and second, fuel economy standards which are set at the maximum feasible level. NHTSA has construed this language many times. For example, as the agency stated in the 1977 notice establishing the MYs 1981-84 standards for passenger automobiles, Congress did not intend that standards simply be set at the level of the single least capable manufacturer. Setting standards in that fashion would have vitiated the CAFE program. This point can be illustrated by considering the effects of setting a standard at 19.0 mpg, based on the capability of a single manufacturer with a market share of less than one percent. Such a standard would have no possible impact on the balance of the manufacturers which, together produce more than 99 percent of all cars and have higher average fuel economies.

Since this initial interpretation, the agency has expanded its position, noting that the statute contemplated that standards should not be set above the capability of manufacturers whose sales represent a substantial share of the market. (50 FR 29912, 29923) This would apply either to a single larger such manufacturer or to a combination of smaller manufacturers constituting together a substantial share of the market. In the final rule reducing the MYs 1987-88 standards, the agency concluded that the particular compliance difficulties of several of the European manufacturers, whose combined market share is relatively small, was not legally sufficient to justify a standard set far below the capabilities of the other manufacturers. (51 FR 35617)

The agency does not believe that Congress intended the CAFE standards to be governed by the abilities of a single, narrow segment of the industry, such as the projected 0.8 percent market share of Mercedes in MY 1988, or even the 6.7 percent combined market share of European manufacturers in that model year. (It also should be noted that the 6.7 percent reflects all European manufacturers;

3.2 of those 6.7 percentage points represent European manufacturers that already achieve or exceed 27.5 mpg, i.e., Volkswagen/Audi and Yugo.) 53 FR 33085.

Mercedes-Benz and AIA took exception to the agency's position regarding "industrywide considerations" and the setting of CAFE standards. Mercedes-Benz stated that although limited line manufacturers like itself have taken all feasible measure to improve fuel economy, consumer demand prevents such manufacturers not only from meeting the existing standard of 27.5 mpg for MY 1989, but also the lowest proposed standard of 26.5 mpg. Mercedes argued that the CAFE standards were irrelevant and discourage safety innovation and that therefore the balancing of competing considerations dictated that the agency should set a standard attainable by limited line manufacturers. Mercedes stated in its petition that such a standard would be approximately 22 mpg. Mercedes argued there that NHTSA had the authority to promulgate a standard of 22 mpg, citing *Immigration and Nationalization Service v. Chadha*, 462 U.S. 919 (1983) and *Gulf Oil Corp. v. Dyke*, 734 F.2d 797, 802 (T.E.C.A. 1984), cert. den., *Dyke v. Gulf Oil Corp.* 469 U.S. 852 (1984). The latter case, involving provisions of EPCA relating to decontrol of crude oil, residual fuel oil, or any refined petroleum product, held the legislative veto provision in section 551 of EPCA to be severable from the rest of the statute. Mercedes argued alternatively, focusing on the language in section 502 of EPCA regarding the legislative veto, that Congress would have preferred a statute providing for improved motor vehicle energy efficiency and permitting reduction of the 27.5 mpg goal as necessary to no statute at all.

Mercedes argued that NHTSA's current approach to taking industrywide considerations into account focuses only on the two large, multi-line manufacturers, Ford and General Motors. This approach, according to Mercedes, confers a competitive advantage for those large manufacturers, and results in standards whose effect is not to produce additional energy savings, but only to impose penalties on limited line manufacturers.

AIA, which represents most of the limited line manufacturers which are the focus of Mercedes' comments, also argued against the agency's approach to "industrywide considerations." AIA said that approach "conflicts with both the technological feasibility and the economic practicability factors because it gives insufficient weight to consumer

demand." If the standard were set based on proper consideration of the limited line manufacturers, AIA said that the standard would be less than 26 mpg. However, AIA believes that NHTSA is barred from setting a standard below 26 mpg because, in its view, the agency's authority to do so is inseparable from the legislative veto to which the exercise of that authority was subject before *Chadha*.

The agency believes that its approach to industrywide considerations is fully consistent with EPCA. Although the conference report on EPCA clearly states a congressional interest that NHTSA be particularly mindful of the effects of implementing the CAFE program on the domestic manufacturers (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975)), the agency's analysis is not limited to those manufacturers. NHTSA's approach involves consideration of the capabilities of 100 percent of the manufacturers and the energy savings and compliance difficulties associated with different levels of standards. The approach results in the selection of a standard achievable by virtually all U.S. and Asian manufacturers and some European manufacturers that together represent over 95 percent of all cars sold in this country. Only certain European manufacturers, which concentrate on the production of larger, generally high performance, luxury cars and represent approximately 3.5 percent of all cars sold in this country, have not been projected to be capable of meeting the standards in recent years.

NHTSA believes that setting the standards at the level achievable by the least capable of the manufacturers (or group of manufacturers) with a substantial share of the market instead of the level of the limited line manufacturers of larger, luxury cars is most consistent with the energy saving goals of EPCA. While the agency believes that the bulk of the fuel economy improvements over the last decade were due to market forces (rising fuel prices, changing consumer demand, and greater foreign competition), the goal of the statute was to provide an additional incentive for the manufacturers to achieve and maintain levels of CAFE reflecting their maximum capabilities. Even if the contribution of CAFE standards to energy conservation appear to have been slight, EPCA reflects a congressional judgment about the value of standards making such contributions. This agency is bound by that judgment. Setting the standards at the level requested by Mercedes would vitiate the fuel economy program and

require NHTSA to disregard Congress' judgment regarding the CAFE standards.

XI-C. Determining the Level of the MY 1989 Standard

Taking account of the four factors of section 502(e), NHTSA determines that the maximum feasible average fuel economy level for MY 1989 is 26.5 mpg. This level balances the small potential petroleum savings, discussed elsewhere in this notice, associated with higher standards against the substantial difficulties of individual manufacturers, especially domestic manufacturers, facing potentially higher standards and the impacts of such standards on the automotive industry and the economy as a whole.

In making this determination, the agency has followed its consistent approach of analyzing the ability of manufacturers to meet the standard. It has not included as part of its calculation of the standard the ability to pay penalties for not meeting the standard, or the availability of, or need for, credits.

NHTSA recognizes, however, that the record of this rulemaking indicates that the availability of credits is relevant to how at least one manufacturer, Ford, is likely to respond to an amended MY 1989 standard. As indicated earlier, there is a distinction between *meeting* a standard for a given model year, i.e., achieving the level of the standard for that model year, and *complying* with the standard. Ford stated at the September 14 public hearing that it would not do anything different if the standard remained at 27.5 mpg than if it were reduced, since it has a compliance plan using credits. The credits in question are carryforward credits that have already been earned, during MY 1986-88. The MY 1986 credits will expire if they are not used during MY 1989.

The issue of whether GM would have any carryforward credits available for MY 1989 was dependent throughout much of this proceeding on the outcome of a case before the U.S. Court of Appeals for the D.C. Circuit, *Center for Auto Safety v. Thomas*, which was decided on September 16, 1988. Now that the *en banc* court has vacated its opinion and judgment of May 17, 1988, denying the original petition for review and leaving EPA's decision in effect, GM will have some carryforward credits earned in MY 1988 that could be applied against a MY 1989, MY 1990, and/or MY 1991 shortfall. Thus, GM, like Ford, could comply with a 27.5 mpg standard for MY 1989 by use of carryforward credits that have already been earned, even if it achieves a MY 1989 CAFE

level somewhat under 27.5 mpg. The agency assumes that GM would prefer to retain its MY 1988 credits as insurance against possible shortfalls in MY 1990-91, rather than to use them in MY 1989. NHTSA also notes that there could be further appeal of *Center for Auto Safety v. Thomas*, and that litigation is pending that challenges NHTSA's reduction of the MY 1987-88 passenger car CAFE standards, which raises at least some possibility that those MY 1988 credits may not be available.

As discussed above, NHTSA has concluded that the 26.5 mpg level represents the MY 1989 CAFE capabilities of both GM and Ford in their domestic fleets. Since GM produces about 36 percent and Ford about 21 percent of all cars sold in the U.S., and since the manufacturers responsible for most of the balance of the cars sold in the U.S. achieve higher CAFE's, the agency believes that CAFE standards set at the level of the least capable of the two major domestic manufacturers ensures that the standards can be met by manufacturers representing a very high percentage of the total car production for the U.S. In light of the language of the Conference Report, cited above, the agency believes that standards set in this fashion represent an appropriate balancing of "the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers," particularly in light of the competitive threats faced by GM. NHTSA also believes that given GM's and Ford's large market shares, a CAFE standard set at a level above either of their capabilities would be inconsistent with taking industrywide considerations into account.

A higher CAFE standard would substantially complicate the efforts of GM to respond to the competitive pressures confronting it. Such a standard would limit its efforts through product and marketing actions to regain lost market shares since those actions would entail increased sales of cars and options likely to reduce its CAFE. In addition, a standard set at the level of GM's projection, 27.2 mpg, would not adequately take into account some uncertainties associated with the GM projection that could, if they materialized, cause a reduction in GM's actual CAFE for MY 1989. These include EPA test result variability.

The agency has concluded that GM and Ford, as well as the manufacturers of most other cars sold in this country, can meet the 26.5 mpg standard for MY 1989 without engaging in harmful

production restrictions and without any significant restrictions on consumer choice. Thus, no job or sales losses should result from GM and Ford, as well as the manufacturers of most foreign vehicle sold in this country, meeting the standard; indeed, that standard should help preserve the ability of the two domestic companies to recapture sales and jobs from competitors. Further, there should be no adverse economic impacts on automobile dealers, suppliers or automotive employees resulting from this standard.

NHTSA recognizes that the 26.5 mpg standard for MY 1989 is above the capabilities of approximately eight European manufacturers. For some of those manufacturers, the standard is several mpg above their capabilities.

Some of the European companies may thus be limited to two options: (1) Paying the statutory penalties associated with failure to comply with fuel economy standards, or (2) drastic product actions which, in the case of some, could require radical changes in the mix of cars they import. While the agency appreciates these difficulties, the agency does not believe there is any alternative available under the statute. NHTSA concludes that amending the MY 1989 standard to levels below 26.5 mpg would be inconsistent with a determination of maximum feasibility that takes industrywide considerations into account, as required by statute. Both the individual market share of each of these European manufacturers and the combined market share of all eight of those manufacturers is very small, i.e., less than four percent.

While NHTSA believes that energy conservation is important, it does not believe that the slight potential petroleum savings associated with a higher standard would justify setting the standard at a higher level, particularly given the competitive pressures facing the domestic auto industry. In analyzing the potential energy savings associated with standards within a range of 26.5 mpg to 27.5 mpg, the agency believes that it is appropriate to focus on GM and Ford. Since the Asian manufacturers, as well as several of the European manufacturers have CAFE levels well above 27.5 mpg, reflecting their concentration in the smaller size classes, a reduction in the MY 1989 standard does not create an incentive for those companies to change their product plans. Similarly, given Chrysler's current CAFE projections, the agency does not have any reason to assume that company would change its product plans as a result of a reduced standard. Finally, the agency does not

have any reason to assume that the European manufacturers below the standard would change their produce plans as a result of the reduced standard. They have not indicated any plans to attempt to achieve higher CAFE levels in order to meet even the reduced standard.

It is doubtful whether there would be any quantifiable energy savings resulting from maintaining the 27.5 mpg standard, although a maximum bound can be calculated. NHTSA notes that this conclusion is consistent with the Department of Energy's comment that it is completely unconvinced that the standards are useful in actually achieving energy savings in today's market.

NHTSA expects that GM will respond to the 26.5 mpg standard by attempting to increase its market share by selling larger or higher-performance cars that would otherwise have been sold by other manufacturers. While this course of action would reduce the CAFE of GM's domestic fleet, it would not increase overall energy consumption. Conversely, if GM were faced with a standard higher than 26.5 mpg, it would sell fewer larger cars and engines. However, in place of the vehicle sales foregone by GM, there would be sales of foreign, typically high-performance, compact and mid-size cars whose CAFE in many instances would not differ significantly from that of the GM cars that would have been sold in their place. To the extent that GM responded to a standard higher than 26.5 mpg by restricting availability of its larger cars and engines, some consumers might keep their older, less fuel-efficient cars in service longer. Alternatively, they might choose to purchase large pickup trucks and vans to obtain the room, power and loadcarrying capacity they desire. Obviously, neither of these possibilities would improve energy conservation.

NHTSA expects that Ford, consistent with its statement at the September 14 public hearing, will not change its product plan as a result of the 26.5 mpg standard.

Notwithstanding the improbability of any significant impact on conservation, the agency has calculated the maximum hypothetical difference in gasoline consumption between GM and Ford achieving 26.5 mpg in MY 1989 and their achieving 27.5 mpg. The amount would be 0.9 billion gallons over the 20-year life of the MY 1989 fleet. The maximum increase in any individual year would be about 122 million gallons, approximately 0.05 percent of current oil consumption levels. The agency does

not believe that hypothetical savings of this magnitude would justify the significant competitive harm to GM that could result from a standard higher than 26.5 mpg.

Conversely, it can also be argued that the higher 27.5 mpg CAFE standard might actually result in increased gasoline consumption. Dr. Crandell stated at the public hearing that the short run effect of tightening CAFE would clearly be to increase the consumption of fossil fuels, because it would result in consumers postponing the decision to replace older, less fuel-efficient cars with new, more fuel-efficient cars. NHTSA notes that there are two ways in which a higher CAFE standard could result in a possible increase in gasoline consumption: (1) If the higher standard caused manufacturers to restrict product offerings, which in turn encouraged consumers to keep older (less fuel efficient) cars, or to purchase pick-ups or vans (which are less fuel-efficient), or (2) if the higher standard impeded the ability of the U.S. manufacturers to compete vigorously in luxury/performance segments, and sales shifted to competing models of Asian manufacturers with lower fuel economy ratings. GM noted that larger domestic cars are often more fuel-efficient than smaller imported cars, citing, among other models, the large Buick Electra (3.8L/6 cylinder engine), with a fuel economy of 26 mpg, and the compact Acura Legend (2.7L/6 cylinder engine) and Toyota Cressida (2.8L/6 cylinder engine), which have fuel economies of 23 mpg and 24 mpg, respectively. While such effects may seem incongruous, it is important to remember that the CAFE law does not measure real fuel efficiency in the automotive sector, but instead uses an artificial bookkeeping system with numerous distortions (such as corporate averaging, the two-fleet rule, and separation of cars and light trucks).

The magnitude of this potential impact can be suggested with the following example: If, to meet a 27.5 mpg CAFE standard, GM curtailed production of its large (B-body) station wagons, which achieve 22.9 mpg, but these lost sales went to GM's own minivan, the Astrovan (which is a light truck for fuel economy calculation purposes), GM's passenger car CAFE would rise by about 0.1 mpg but total fuel consumption would actually increase. This would occur because the Astrovan achieves a fuel economy about 1 mpg lower than that of the B-wagon. This switch, from station wagons to minivans, would raise passenger car CAFE but actually result

in an additional 10 million gallons of gasoline being consumed over the life of those vehicles.

The agency does not believe that either "worst-case" scenario on the issue of energy conservation is likely. On the contrary, NHTSA believes the impact of the MY 1989 standard on actual gasoline consumption will be negligible. The agency notes that, for MY 1986-88, when the CAFE standard was set at 26 mpg, the actual CAFE of the total new car fleet still increased, from 27.9 mpg to 28.7 mpg. Moreover, the manufacturers have indicated their product plans for MY 1989 are fixed; and there are no signs of product restrictions. There may be shifts in sales among manufacturers (which may be influenced by CAFE), but the CAFE of the total MY 1989 fleet is unlikely to be affected by any NHTSA decision on CAFE in the 26.5 to 27.5 range.

To show how a given manufacturer's CAFE can increase while not positively affecting total fuel consumption, consider the following: if GM curtailed production of its Cadillac Brougham, its CAFE would increase by 0.06 mpg. If consumers desirous of this type of luxury car instead purchased a Lincoln Town Car (Ford has extensive credits which currently enable it to sell additional less fuel efficient cars), total fleet fuel consumption would actually increase by 26 million gallons over the lifetime of the affected fleets.

Just as it is doubtful whether there will be any quantifiable increase in energy consumption resulting from reducing the 27.5 mpg standard to 26.5 mpg, it is doubtful that this action will have any impact on the environment. A number of commenters expressed concern that a reduced standard would result in increased emissions of a number of pollutants, including hydrocarbons, carbon monoxide, nitrogen oxides, chlorofluorocarbons, and carbon dioxide. Commenters particularly focused on carbon dioxide, since it contributes to the "greenhouse effect." NHTSA addressed the potential environmental impacts associated with this rulemaking in an environmental assessment. In addition, the agency has prepared a supplement to the Environmental Assessment in order to address comments submitted by various organizations and individuals. The agency observes here that carbon dioxide emissions are produced in direct proportion to gasoline consumption. Therefore, the reasons discussed above concerning why a reduced standard is unlikely to result in any quantifiable increase in gasoline consumption also mean that a reduced standard is

unlikely to result in any quantifiable increase in carbon dioxide emissions.

The Center for Auto Safety (CFAS) argued that relaxation of the CAFE standard would permit the domestic auto companies to export small car production and U.S. jobs abroad. That commenter argued that the record is clear that CAFE relaxation costs U.S. jobs and CAFE strengthening saves U.S. jobs, since GM and Ford have increased their sales of captive imports during the last several years. CFAS argued that GM and Ford could have improved their CAFE and created more domestic jobs if they had produced these cars in the U.S. Also, Mr. Owen Bieber, president of the UAH, urged NHTSA to consider both the implications of not lowering the standards and of lowering the standards. Mr. Bieber stated that the lowering of the standards should not provide the companies with an incentive to outsource small cars.

The record does not support the belief that maintaining the 27.5 mpg standard for MY 1989 would increase American jobs. The economic reality is that small car jobs have been lost due to competition from foreign manufacturers which enjoy large cost advantages. Higher standards would not bring those jobs back. The domestic manufacturers import small cars in response to that competition. If GM and Ford did not import particular small cars, a greater number of small cars would be imported by other manufacturers.

GM stated at the September 14 public hearing that the fuel-efficient Chevette, a domestic small car that company once produced, was not redesigned because GM couldn't compete in that market. GM emphasized that its inability to compete in that market is the reason it is working on Saturn at this point in time, which will probably come out in 1990 as a 1991 model. GM emphasized that it has increased its import fleet from zero in 1984 to over 300,000 in 1988 to maintain a presence in that market until it can get Saturn on the street. GM's August 1988 submission included an article on Saturn which characterized the project as a "development program for a new family of import-fighting subcompact cars planned for production in the United States." The article indicated that GM is spending \$2 billion on the first phase of Saturn.

A higher MY 1989 standard would not bring Saturn along sooner. Moreover, given the importance of Saturn to GM, NHTSA agrees with that company that Saturn could not, and cannot, be "rushed." Given the current competitive market, it is essential that the car be "right" when it is introduced. NHTSA

also observes that while Saturn will not help GM's MY 1989 CAFE, the Saturn project is an added reason to find that GM has continued to make reasonable efforts to achieve the 27.5 mpg standard.

Just as the agency cannot justify at standard of 27.5 mpg for MY 1989, neither can it justify keeping the standard at the level of the MY 1988 standard, i.e., 26.0 mpg. NHTSA is mindful of the statutory command to set the MY 1989 standard at the maximum feasible level. Since its review of the market suggests that even a fully competitive U.S. auto industry would achieve a fuel economy higher than 26.0 mpg, a higher standard must be set. The agency is also commanded by the CAFE law to give due weight to all statutory factors, including the need of the nation to conserve energy. NHTSA is reminded by the Department of Energy in its comments to this proceeding that the nation's conservation needs are greater now than they were in 1985, when the agency first set the standard at 26.0 mpg. Balancing the agency's view about what level of standard is economically practicable for MY 1989 against the nation's conservation needs, NHTSA believes that a proper balance between these factors can be reached by increasing the standard to 26.5 mpg, a 0.5 mpg increase over the 1988 level. This increase also demonstrates the agency's recognition of the role of fossil fuel conservation in reducing carbon dioxide emissions, which are thought to be a major factor in the "greenhouse" effect. While NHTSA has concluded, and firmly believes, that a standard at 26.5 mpg will have no significant effect on the human environment, as compared with a standard of 27.5 mpg, the agency also sees the increase in the standard to 26.5 mpg as appropriately taking into account the need of the nation to conserve energy. Moreover, taking this step can be made without threatening the competitiveness of the U.S. auto industry. It is important to note at this point the results of the agency's analysis (described more fully in the accompanying regulatory impact analysis and environmental assessment) demonstrating that the maximum hypothetical increase in fuel consumption of a standard set at 26.5 mpg as compared with 27.5 mpg is substantially less than a fraction of one percent. Indeed, this figure probably overstates the actual results as noted in those supporting documents. Further, as noted elsewhere in this notice, the Department of Energy has expressed strong doubts about the effect of CAFE standards on energy savings under current market conditions.

XII. Impact Analysis

XII-A. Economic Impacts

The agency considered the economic implications of this action and determined that the amendment is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Final Regulatory Impact Analysis, copies of which are available from the Docket Section. The contents of that analysis are generally described above.

XII-B. Environmental Impacts

The agency has analyzed the potential environmental impacts of the amendment to the 1989 model year passenger automobile average fuel economy standard in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* The agency prepared an Environmental Assessment (EA). Comments were received from members of Congress, manufacturers, interest groups and individuals. The agency prepared a supplement to the Environmental Assessment in order to address the comments. Based on the agency's review of the comments and all available information, the agency has determined that this rulemaking action will not have a significant effect on the environment. As discussed above, the agency's analysis has included the possible effects of the potential increase in carbon dioxide (CO₂) build-up as the result of action lowering the standard (build-up is known as the "greenhouse" effect). Copies of the Environmental Assessment and supplement are available from the Docket Section.

XII-C. Impacts on Small Entities

Consistent with the provisions of the Regulatory Flexibility Act, the agency has considered the impacts this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No passenger car manufacturer would be classified as a "small business" under the Regulatory Flexibility Act. In the case of small businesses, small organizations, and small governmental units which purchase passenger cars, this amendment would not affect the availability of fuel efficient passenger cars or have a significant effect on the overall cost of purchasing and operating passenger cars.

XII-D. Impact on Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

XIII. Department of Energy Review

In accordance with section 502(i) of the Cost Savings Act, the agency submitted this proposal to the Department of Energy for review. There were no unaccommodated comments.

List of Subjects in 49 CFR Part 531

Energy conservation, Fuel economy, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 531 is amended as follows:

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

1. The authority citation for Part 531 continues to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. The table in § 531.5(a) is revised to read as follows:

§ 531.5 Fuel economy standards.

(a) * * *

Model year	Average fuel economy standard (miles per gallon)
1978.....	18.0
1979.....	19.0
1980.....	20.0
1981.....	22.0
1982.....	24.0
1983.....	26.0
1984.....	27.0
1985.....	27.5
1986.....	26.0
1987.....	26.0
1988.....	26.0
1989.....	26.5
1990 and thereafter.....	27.5

* * *

Issued: September 30, 1988.

Diane K. Steed,
Administrator.

[FR Doc. 88-22978 Filed 10-3-88; 9:30 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 601

[Docket No. 80225-8189]

Regional Fishery Management Councils

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule, § 601.37, to implement section 302(k) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Section 302(k) of the Magnuson Act requires the disclosure by Regional Fishery Management Council (Council) nominees, appointees, voting members, and Executive Directors of certain financial interests, and that these disclosures be made in accordance with such procedures, and at such times, as the Secretary of Commerce (Secretary) prescribes by regulation. The statute requires affected individuals to file disclosures within certain time frames; those in office at the time the regulations become effective must file, if they have not done so, within 45 days of the effective date. The purpose of the rule is to permit the filing of such required disclosures as soon as possible.

EFFECTIVE DATE: November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, telephone (202) 673-5263.

SUPPLEMENTARY INFORMATION: On June 10, 1988, NOAA issued a proposed rule (53 FR 21863), of which § 601.37 is a part, revising regulations and guidelines concerning the operation of the Councils under the Magnuson Act. The proposed rule (1) repromulgates the Secretary's uniform standards governing the operations of the Councils, (2) implements parts of Title I of Pub. L. 99-659 which amends the Magnuson Act, (3) clarifies instructions of the Secretary of Commerce on other statutory and regulatory requirements affecting the Councils, and (4) adjusts the fishery management planning and development procedures in line with recommendations of two fishery management studies commissioned by NOAA in 1985 and 1986. The comment period on the proposed rule, including § 601.37, ended on September 1, 1988.

NOAA is issuing § 601.37 of the proposed rule as a separate final rule at

this time because (1) immediate regulatory guidance to implement section 302(k) of the Magnuson Act is needed and would be delayed by analysis of, and response to, comments on the many complex issues contained in the whole proposal, and (2) only one comment was received on the financial disclosure issue.

Comment: The commenter stated his concern that the financial interests of a Council member developed before and after appointment should be dealt with separately to preserve the integrity of the Council process and ensure a balanced representation of industry interests. The commenter suggested that the regulations should preserve or maintain the *status quo* of a Council member's financial interests at the level or in the same orientation in which they existed at the time of his/her appointment.

Response: No change was made in response to this comment. As provided by section 302(k) of the Magnuson Act, the rule does not limit the financial interests one may hold, but merely requires that holdings be disclosed to the public. Furthermore, language in § 601.37(a) provides as follows: "Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The information required to be submitted will be kept on file, and made available for public inspection at reasonable hours at the Council offices." In addition to providing information to the public, the financial disclosure statement is intended to provide protection from criminal penalty for violation of the conflict-of-interest statute cited, so it is in a Council member's best interests to disclose any change whenever it occurs. NOAA believes that the procedure set forth in this rule implements the philosophy embodied in Pub. L. 99-659—that the integrity of the unique Council fishery management decision process is best protected by a system of full financial disclosure. Such protection is provided by statute in section 302(k) of the Magnuson Act.

Classification

This rule implements section 302(k) of the Magnuson Act, which requires disclosure of certain financial interests by Council nominees, appointees, voting members, and Executive Directors. This rule creates no burden for the general public.

This action is categorically excluded from the National Environmental Policy Act's requirement to prepare an

environmental assessment under NOAA Directive 02-10 (5)(c)(3)(i) because this is an action that will not have any potential for significant effect on the human environment.

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order (E.O.) 12291 because it will not result in an annual effect on the economy of \$100 million or more; will not result in a major increase in costs or prices for consumers, industries, government agencies, or geographic regions; and will not result in significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule, in fact, will have no effect on the economy. The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis was not required or prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0192.

This rule does not affect the coastal zone of any State with an approved coastal zone management program, so the requirements of the Coastal Zone Management Act are not implicated. Neither does this rule contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Dated: September 29, 1988.

William Matuszeski,
Executive Director, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 601 is amended as set forth below:

PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

1. The authority citation for Part 601 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Subpart D consisting of § 601.37 is added to read as follows:

Subpart D—Membership

Sec.

601.37 Financial Disclosure

Subpart D—Membership**§ 601.37 Financial disclosure.**

(a) The Magnuson Act requires the disclosure by Council nominees, appointees, voting members, and Executive Directors of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council or of any such financial interest of the reporting individual's spouse, minor

child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," or such other form as the Secretary, or designee, may prescribe. The report must be filed by nominees for Secretarial appointment before the date of appointment as prescribed by the Secretary. Other voting members and Executive Directors must file the report with the Executive Director of the appropriate Council prior

to taking office. Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The information required to be submitted will be kept on file, and made available for public inspection at reasonable hours at the Council offices. A copy of the form may be obtained from the appropriate Regional Office.

(b) The provisions of 18 U.S.C. 208 do not apply to an individual who has filed a financial report under this section regarding an interest that has been reported.

[FR Doc. 88-23083 Filed 10-5-88; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 53, No. 194

Thursday, October 6, 1988

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

Florida Tomatoes; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule regarding Florida tomatoes would authorize expenses and establish an assessment rate under Marketing Order 966 for the 1988-89 fiscal period. Authorization of this budget would allow the Florida Tomato Committee to incur expenses reasonable and necessary to administer the program. Funds for this program would be derived from assessments on handlers.

DATE: Comments must be received by October 17, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20009-6456. Comments should reference the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

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

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 966 (7 CFR Part 966), regulating the handling of tomatoes grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and

Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida tomatoes under this marketing order, and approximately 180 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable tomatoes handled from the beginning of such year. An annual budget of expenses is prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of tomatoes. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of tomatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of

assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The Florida Tomato Committee met on September 8, 1988, and unanimously recommended a 1988-89 budget of \$1,537,000. Last season's budget was \$763,500. The major expense allocation is for education and promotion, which at a total of \$1,140,500, this item accounts for about 75 percent of the budget. Also, increases are made in production research (up \$7,000 to \$115,000) and in administrative expenses (up \$16,500 to \$281,500).

The committee unanimously recommended an assessment rate of \$0.025 per 25-pound container, up one cent from last year. When applied to projected shipments of 54.3 million containers, this would generate assessment income of \$1,357,500. This amount when added to about \$12,500 in other income and \$167,000 from the reserve would be adequate to cover budgeted expenses. The beginning reserve of \$593,000 with above projections, would be reduced to \$425,500, well within the marketing order limit of one fiscal year's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the assessment rate approval for this program needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes (Florida).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 966 be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 966 continues to read as follows:

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

2. Section 966.226 is added to read as follows:

§ 966.226 Expenses and assessment rate.

Expenses of \$1,537,000 by the Florida Tomato Committee are authorized and an assessment rate of \$0.025 per 25-pound container of tomatoes is established for the fiscal period ending July 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: October 3, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-23022 Filed 10-5-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 984**Expenses and Assessment Rate for Walnuts Grown in California**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 984 for the 1988-89 marketing year established under the walnut marketing order. The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable walnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Walnut Marketing Board (Board), the agency responsible for local administration of the walnut marketing order, and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of walnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The assessment rate recommended by the Board is derived by dividing the anticipated expenses by expected shipments of walnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. Funds to

administer this program are derived from assessments on handlers.

DATE: Comments must be received by October 17, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the *Federal Register* and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524-S, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is issued under marketing agreement and Order No. 984 (7 CFR Part 984), both as amended, regulating the handling of walnuts grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 60 handlers of walnuts grown in California subject to regulation under the walnut marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of

walnut producers and handlers may be classified as small entities.

The walnut marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable walnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of walnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of walnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and rate of assessment is usually acted upon by the Board before October 1 of each marketing year, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Board will have funds to pay its expenses.

The Board met on September 9, 1988, and unanimously recommended 1988-89 marketing order expenditures of \$1,400,294 and an assessment rate of \$0.85 per hundredweight of walnut kernels. In comparison, 1987-88 marketing year actual expenditures were \$1,248,485 and the assessment rate was \$0.70 per hundredweight of walnut kernels. Assessment income for 1988-89 is estimated to total as much as \$1,620,303 based on an estimated crop of 190,623,890 kernelweight pounds of walnuts. Thus, estimated assessment income exceeds the recommended level of marketing order expenditures for the current year. Due to this year's crop conditions, the Board believes the actual yield of merchantable walnuts in the 1988-89 year is likely to be lower than the initial crop estimate of 190,623,890 kernelweight pounds. Thus, the assessment rate shall be established at a level adequate to meet the Board's anticipated expenses in the event that the total crop in the current year is less than the estimated figure. However, if the estimated yield is achieved, and

there is extra income from assessments above marketing order expenditures for the year, such funds may be carried over as a reserve. Previous years' reserve funds could also be used to meet any deficit in this year's assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for this program need to be expedited. The Board must have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 984

California, Marketing agreements and orders, Walnuts.

For the reasons set forth in the preamble, a new § 984.340 is proposed to be added as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 984 continues to read as follows:

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

2. Add a new § 984.340 to read as follows:

§ 984.340 Expenses and assessment rate.

Expenses of \$1,400,294 by the Walnut Marketing Board are authorized, and an assessment rate of \$0.0085 per kernelweight pound of merchantable walnuts is established for the marketing year ending July 31, 1989. Unexpended funds may be used temporarily during the first five months of the subsequent marketing year, but must be made available to the handlers from whom collected within that period.

Dated: October 3, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-23021 Filed 10-5-88; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 318, 319 and 381

[Docket No. 86-042P]

Use of Certain Binders in Meat and Poultry Products and Transfer of Binders in Text to the Tables of Approved Substances

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations and the poultry products inspection regulations to permit the use of wheat gluten, tapioca dextrin, whey protein concentrate, and sodium caseinate as binders in various meat and poultry products. This action responds to petitions submitted by several companies requesting that FSIS permit these substances in various meat and poultry products to improve the texture of the products. The Food and Drug Administration (FDA) has affirmed wheat gluten, tapioca dextrin, whey protein concentrate, and sodium caseinate as generally recognized as safe for use in food. FSIS has determined that the petitions should be granted. This action would enable the industry to use a wider variety of binders in meat and poultry products. This document would also transfer text references for specific binders from the individual product standards to the tables of approved substances. This action would eliminate unnecessary repetition and would consolidate certain information relating to approved binders, products in which they may be used, and use levels.

This document also would provide for the use of binders in the standardized product "Chili con Carne with Beans." Through an oversight, binders were not originally provided for in the above product standard. However, for many years, FSIS has permitted the addition of binders to this product; this action would reflect that practice.

DATE: Comments must be received on or before November 7, 1988.

ADDRESS: Written comments to Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171, 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: Ashland L. Clemons, Acting Director, Standards and Labeling Division,

Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447-4293.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It would not result in an annual effect on the economy of \$100 million or more. There would be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would provide for the use of several binders—wheat gluten, tapioca dextrin, and sodium caseinate—in meat food and poultry products. It also would provide for the use of whey protein concentrate as a binder in fabricated, restructured, and whole muscle meat products.

Industry would benefit from this action through the ability to use a wider variety of binders in various meat and poultry products. The use of binders in meat and poultry products would be voluntary.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This proposed rule would impose no new requirements on industry; rather, it would permit the meat and poultry industries to use a greater variety of binders. These substances function to bind pieces of food products (raw or cooked) together, resulting in better process control and more uniform products. Food products which contain binders can be more conveniently produced, packaged and marketed. Use of these binders in meat and poultry products would be voluntary.

Comments

Interested persons are invited to submit comments in response to this action. Written comments should be sent to the Policy Office. Please include the docket number that appears in the heading of this document. Any person desiring an opportunity for an oral

presentation of views, as provided for in the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), should make such request to Mr. Clemons so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. Comments submitted will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

FSIS has been petitioned to permit the following uses of added substances:

1. *Wheat Gluten*, submitted by the International Wheat Gluten Association, Washington, DC, requesting approval for use of wheat gluten in those meat food and poultry products, subject to a standard of identity, in which binders are permitted. Binders are permitted in breakfast sausage (9 CFR 319.143), frankfurters (9 CFR 319.180), cheeseburgers and similar products (9 CFR 319.181), bockwurst (9 CFR 319.281), braunschweiger and liver sausage (9 CFR 319.182), chili con carne (9 CFR 319.300), spaghetti with meatballs and sauce (9 CFR 319.306), pork or beef with barbecue sauce (9 CFR 319.312), and "various" poultry products (9 CFR 381.147(f)(4)). Binders are also permitted in certain meat food products such as imitation sausage, nonspecific loaves, soups and stews (9 CFR 318.7(c)(4)). Wheat gluten is permitted for use as a binder in poultry rolls at a level of 3 percent for cooked rolls and a level of 2 percent for raw rolls based on the total ingredients used (9 CFR 381.159). Wheat gluten is not permitted for use as a binder in meat food products. The petitioner has submitted extensive technical and scientific information to substantiate the claim concerning the technical effect of wheat gluten as a binder in meat food and poultry products.

2. *Sodium Caseinate*, submitted by DMV Campina, Inc., Stone Mountain, GA, requesting approval for use of sodium caseinate as a binder at a level of 2 percent in meat food and poultry products in which isolated soy protein and soy flour are allowed as binders. Isolated soy protein and soy flour are permitted for use as binders in breakfast sausage (9 CFR 319.143), frankfurters (9 CFR 319.180), cheeseburgers and similar products (9 CFR 319.181), bockwurst (9 CFR 319.281), braunschweiger and liver sausage (9 CFR 319.182), chili con carne (9 CFR 319.300), spaghetti with meatballs and sauce (9 CFR 319.306), pork or beef with barbecue sauce (9 CFR 319.312), and "various" poultry products (9 CFR 381.147(f)(4)). Sodium caseinate is permitted for use as a binder in

certain meat food products such as imitation sausage, nonspecific loaves, soups and stews in an amount sufficient for purpose (9 CFR 318.7(c)(4)). Sodium caseinate is also permitted for use as a binder in "various" poultry products in an amount sufficient for purpose (9 CFR 381.147(f)(4)). The petitioner has submitted extensive technical information to substantiate the technical effect of sodium caseinate as a binder in meat food and poultry products.

3. *Tapioca Dextrin*, submitted by the National Starch and Chemical Corporation, Bridgewater, NJ, requesting approval for use of tapioca dextrin as a binder in standardized and nonstandardized meat food and poultry products in which binders are permitted. Binders are permitted in breakfast sausage (9 CFR 319.143), frankfurters (9 CFR 319.180), cheeseburgers and similar products (9 CFR 319.181), bockwurst (9 CFR 319.281), braunschweiger and liver sausage (9 CFR 319.182), chili con carne (9 CFR 319.300), spaghetti with meatballs and sauce (9 CFR 319.306), pork or beef with barbecue sauce (9 CFR 319.312), and "various" poultry products (9 CFR 381.147(f)(4)). Binders are also permitted in certain meat food products such as imitation sausage, nonspecific loaves, soups and stews (9 CFR 318.7(c)(4)). The petitioner provided analytical data for several products, including turkey weiners, where tapioca dextrin was used at a level of 2 percent to replace the fat content and to improve the texture of the product.

4. *Whey Protein Concentrate*, submitted by New Zealand Milk Products, Inc., Petaluma, CA, requesting approval for use of whey protein concentrate as binder in restructured meat food products, such as ham patties, and in whole muscle meat cuts, such as roast beef and cured pork products at a level of 3.5 percent. When protein concentrate is permitted for use as a binder in: (1) Sausage (9 CFR Part 319) and bockwurst (9 CFR 319.281) at a level of 3.5 percent individually or collectively with other binders; (2) in imitation sausage, soups, stews and nonspecific loaves (9 CFR 318.7) at a level sufficient for purpose; and (3) in chili con carne and pork or beef with barbecue sauce at a level of 8 percent individually or collectively with other binders (9 CFR 318.7). The petitioner has provided technical data which indicates the effectiveness of whey protein concentrate as a binder in restructured meat products and whole cuts of meat.

The data on the technical effect of these substances as binders are available free of charge from the Standards and Labeling Division at the

address given under "For Further Information Contact."

FDA Food Substance Status

FDA lists wheat gluten as generally recognized as safe (GRAS) as a direct human food ingredient under certain conditions of use, including as a stabilizer and thickener, at levels not to exceed current good manufacturing practice (21 CFR 184.1322). FDA lists sodium caseinate as GRAS when used in accordance with good manufacturing practice (21 CFR 182.1748). FDA lists dextrin, prepared from several starchy plants including tapioca, as affirmed GRAS under certain conditions of use, including as a formulation aid (21 CFR 170.3(o)(14)), in food at levels not to exceed current good manufacturing practice (21 CFR 184.1277). FDA lists whey protein concentrate as affirmed GRAS for use as a direct human food ingredient when used in accordance with good manufacturing practice (21 CFR 184.1979c). References to FDA's restrictions or conditions of use are included under each substance in the tables of approved substances.

Transfer of Binders in Text to Tables of Approved Substances

The following changes only would transfer certain information from named product standards to the tables of approved substances. Currently, binders permitted for use in meat and poultry products are listed under various product standards in part 319 and Part 381 as well as in the tables of approved substances in the Federal meat inspection and poultry products inspection regulations. FSIS is proposing to transfer the specific-named binders from individual product standards to the "Binders" section in the tables of approved substances. This action would consolidate certain information relating to approved binders, their use levels, and meat food and poultry products in which they may be used; it would eliminate unnecessary repetition between the text of the regulations and the tables of approved substances. A sentence would be added to each affected product standard stating that binders and extenders may be added to the product as provided in the tables of approved substances.

Change in Product Standard—Chili con Carne with Beans

The standard of composition of "Chili con Carne with Beans" is provided in § 319.301 of the Federal meat inspection regulations (9 CFR 319.301). Although the standard does not specifically provide for the addition of binders, it

has been a long-standing practice of FSIS to permit the addition of binders to this product. The product Standard for "Chili con Carne" provided in § 319.300 of the Federal meat inspection regulations (9 CFR 319.300) permits the addition of binders and extenders at a level of 8 percent individually or collectively. When these product standards were originally promulgated, it was the Agency's intention to differentiate between the products only to the extent that one product standard allowed for "Beans" and the other did not. The product standards also differed in the minimum percentage of meat required to label the product as either "Chili con Carne" or "Chili con Carne with Beans." FSIS has determined that current practice should be reflected in the regulations. This proposed rule would amend § 318.7(c)(4) and § 319.301 of the Federal meat inspection regulations (9 CFR 318.7(c)(4) and 319.301) to permit the addition of binders and extenders to "Chili con Carne with Beans" at a level of 8 percent individually or collectively.

This proposed rule would amend the chart of substances at § 318.7(c)(4)

under the heading "Class of substance" by changing the current entry "Binders" to "Binders and extenders." This action would more accurately describe the technical effect of the majority of the substances listed under this category. That is, all of the listed substances function to bind product but many of these same substances also function to extend product.

This proposed rule would also correct a printing error in the chart of substances at § 318.7(c)(4) by changing the allowable amount of xanthan gum from "8 percent" to "Sufficient for purpose." This proposed rule would also correct printing errors in the same chart for the substance "Carrageenan" by changing the "Purpose" to "To extend and stabilize product"; and changing the products in which carrageenan can be used to "Breeding mix, sauces"; and by changing the amount that may be used to "Sufficient for purpose."

Therefore, for the reasons discussed in the preamble, FSIS is proposing to amend Parts 318 and 319 of the Federal meat inspection regulations and Part 381 of the poultry products inspection regulations as set forth below.

List of Subjects

9 CFR Part 318

Food additives, Meat inspection.

9 CFR Part 319

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 would continue to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*) 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. In § 318.7(c)(4), the chart would be amended by revising the heading and the entries under "Binders" as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Binders and extenders	Agar-agar	To stabilize and thicken	Thermally processed canned jellied meat food products.	0.25 percent of finished product.
	Algin	To extend and stabilize product.	Breeding mix; sauces	Sufficient for purpose.
	A mixture of sodium alginate, calcium carbonate and calcium lactate/lactic acid/glucono delta-lactone.	To bind meat pieces	Restructured meat food products.	Sodium alginate not to exceed 1.0 percent; calcium carbonate not to exceed 0.2 percent; and lactic acid/calcium lactate/glucono delta-lactone not to exceed 0.3 percent of product formulation. Added mixture may not exceed 1.5 percent of product at formulation. Ingredients of mixture must be added dry.
	Bread	To bind and extend product	Bockwurst	3.5 percent individually or collectively with other binders.
	Calcium lactate	do	Sausage as provided in Part 319.	Do
	Calcium reduced dried skim milk.	do	do	Do.
	do	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	do	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders.
	Carrageenan	To extend and stabilize product.	Breeding mix; sauces	Sufficient for purpose.
	Carboxymethyl cellulose (cellulose gum).	do	Baked pies	Do.
	Cereal	To bind and extend product	Sausages as provided in part 319, bockwurst.	3.5 percent individually or collectively with other binders.
	do	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	Dried milk	do	Sausage as provided in Part 319.	3.5 percent individually or collectively with other binders.
	do	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	Enzyme (rennet) treated calcium reduced dried skim milk and calcium lactate.	To bind and extend product	Sausages as provided for in Part 319.	3.5 percent total finished product. (Calcium lactate required at rate of 10 percent of binder).

Class of substance	Substance	Purpose	Products	Amount
	do	do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose. (Calcium lactate required at rate of 10 percent of binder).
	Enzyme (rennet) treated sodium caseinate and calcium lactate.	do	Imitation sausages, nonspecific loaves, soups, stews.	Sufficient for purpose. (Calcium lactate required at rate of 10 percent of binder).
	Gums, vegetable.	do	Egg roll.	Sufficient for purpose.
	Methyl cellulose.	To extend and to stabilize product (also carrier).	Meat and vegetable patties.	0.15 percent.
	Isolated soy protein.	To bind and extend product.	Sausage, as provided for in Part 319.	2 percent.
	do	do	Imitation sausage, nonspecific loaves, soups, stews.	Sufficient for purpose.
	do	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders.
	do	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders.
	Sodium caseinate.	do	Imitation sausage, nonspecific loaves, soups, stews.	Sufficient for purpose.
	do	do	Sausage as provided in Part 319.	2 percent.
	do	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders.
	do	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders.
	Dry or dried whey.	To bind or thicken.	Sausage as provided in Part 319, bockwurst.	3.5 percent individually or collectively with other binders and extenders.
	Reduced lactose whey.	do	do	Do.
	Reduced minerals whey.	do	do	Do.
	Whey protein concentrate.	do	do	Do. In accordance with 21 CFR 184.1979c.
	Dry or dried whey.	do	Imitation sausage, soups, stews, nonspecific loaves.	Sufficient for purpose.
	Reduced lactose whey.	do	do	Do.
	Reduced minerals whey.	do	do	Do.
	Whey protein concentrate.	do	do	Do. In accordance with 21 CFR 184.1979c.
	Dry or dried whey.	do	Chili con carne, chili con carne with beans, pork or beef with barbecue sauce.	8 percent individually or collectively with other binders and extenders.
	Reduced lactose whey.	do	do	Do.
	Reduced minerals whey.	do	do	Do.
	Whey protein concentrate.	do	do	Do. In accordance with 21 CFR 184.1979c.
	do	To bind meat pieces.	Restructured meat food products, whole muscle meat cuts.	3.5 percent individually or collectively with other binders and extenders.
	Soy flour.	To bind and extend product.	Sausage as provided in Part 319, bockwurst.	Do.
	Soy protein concentrate.	do	do	Do.
	Starchy vegetable flour.	do	do	Do.
	Vegetable starch.	do	do	Do.
	Wheat gluten.	do	do	Do. In accordance with 21 CFR 184.1322.
	Tapioca dextrin.	do	do	Do. In accordance with 21 CFR 184.1277.
	Soy flour.	do	Chili con carne, chili con carne with beans.	8 percent individually or collectively with other binders and extenders.
	Soy protein concentrate.	do	do	Do.
	Starchy vegetable flour.	do	do	Do.
	Vegetable starch.	do	do	Do.
	Wheat gluten.	do	do	Do. In accordance with 21 CFR 184.1322.
	Tapioca dextrin.	do	do	Do. In accordance with 21 CFR 184.1277.
	Soy flour.	do	Spaghetti with meatballs and sauce, spaghetti with meat and sauce and similar products.	12 percent individually or collectively with other binders and extenders.
	Soy protein concentrate.	do	do	Do.
	Wheat gluten.	do	do	Do. In accordance with 21 CFR 184.1322.
	Tapioca dextrin.	do	do	Do. In accordance with 21 CFR 184.1277.

Class of substance	Substance	Purpose	Products	Amount
	Xanthan gum.....	To maintain uniform viscosity; suspension of particulate matter, emulsion stability; freeze-thaw stability.	Meat sauces, gravies or sauces and meats, canned or frozen and/or refrigerated meat salads, canned or frozen meat stews, canned chili or chili with beans, pizza topping mixes and batter or breading mixes.	Sufficient for purpose

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for Part 319 would continue to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

4. Section 319.140 would be amended by revising it to read as follows:

§ 319.140 Sausage.

Except as otherwise provided in this section, or under the Poultry Products Inspection Act with respect to products consisting partly of poultry, sausage is the coarse or finely comminuted meat food product prepared from one or more kinds of meat or meat and meat byproducts, containing various amounts of water as provided for elsewhere in this part, and usually seasoned with conditioned proportions of condimental substances, and frequently cured. Certain sausage as provided for elsewhere in this part may contain binders and extenders as provided in § 318.7(c)(4) of this subchapter. Sausage may not contain phosphates except that phosphates listed in § 318.7(c)(4) of this subchapter may be used in cooked sausage. To facilitate chopping or mixing or to dissolve the usual curing ingredients, water or ice may be used in the preparation of sausage which is not cooked in an amount not to exceed 3 percent of the total ingredients in the formula. Cooked sausages such as Polish sausage, cotto salami, braunschweiger, liver sausage, and similar cooked sausage products may contain no more than 10 percent of added water in the finished product. Sausage may contain Mechanically Separated (Species) used in accordance with § 319.6.

5. Section 319.143 would be amended by revising it to read as follows:

§ 319.143 Breakfast sausage.

"Breakfast sausage" is sausage prepared with fresh and/or frozen meat; or fresh and/or frozen meat and meat byproducts, and may contain Mechanically Separated (Species) in accordance with § 319.6, and may be

seasoned with condimental substances as permitted in Part 318 of this subchapter. The finished product shall not contain more than 50 percent fat. To facilitate chopping or mixing, water or ice may be used in an amount not to exceed 3 percent of the total ingredients used. Binders or extenders may be added as provided in § 318.7(c)(4) of this subchapter.

6. Paragraph (e) of § 319.180 would be amended by revising it to read as follows:

§ 319.180 Frankfurter, frank, furter, hotdog, weiner, vienna, bologna, garlic bologna, knockwurst, and similar products.

(e) With appropriate labeling as required by § 317.8(b)(16) of this subchapter, e.g., Frankfurter, Calcium Reduced Dried Skim Milk Added," or "Bologna, with Byproducts (or Variety Meats), Soy Flour Added," one or more of the binders and extenders as provided in § 318.7(c)(4) of this subchapter may be used in cooked sausage otherwise complying with paragraph (a) or (b) of this section.

7. Section 319.181 would be amended by revising it to read as follows:

§ 319.181 Cheesefurters and similar products.

"Cheesefurters" and similar products are products in casings which resemble frankfurters except that they contain sufficient cheese to give definite characteristics to the finished article. They may contain binders and extenders as provided in § 318.7(c)(4) of this subchapter. Limits on use as provided in § 318.7 are intended to be exclusive of the cheese constituent. When any such substance is added to these products, there shall appear on the label in a prominent manner, contiguous to the name of the product, the name of each such added ingredient, as for example, "Cereal Added," "With Cereal," "Potato Flour Added," "Cereal and Potato Flour Added," "Soy Flour Added," "Nonfat Dry Milk Added," "Cereal and Nonfat Dry Milk Added," as the case may be. These products shall contain no more than 10 percent of added water and/or ice, 30 percent fat

and shall comply with the other provisions for cooked sausage that are in this subchapter.

8. Paragraph (b)(9) of § 319.281 would be amended by revising it to read as follows:

§ 319.281 Bockwurst.

* * * * *

(b) * * *

(9) Binders and extenders may be added as provided in § 318.7(c)(4) of this subchapter. Bockwurst containing any of the ingredients permitted by this subparagraph shall be labeled in accordance with § 317.8(b)(33) of this subchapter.

* * * * *

9. Section 319.300 would be amended by revising it to read as follows:

§ 319.300 Chili con carne.

"Chili con carne" shall contain not less than 40 percent of meat computed on the weight of the fresh meat. Mechanically Separated (Species) may be used in accordance with § 319.6. Head meat, cheek meat, and heart meat exclusive of the heart cap may be used to the extent of 25 percent of the meat ingredients under specific declaration on the label. The mixture may contain binders and extenders as provided in § 318.7(c)(4) of this subchapter.

10. Section 319.301 would be amended by revising it to read as follows:

§ 319.301 Chili con carne with beans.

"Chili con Carne with Beans" shall contain not less than 25 percent of meat computed on the weight of the fresh meat. Mechanically Separated (Species) may be used in accordance with § 319.6. Head meat, cheek meat, or heart meat exclusive of the heart cap may be used to the extent of 25 percent of the meat ingredients, and its presence shall be reflected in the statement of ingredients required by Part 317 of this subchapter. The mixture may contain binders and extenders as provided in § 318.7(c)(4) of this subchapter.

11. Section 319.306 would be amended by revising it to read as follows:

§ 319.306 Spaghetti with meatballs and sauce, spaghetti with meat and sauce, and similar products.

"Spaghetti with Meatballs and Sauce" and "Spaghetti with Meat and Sauce," and similar products shall contain not less than 12 percent of meat computed on the weight of the fresh meat. Mechanically Separated (Species) may be used in accordance with § 319.6. The presence of the sauce or gravy constituent shall be declared

prominently on the label as part of the name of the product. Meatballs may be prepared with farinaceous material and with other binders and extenders as provided in § 318.7(c)(4) of this subchapter.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

12. The authority citation for Part 381 would continue to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

13. The table of substances in § 381.147(f)(4) would be amended by adding the substances gelatin, tapioca, and wheat gluten, in alphabetical order, under the Class of Substance entitled "Binders and Extenders" as set forth below:

Class of substance	Substance	Purpose	Products	Amount
Binders and extenders.....	Gelatin.....	do.....	do.....	3 percent in cooked product, 2 percent in raw product.
	Sodium caseinate.....	do.....	do.....	3 percent in cooked product, 2 percent in raw product.
	Tapioca.....	do.....	do.....	Sufficient for purpose and in accordance with 21 CFR 184.1277.
	Wheat gluten.....	do.....	do.....	3 percent in cooked product, 2 percent in raw product, and in accordance with 21 CFR 184.1322.

14. Paragraph (a) of § 381.159 would be amended by revising it to read as follows:

§ 381.159 Poultry rolls.

(a) Binders or extenders may be added in accordance with § 381.147(f)(4) of this part. When binders or extenders are added in excess of the stated amounts, where stated, the common name of the agent or the term "Binders Added" shall be included in the name of the product; e.g., "Turkey Roll-Gelatin Added."

* * * * *

Done at Washington, DC on September 30, 1988.

Lester M. Crawford,
Administrator, Food Safety and Inspection Service.

[FR Doc. 88-23120 Filed 10-5-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASO-18]

Proposed Amendment to Transition Area; Vidalia, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Vidalia, GA, transition area by adding an arrival area extension to provide airspace protection for aircraft executing a new NDB Runway 24

Standard Instrument Approach Procedure to the Vidalia Municipal Airport predicated on the Onion RBN and to revise the geographic position coordinates of the Vidalia Municipal Airport and the Reidsville Airport.

DATES: Comments must be received on or before November 15, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-18, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be

submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No.

11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Vidalia, Georgia, transition area. This action would add an arrival area extension to the existing transition area to provide airspace protection for aircraft executing a new NDB RWY 24 Standard Instrument Approach Procedure to the Vidalia Municipal Airport predicated on the Onion RBN. Also, the latitude/longitude coordinates for the geographic position of the Vidalia Municipal Airport and the Reidsville Airport would be revised. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Vidalia, GA [Revised]

By deleting the existing description and adding the following: "That airspace extending upward from 700' above the surface within an 8.5-mile radius of Vidalia Municipal Airport (Lat. 32°11'30" N., Long. 82°22'30" W.); within 2.5 miles each side of the 065° bearing from Onion RBN (Lat. 32°13'23" N., Long. 82°17'54" W.), extending from the 8.5-mile radius area to 7 miles northeast of the RBN; within a 6.5-mile radius of Reidsville Airport, Reidsville, Georgia, (Lat. 32°03'32" N., Long. 82°09'00" W.); within 3 miles each side of the 295° bearing from Prison RBN (Lat. 32°03'27" N., Long. 82°09'09" N.), extending from the 6.5-mile radius area to 8.5 miles northwest of the RBN."

Issued in East Point, Georgia, on September 21, 1988.

William D. Wood,

Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 88-23014 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-36]

Proposed Removal of Transition Area; Gruver Municipal Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at Gruver Municipal Airport, TX. This proposal is necessary since the only standard instrument approach procedure (SIAP) to the Gruver Municipal Airport has been canceled, thus negating the need for a 700-foot transition area. The intended effect of this proposal is to return that controlled airspace no longer required for aircraft executing the SIAP. Coincident with this proposal, the airport status will change from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before November 7, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-36, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

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

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of

Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5581.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-36." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at Gruver Municipal Airport, TX. The cancellation of the only SIAP serving the

airport, thus negating the need for a 700-foot transition area, has necessitated this proposal. The intended effect of this proposal is to return that controlled airspace no longer required for aircraft executing the SIAP. Coincident with this proposal would be the changing of the status of the airport from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Gruver Municipal Airport, TX [Removed]

Issued in Fort Worth, TX on September 20, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-23015 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ASW-27]

Proposed Removal of Transition Area; La Pryor La Paloma Ranch Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the transition area located at La Pryor La Paloma Ranch Airport, TX. This proposal is necessary since the only standard instrument approach procedure (SIAP) to the La Paloma Ranch Airport has been canceled, thus negating the need for a 700-foot transition area. The intended effect of this proposal is to return that controlled airspace no longer required for aircraft executing the SIAP. Coincident with this proposal, the airport status will change from instrument flight rules (IFR) to visual flight rules (VFR).

DATE: Comments must be received on or before November 7, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 88-ASW-27, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

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

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped

postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASW-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) by removing the transition area located at La Pryor La Paloma Airport, TX. The cancellation of the only SIAP serving the airport, thus negating the need for a 700-foot transition area, has necessitated this proposal. The intended effect of this proposal is to return that controlled airspace no longer required for aircraft executing the SIAP. Coincident with this proposal would be the changing of the status of the airport from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 1, 1988.

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

routine matter that will only affect air traffic procedures and air navigation. It is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

La Pryor La Paloma Ranch Airport, TX [Removed]

Issued in Fort Worth, TX on September 20, 1988.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 88-23016 Filed 10-5-88; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 235

Payment of Social Security Benefits by the Railroad Retirement Board

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations by adding a new Part 235 to explain the Board's role in paying social security benefits. The proposed new part explains why, when and under what circumstances the Board pays social security benefits.

DATE: Comments must be submitted on or before December 5, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Stanley Jay Shuman, General Attorney, Railroad Retirement Board, 844 Rush

Street, Chicago, Illinois 60611, (312) 751-4568 [FTS 386-4568].

SUPPLEMENTARY INFORMATION: Pursuant to the Railroad Retirement Act of 1974 (Act), as amended, the Board is authorized to pay social security benefits on behalf of the Social Security Administration to certain individuals. The proposed new Part 235 identifies those individuals and explains, in general, how the Board pays social security benefits.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this part does not impose any requirement for the collection of information within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 235

Railroad employees, Railroad retirement, Social security.

For the reasons set out in the preamble, Chapter II, Title 20 of the Code of Federal Regulations is proposed to be amended by adding a new Part 235 to read as follows:

PART 235—PAYMENT OF SOCIAL SECURITY BENEFITS BY THE RAILROAD RETIREMENT BOARD

Sec.

235.1 Basis and purpose.

235.2 Other regulations related to this part.

235.3 Who is paid social security benefits by the Board.

235.4 How the Board pays social security benefits.

Authority: 45 U.S.C. 231f.

§ 235.1 Basis and purpose.

Effective January 1, 1975, the Railroad Retirement Act of 1974 (Act) requires the Railroad Retirement Board (Board) to provide for the payment of monthly social security benefit payments on behalf of the Social Security Administration to certain individuals as described in § 235.3 of this part. However, any such individual who was receiving benefits from the Social Security Administration prior to January 1, 1975, will continue to receive benefits from that agency unless he or she becomes eligible for a different type of social security benefit after that date and files a new application with the Social Security Administration for that benefit. Benefits under the new entitlement will be paid by the Board. The Act provides an offset in the railroad retirement benefits of individuals who are also eligible for social security benefits. Because the Board is required to make this offset, the payment of social security benefits by

the Board is authorized for the purpose of convenience in the administration of the Act.

§ 235.2 Other regulations related to this part.

This part is related to a number of other parts in this chapter:

(a) Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

(b) Part 222 defines family relationships (for example, who is the wife or widow of an employee) for use when it is necessary to establish such a relationship in order to receive a benefit under the Railroad Retirement Act.

§ 235.3 Who is paid social security benefits by the Board.

The following individuals, if entitled to social security benefits, are paid such benefits by the Board.

(a) A railroad employee who has been credited with at least 120 months of railroad service;

(b) A wife or husband of a railroad employee who has been credited with at least 120 months of railroad service;

(c) A divorced wife or husband of a railroad employee who has been credited with at least 120 months of railroad service, but only if the divorced wife or husband is claiming social security benefits based upon the railroad employee's social security wages;

(d) A survivor of a railroad employee, including a surviving divorced spouse, remarried widow(er), surviving divorced mother or father, who is entitled, or upon application would be entitled, to an annuity under the Railroad Retirement Act;

(e) Any other person entitled to benefits under Title II of the Social Security Act based on the social security wages of a railroad employee who has been credited with at least 120 months of railroad service, except survivors of a railroad employee when the Social Security Administration has jurisdiction for survivor benefits. See Part 221 of this title.

§ 235.4 How the Board pays social security benefits.

(a) When an individual described in § 235.3 of this part is determined by the Social Security Administration to be entitled to social security benefits, the Social Security Administration certifies such benefits to the Board for payment by the Board. Once social security entitlement is certified to the Board, the Board then certifies the amount of the social security benefit to the Department of the Treasury for payment and makes

any necessary adjustments in the individual's railroad retirement benefit.

(b) The Board has no authority respect to the adjudication of the benefit to be paid under the Social Security Act. Entitlement to and the computation of such benefits is a matter solely within the jurisdiction of the Social Security Administration.

Dated: September 29, 1988.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88-23095 Filed 10-5-88; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns civil penalty assessments and when they can be discretionary and need not be assessed.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are 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 regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on November 7, 1988. If requested, a public hearing on the proposed amendment will be held at 9:00 a.m. on October 31, 1988; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on October 21, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to: Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below. If a public hearing is held, its location will be: The Penn Harris Motor Inn and Convention

Center, at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania 17011.

Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania, 17101; Telephone: (717) 782-4036.

Office of Surface Mining Reclamation and Enforcement, 100 "L" Street NW., Room 5131, Washington, DC 20240; Telephone: (202) 343-5492.

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Third and Locust Streets, Harrisburg, Pennsylvania 17120; Telephone: (717) 782-4036.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program effective July 31, 1982. Information regarding general background on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, *Federal Register* (47 FR 33050). Subsequent actions taken with regard to Pennsylvania's program and program amendments can be found in 30 CFR 938.15 and 938.16.

II. Discussion of Amendments

By letter dated August 17, 1988 (Administrative Record No. PA 699), Pennsylvania submitted a proposed amendment to the Pennsylvania program. Pennsylvania's current civil penalty program requires a mandatory penalty assessment when a compliance order is issued. The statement which indicates this requirement is found in the program guidance document entitled *Civil Penalty Assessments*, Section 1:3:6, Part I, Paragraph 4 and states: "If a particular violation results in the issuance of a Compliance Order, a penalty becomes mandatory." The Pennsylvania Department of

Environmental Resources (DER) is requesting that the approved program be amended by replacing this statement with the following: "If a particular violation is assessable, pursuant to Section 86.194, in an amount less than \$1,000, a civil penalty assessment is discretionary and the Department need not assess the penalty."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Pennsylvania satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Pennsylvania program.

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 received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on October 21, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and 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 who 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

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Harrisburg

Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 938

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

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: September 23, 1988.

[FR Doc. 88-23084 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

Student Assistance General Provisions and Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Notice of extension of deadline date for receiving comments.

SUMMARY: The Secretary extends the period for receiving comments on a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions (34 CFR Part 668) and Guaranteed Student Loan Program and PLUS Program regulations (34 CFR Part 682). The Secretary takes this action to allow the public additional time to comment on proposed amendments to the regulations.

DATES: Comments must be received on or before February 28, 1989.

ADDRESSES: Comments should be addressed to Pamela A. Moran, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4310, ROB-3), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe or Pamela A. Moran, Telephone (202) 732-4242.

SUPPLEMENTARY INFORMATION: On September 16, 1988, the Secretary published in the *Federal Register* (53 FR 36216) an NPRM proposing amendments to the Student Assistance General Provisions and regulations for the Guaranteed Student Loan and PLUS Programs.

The regulations are needed to implement the Secretary's default reduction initiative by strengthening

administrative sanctions available to the Secretary against postsecondary institutions with excessive default rates. Additional information on the proposed amendments is included in the NPRM.

The purpose of this notice is to extend the deadline for receiving comments on the NPRM in order to allow all interested parties sufficient time to prepare detailed comments.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: October 3, 1988.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 88-23118 Filed 10-5-88; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87-6]

Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of further proceedings and request for additional comments.

SUMMARY: The Federal Maritime Commission, on the basis of comments filed in response to the Commission's request for further information issued in this proceeding, regarding actions to adjust or meet conditions unfavorable to shipping in the United States/Peru trade, has determined to defer final consideration of this matter pending receipt of reply comments on additional issues, including proposed alternative sanctions, raised by Nedlloyd Lines. The Commission is also soliciting the views of the U.S. Executive Agencies.

DATE: Reply comments due on or before November 7, 1988.

ADDRESS: Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: On March 3, 1988, the Federal Maritime Commission ("Commission" or "FMC") withdrew and gave notice that it would reconsider the Final Rule earlier promulgated in this proceeding (Part 586) pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) ("Section 19"), and invited

comments and information on present conditions in the U.S./Peru trade ("Trade") from interested parties.¹ Comments were received from 11 parties in response to that Notice. Based on those comments, the Commission announced on June 2, 1988, that this proceeding would be held in abeyance and invited further comments and information from interested parties by August 31, 1988. The Commission, noting that all but one party had suggested that the Commission either terminate the proceeding or hold it in abeyance, elected then to give the parties time to assess the impact of certain actions taken by the Government of Peru ("GOP") and the then recently-filed agreements entered into by Chilean and Peruvian-flag carriers.

Comments have now been received from Shippers for Competitive Ocean Transportation ("SCOT"); Compania Sud Americana de Vapores ("CSAV"); Compania Chilena de Navegacion Interoceanica, S.A. ("CCNI"); Great Lakes Transcaribbean Line ("GLTL"), Nedlloyd Lines ("Nedlloyd"); Crowley Caribbean Transport, Inc. ("CCT"); Lykes Bros. Steamship Co. ("Lykes"); Compania Peruana de Vapores ("CPV"); Naviera Neptune, S.A. ("Neptuno") and Empresas Naviera Santa, S.A. ("Santa"), jointly ("the Peruvian Carriers"); American Chamber of Commerce of Peru ("Chamber"); and Southern Peru Copper Corporation ("SPCC").² These comments are summarized below.

Summary of Comments

Nedlloyd's comments pose two questions: (1) Whether the new legislative regime in Peru ameliorates the unfavorable conditions that were found to exist by the Commission under the now-repealed Supreme Decree No. 009-86-TC ("Decree 009-86"); and (2) if there has been no noticeable change in the unfavorable conditions, whether the Final Rule issued by the Commission required modification. Nedlloyd alleges that the conditions in the Trade previously found unfavorable to

¹ Rather than repeat the background information which has been extensively published in this proceeding, we refer interested parties to the following documents wherein this information is set forth. Docket No. 87-6, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade*: (1) Notice of Proposed Rulemaking, 52 FR 11832 (April 13, 1987); (2) Order Denying Petition, June 18, 1987; (3) Final Rule, 52 FR 46356 (December 7, 1987); (4) Reconsideration of Final Rule, 53 FR 7361 (March 8, 1988); and (5) Proceeding Held in Abeyance, 53 FR 20847 (June 7, 1988).

² The U.S. Executive Agencies submitted no comments in response to the Commission's Notice of June 2, 1988, although they had previously actively participated in the proceeding.

shipping continue to exist. Nedlloyd contends that the repeal of Decree 009-86 leaves intact Peruvian restrictions which, in effect, reserve 100 percent of all the commodities in the Trade for Peruvian and associate-flag lines. Nedlloyd believes that the Peruvian waiver system is cumbersome and makes it virtually impossible for a non-associate carrier to lift any of the "unreserved" cargo in the Trade. Nedlloyd states that, currently, non-Peruvian-flag carriers are excluded from the Trade unless they operate under the waiver system or enter into "non-economic" agreements with Peruvian-flag carriers.³ Nedlloyd alleges that the only thing that has changed in the Trade is that Chilean-flag carriers, by virtue of their agreements with Peruvian-flag carriers, now have access to the Trade.

Nedlloyd provides a summary of the Peruvian cargo restrictions which indicates that restrictions have existed in Peruvian trades for 20 years. Nedlloyd recaps laws which are apparently in effect. These laws reserve 50 percent of imports and exports for Peruvian-flag carriers and require shippers to submit to the GOP quarterly reports which detail their activities. These reports are to ensure that a minimum of 50 percent of the cargoes of each importer and exporter has been carried by Peruvian-flag vessels. Nedlloyd asserts that the GOP went beyond the 50 percent reservation in Supreme Decree No. 036-82-TC ("Decree 036-82") which effectively, though not explicitly, reserves 100 percent of Peruvian import and export cargoes through its waiver system.

Nedlloyd reports that it initiated a U.S./West Coast of South America service in August 1988. Nedlloyd believes that it offers a unique service and that its rates and service levels are competitive. It advises that it has had one southbound and one northbound voyage since August. Nedlloyd notes that it has not carried any Peruvian cargoes on these voyages. It believes that the absence of Peruvian cargo to date is attributable to the "chilling effect" of the waiver system. Nedlloyd states that it has been told by prospective customers that they are concerned about the burdens and uncertainties of the waiver requirements.⁴ The mechanics of

calculating whether shippers have transported 50 percent of their cargoes on Peruvian-flag vessels, and whether shippers wishing to obtain waivers must submit Nedlloyd's rates in writing to competing carriers and GOP officials before waivers can be granted, are said to be of particular concern.⁵

Nedlloyd reports that in May and July 1988, a company representative travelled to Lima to suggest proposals that would enable Nedlloyd to obtain relief from GOP restrictions. Nedlloyd states, however, that as of the time of submission of its comments, its proposals have not elicited a response from the GOP. Nedlloyd contends, therefore, that it appears that only FMC intervention in the Trade can have any beneficial, near-term effect on the situation.

Nedlloyd recommends that a modified Final Rule be issued by the Commission in response to the alleged continuance of unfavorable conditions in the Trade. Nedlloyd suggests modification of the Final Rule because the concerns expressed by certain commercial interests in the Trade, that Commission suspension of the Peruvian-flag carriers' tariffs would shut down the Trade, "tend to obscure the nature and causes of this proceeding" and could distort the analysis of whether unfavorable conditions in the Trade exist. In addition, Nedlloyd states that some parties appear to misunderstand the focus of the proceeding to be the termination of operating rights for Peruvian-flag carriers in the United States. Nedlloyd explains that it does not desire such a result.

Nedlloyd proposes that the Commission consider sanctions against Peruvian-flag carriers which mirror Peruvian restrictions. Nedlloyd's proposed final rule would impose waiver requirements on Peruvian-flag carriers operating in the Trade, rather than tariff suspension.⁶ Nedlloyd also proposes monetary fines for failure to comply with its final rule. Further, the proposed final rule would require that only Peruvian-flag carriers and not

shippers file certifications and monthly reports with the Commission.

In conclusion, Nedlloyd believes that the GOP will take no action to lift restrictions unless it is faced with the certainty of countermeasures by the FMC. Nedlloyd, therefore, urges the Commission to act with dispatch. However, Nedlloyd reports that it will continue in its efforts to achieve relaxation of the GOP restrictions.

The Peruvian carriers state that the focus of complaints that triggered this proceeding was the exclusion of Chilean-flag carriers from the Trade. They report that the Chilean-flag carriers are again active in the Trade. Further, they note that the GOP has been committed to balancing its interest in promoting the Peruvian-flag merchant marine and the interest of the U.S. and Peru for competitive service. To this end, they state that the GOP has "changed its laws, approved agreements with Chilean carriers, and formed a commission to study its maritime policy."

The Peruvian carriers assert that service in the Trade is frequent, reliable and comprehensive and that rates do not appear to be unreasonably high. They contend that no U.S. interests would be served by the Commission taking retaliatory action against Peruvian-flag carriers. They maintain that such action would be an "unjustified encroachment on the sovereign right of Peru to protect and further its national interests, which would violate the rule of comity."

The Peruvian carriers contend that the Peruvian cargo reservation laws are not *per se* unfavorable conditions to shipping under Section 19. They believe that action against such laws would only be justified if the laws create conditions unfavorable to shipping in the Trade. They maintain that such conditions do not exist. The Peruvian carriers, therefore, believe the proceeding should be terminated.

With regard to Nedlloyd Lines, the Peruvian carriers contend that Nedlloyd's desire to operate in the Trade without association with a Peruvian-flag carrier is not sufficient grounds for the FMC to take action. They assert that while Nedlloyd discusses what is in its interest in the Trade, "it presents no evidence of any adverse impact on U.S. interests."⁷ The Peruvian carriers claim that "Nedlloyd has neither presented evidence of unfavorable conditions generally, nor established specifically that this lack of

³ Nedlloyd contends that the "associate agreements" are non-economic and thereby deny U.S. shippers and commerce the benefit of competitive ocean transportation.

⁴ This information is further discussed in a supporting affidavit attached to Nedlloyd's comments.

⁵ Nedlloyd notes that the procedure of submitting rates to GOP authorities is not stated in Decree 036-82 or its implementing regulations. Nedlloyd notes, however, that while it has not obtained confirmation that Nedlloyd's rates must be screened by GOP officials and competitors, the impression on "Major potential customers" that such a requirement exists adds to the "chilling effect" of the waiver system.

⁶ Nedlloyd attaches a proposed final rule to its comments. The proposed final rule exempts the Peruvian-flag carrier, Naviera Amazonica Peruana, from the requirements of the proposed rule because the subtrade served by that carrier is not served by any other carrier.

⁷ The Peruvian carriers are referring to comments filed by Nedlloyd in March 1988.

participation in the trade, or its participation under an associate agreement, is unfavorable to U.S. shipping interests." The Peruvian carriers, in fact, allege that Nedlloyd's participation in the Trade could have a negative effect on U.S.-flag carriers by reducing their cargo availability and profitability.⁸

The Peruvian carriers maintain that suspending Peruvian-flag carriers' tariffs would be contrary to law because under Section 19, the FMC is authorized to act only if there is evidence of conditions unfavorable to U.S. shipping interests. They contend that the FMC "is not authorized to act solely to protect the interests of third-flag carriers or on the basis of general philosophical principles."

The two U.S.-flag carriers commenting, CCT and Lykes, urge the Commission to either terminate the proceeding or continue to hold it in abeyance on grounds that unfavorable conditions to shipping do not exist in the Trade. They describe developments in the Trade including the fact that Chilean-flag carriers are again operating in the Trade. Lykes adds that, in its opinion, the Trade is currently overtonnaged.

Further, Lykes addresses Nedlloyd's claims⁹ stating that these claims do not amount to unfavorable conditions to shipping in the Trade because, to the best of Lykes' knowledge, Nedlloyd has not attempted to comply with Peruvian laws. Lykes maintains that in the absence of such an attempt, it would appear that Nedlloyd cannot demonstrate that Peruvian law is actually unfavorable to shipping.

Third-flag carriers commenting include CCNI an CSAV, two Chilean-flag carriers, and GLTL. The Chilean-flag carriers report that they are able to operate in the Trade with access to Peruvian reserved cargoes pursuant to agreements reached with Peruvian-flag carriers. CSAV, therefore, states that it does not advocate the imposition of sanctions against Peruvian-flag carriers at this time.

GLTL reports that CPV has approved a framework for a proposed commercial agreement between CPV and GLTL. It advises that this agreement would insure GLTL free access to all cargoes

between the U.S. Great Lakes and Peru. GLTL, therefore, requests that the Commission continue to hold the proceeding in abeyance until December 1, 1988, in order for CPV and GLTL to finalize their proposed agreement and for GOP authorities to determine the approvability of the agreement.

SCOT believes that the critical issue in this proceeding is whether qualified third-flag carriers can be denied access to the Trade by unilateral actions of the GOP. SCOT contends that no third-flag carrier can afford to invest to serve a trade where waivers are required.

SCOT summarizes the status of service in the Trade. It reports that with the participation of U.S., Peruvian and Chilean-flag carriers, service on the U.S. East and Gulf Coasts is reliable and adequate. SCOT notes that given the depressed state of the Trade caused primarily by economic problems in Peru, this portion of the Trade is overtonnaged.

SCOT reports that on the U.S. West Coast, no Peruvian-flag carriers serve the Trade. Therefore, visas for cargo manifests and waivers are said to be granted routinely for third-flag carrier operations. SCOT notes, however, that in the past, whenever a Peruvian-flag carrier advertised service in the U.S. West Coast/Peru trade waivers and/or visas were not granted, and U.S. shippers experienced serious service problems. SCOT maintains, therefore, that the waiver problem is dormant as long as no Peruvian-flag carrier is available to carry cargo to or from the U.S. West Coast.

In the U.S. Great Lakes/Peru trade, SCOT states that no carrier has advertised a service. It speculates that there possibly was insufficient cargo to attract carriers in 1988.

SCOT explains that although, currently, there is adequate capacity serving this depressed market, there is no assurance that there will be adequate capacity when economic conditions improve. As a matter of principle, SCOT maintains that "[w]e should not accept restrictions to third flag participation as required by U.S. law simply because capacity is adequate in a depressed market."

In sum, SCOT takes the position that while service has improved on the U.S. East and Gulf Coasts, GOP restrictions on third-flag carrier access to the Trade continue to exist. SCOT submits that these restrictions are not acceptable to U.S. shippers in the long term. SCOT, however, believes that the imposition of sanctions by the FMC may cause serve disruptions to U.S. exports and imports. Thus SCOT suggests that the U.S.

negotiate with the GOP to assure free third-flag carrier access to the Trade. With this in mind, SCOT supports holding FMC action in abeyance to permit continued negotiations.

The Chamber and SPCC contend that the problems which gave rise to the Final Rule have been resolved. Further, they report that service in the Trade is satisfactory. The Chamber reports that the GOP is applying its waiver system in as flexible a manner as possible and that the rules and regulations which the GOP has implemented permit U.S. shippers to select the carrier of their choice.

Discussion

The history of this proceeding has been long and arduous. It was instituted more than two years ago at the behest of participants in the Trade whose conduct of ongoing commercial operations was disrupted by shipping conditions apparently resulting from the cargo reservation laws and decrees of Peru, specifically, GOP promulgation and enforcement of Decree 009-86, which reserved 100 percent of all imported and exported ocean freight generated by Peru's foreign trade for Peruvian-flag carriers.¹⁰

In the course of this proceeding, interested parties have had and utilized numerous opportunities to file comments, information and arguments with the Commission. The Executive Agencies of the United States and the GOP have met, negotiated, entered into a Memorandum of Understanding ("MOU") and met again. The GOP issued rules and established an "authorization" system to replace the "waiver" system by which it implemented cargo reservation; carriers filed applications for authorized status; and the Trade continued to be burdened by the constraints of the GOP cargo reservation system. The unfavorable conditions in the Trade resulting from GOP decrees continued to exist, as the Commission found in promulgating a Final Rule (52 FR 46356) in this proceeding on December 7, 1987. Subsequent to issuance of the Final Rule, the GOP rescinded Decree 009-86 and regulations issued pursuant to the MOU, and reinstated, at least temporarily, the system of waivers and

⁸ The Peruvian carriers state that very little Peruvian cargo is available to support the frequent comprehensive service in the Trade. Further, they complain that they cannot fill empty space on their vessels with cargoes from South American countries north of Peru because of those countries' cargo reservation policies. They add that it would be unfair to penalize Peruvian-flag carriers for cargo reservation laws that are similar to many other countries' laws.

⁹ We assume that Lykes is referring to Nedlloyd's March comments.

¹⁰ Under Decree 009-86, and earlier Peruvian decrees, the system established imposed waiver and cargo manifest certification requirements upon non-Peruvian-flag vessels and shippers who wished to utilize their services, but provided access to Peruvian cargoes on a reciprocal basis to U.S.-flag carriers and to other carriers who associated themselves with Peruvian-flag carriers by entering into commercial agreements.

cargo manifest certifications which had previously existed, stating that these requirements would be flexibly administered and that GOP maritime policy would be reviewed by a newly-appointed commission.

The Final Rule, based on the effects of Decree 009-86, was withdrawn for reconsideration, and interested parties were again invited to inform the Commission regarding then-present conditions in the Trade. The 11 parties who then commented told the Commission that three agreements had been entered into among Peruvian-flag and Chilean-flag carriers which, by conferring "associate" status on the Chilean-flag carriers, would result in readmission to the Trade for those previously excluded carriers. These continuing changes led the Commission once more to extend the time consumed by these proceedings in order to assess the ameliorative effects of these events and comments were again solicited. The latest round of comments received from interested parties has been summarized above.

We set forth this spare summary of events to date, not to repeat the information and views of parties which have been detailed in each of our prior Notices and Orders, but to point up the extraordinarily lengthy, convoluted, and generally unifying course of this proceeding. As we have previously noted, recurrent upheavals in the Trade brought about by GOP actions, including changes in decrees and new commercial agreements, have created a great deal of uncertainty as to precisely what the effects of these changes, or their duration, is likely to be.

In spite of the repeal of Decree 009-86, which was the focus of the Final Rule, and the reentry of the Chilean-flag carriers to the Trade, the latest round of comments suggests that the more things change, the more they stay the same. Nedlloyd, a new entrant to the Trade, comes before us to report that GOP cargo reservation laws and decrees prevent third-flag carriers from serving U.S. shippers and consignees on the same basis as Peruvian-flag, U.S.-flag, or "commercially" associated carriers; that the requirements for compliance with these laws and decrees confuse and confound shippers wishing to use third-flag service; and that a great deal of uncertainty exists as to what the GOP legal framework affecting the Trade will be in the future. Despite the numerous events which have occurred, this party, at least, alleges that conditions unfavorable to shipping within the meaning of Section 19 exist at the present time.

At the same time, no interested party whose previous comments have indicated that unfavorable conditions exist in the Trade has affirmatively stated that such conditions have ceased to exist. Although the Chilean-flag carriers, whose exclusion from the Trade prompted complaints from U.S. shippers and consignees, have found it possible to re-enter the Trade through agreements associating them with Peruvian-flag carriers, the commercial costs of those agreements may have been high. That is what Nedlloyd alleges, and we note that neither the Chilean-flag carriers nor the shippers commenting at this stage of the proceeding characterize these agreements in positive terms.

While the Chilean-flag carriers have regained access to the Trade, and all but one of the commenters presently filing views urge the Commission to either cease or further delay its efforts to secure long-term, stable amelioration of the unfavorable conditions it previously found to exist in this Trade, we are disturbed by Nedlloyd's allegations that those conditions continue to exist. We are also mindful that, if this is so, absent some decisive action on the part of the GOP to establish and implement long-term solutions to these problems, the need for promulgation by the Commission of a rule to meet or adjust these conditions will continue. The imposition of countervailing rules and regulations is, of course, the means by which Section 19 authorizes the Commission to adjust or meet conditions unfavorable to shipping which result from foreign laws, rules or regulations.

SCOT, the principal shipper group originally advocating Commission action to meet or adjust the GOP-created conditions afflicting the Trade, now asks the Commission to hold this proceeding in abeyance indefinitely in order to permit continued negotiations of a rather general nature: To assure third-flag access at some future time when economic conditions in the Trade warrant such service. SCOT apparently takes the position that GOP cargo reservation decrees which restrict third-flag carrier participation in U.S. trades constitute conditions unfavorable to shipping as a matter of principle in the long term, but may not presently require or justify the imposition of sanctions likely to disturb the fragile equilibrium now prevailing in the Trade. We appreciate the need of commercial operators to balance the realities of such operations with the desire for the unfettered operation of free trade principles. Nevertheless, in order to effectively fulfill its mandate under

section 19, the Commission needs more precise and realistic guidance regarding the needs and desires of parties who seek its assistance.

Nedlloyd, noting the concerns raised by others that further disruption of the Trade as a result of Commission action is not the desired result, suggests alternative sanctions which would subject Peruvian-flag carriers to burdens and costs similar to those imposed by the GOP on third-flag carriers. Nedlloyd's comments and proposed rule, moreover, are something of a procedural anomaly. Because they have been filed as comments in an ongoing proceeding, rather than as a separate section 19 petition or initial request for Commission action, other parties have not had the opportunity to respond to Nedlloyd's submission, including its proposed alternative sanctions.¹¹ Although there have been many occasions for all parties to have their views on these matters generally heard in this proceeding, we believe the fullest possible measure of due process and fairness will be served by providing such an opportunity for response before the Commission considers and acts on Nedlloyd's allegations and proposals.

In addition, we note that although the Executive Agencies have previously been active participants in both attempting to bring about a resolution of unfavorable conditions in the Trade and filing comments which inform the Commission of their views and activities, no comments were received from the Executive Agencies in response to our most recent notice. In conjunction with the present allegations made by Nedlloyd as well as the still unclear effects of the agreements among Peruvian and Chilean-flag carriers, and plans of the GOP to promulgate a more permanent shipping regime as a result of its maritime policy review, the views of these agencies could be helpful to the Commission in assessing the prospects for resolution of the issues as well as what further action, if any, the Commission should take.

In spite of the numerous occasions on which the Commission has already considered the conditions existing in this Trade as a result of the GOP decrees, and the many arguments previously presented, the Commission invites interested parties to file reply comments within 30 days regarding

¹¹ Although several commenters mention Nedlloyd and offer arguments concerning Nedlloyd's complaints of lack of access, these appear to be based on Nedlloyd's first comments in this proceeding, filed in March 1988, prior to the start of their service. Those comments did not include the sanctions now suggested by Nedlloyd.

Nedlloyd's allegations of the continued existence of conditions unfavorable to shipping in the U.S. foreign trade with Peru affecting shippers as well as carriers. We are not inviting here a general repetition of arguments previously presented, but rather comments in reply to the allegations brought before us by Nedlloyd that the Trade continues to be burdened by

requirements that are discriminatory, result in uneconomic commercial circumvention, or adversely affect shippers' choice of carriers, as well as comments on the alternative rule proposed by Nedlloyd. The views of the Executive Agencies with respect to these issues are also specifically solicited by the Commission.

Therefore, Commission action in this

matter is held in abeyance for 30 days from publication of this Notice in the Federal Register for receipt of reply comments.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 88-22765 Filed 10-5-88; 8:45 am]

BILLING CODE 6730-01-M

Notices

Federal Register

Vol. 53, No. 194

Thursday, October 6, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Proposed Determinations With Regard to the 1989 Rice Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1989 crop of rice: (a) Whether producers should be required to purchase marketing certificates as a condition of permitting loan repayment at a reduced level; (b) whether loan deficiency payments should be made available to producers; (c) whether an acreage limitation program (ALP) should be implemented and, if so, the percentage reduction under such ALP; (d) whether an optional land diversion program (LDP) should be established and, if so, the percentage of diversion under the program; (e) the national program acreage (NPA); (f) whether a voluntary reduction percentage should be proclaimed and, if so, the level of such percentage; (g) whether an inventory reduction program should be implemented; and (h) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation Charter Act, as amended.

EFFECTIVE DATE: Comments must be received on or before November 21, 1988, in order to be assured of considerations.

ADDRESS: Orval Kerchner, Acting Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Gene Rosera, Agricultural Economist,

Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447-5954. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impacts of implementing each option is being prepared and will be available soon.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated as "major." It has been determined that these program provisions will result in an annual effect on the economy of \$100 million or more.

The title and number of the Federal assistance programs to which this notice applies are: Title-Rice Production Stabilization: Number 10.065 and Title-Commodity Loans and Purchases: Number 10.051, as found in the catalog of Federal Domestic Assistance.

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

This program 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).

On April 19, 1988, (53 FR 12890) a notice of proposed determinations was published which set forth provisions common to the 1989 Wheat, Feed Grain, Upland Cotton, and Rice Price Support and Production Adjustment Programs. Any comments that were received with respect to such notice which are applicable to the 1989 crop of rice and any comments received with respect to this notice of proposed determinations will be reviewed in determining the provisions of the 1989 Rice Program.

Accordingly, the following program determinations with respect to the 1989 crop of rice are to be made by the Secretary.

Proposed Determinations

a. Marketing Loan Certificates

Section 101A(a)(5)(A) of the 1949 Act provides that the Secretary shall permit a producer to repay a loan at a level that is the lesser of (1) the loan level determined for such crop or (2) the higher of the loan level multiplied by 70 percent of the prevailing world marketing price for rice, as determined by the Secretary. This section also provides that as a condition of permitting a producer to repay a loan, the Secretary may require a producer to purchase marketing certificate equal in value to an amount that does not exceed one-half the difference, as determined by the Secretary, between the amount of the loan obtained by the producer and the amount of the loan repayment. Such certificates shall be negotiable and shall be redeemable for rice owned by the CCC and valued at the prevailing market price, as determined by the Secretary. If CCC-owned rice is not available in the State in which the rice pledged as collateral for the loan was produced or at such other location outside of such State as may be approved by the owner of such certificate, such certificate shall be redeemable for cash. If any such certificate is not presented for marketing within a reasonable number of days after issuance, as determined by the Secretary, reasonable costs of storage and other carrying charges shall be deducted from the value of the certificate.

Comments are requested on whether the Secretary should require producers to purchase certificates and, if so, for what percentage of the difference in value between the loan level and the loan repayment rate.

b. Loan Deficiency Payments

Section 101A(b)(1) of the 1949 Act provides that the Secretary may make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payments.

Such payments shall be computed by multiplying (1) the loan payment rate by (2) the quantity of rice the producer is eligible to place under loan. The quantity of rice eligible to be placed under loan may not exceed the product obtained by multiplying the individual

farm program acreage for the crop by the farm program payment yield established for the farm. The loan payment rate is the amount by which the loan level determined for such crop exceeds the levels at which a loan may be repaid. Section 101A(b) further provides that the Secretary shall make up to one-half the amount of such payments available in the form of negotiable marketing certificates redeemable for CCC-owned rice.

Comments are requested with respect to whether loan deficiency payments should be made available and, if so, what portion should be made in the form of certificates.

c. Acreage Limitation Program

Section 101A(f)(1)(A) of the 1949 Act provides that if the Secretary determines that the total supply of rice, in the absence of an ALP, will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may implement an ALP. The section provides that in making such a determination the Secretary shall take into consideration the number of acres placed in the Conservation Reserve Program established under section 1231 of the Food Security Act of 1985. If the Secretary elects to implement an ALP for 1989, the Secretary shall announce any such program not later than January 31, 1989.

The Secretary shall, to the maximum extent practicable, carry out an ALP for a crop of rice in a manner that will result in a carryover of 30 million hundredweight of rice. If an ALP is announced for a crop of rice such reduction in production shall be achieved by applying a uniform percentage (not to exceed 35 percent) to the rice crop acreage base for the crop of each rice-producing farm. Except as provided under the Inventory Reduction Program, producers who knowingly produce rice in excess of the permitted rice acreage for the farm, shall be ineligible for rice loans, purchases, and payments with respect to that farm.

Comments are requested with respect to the need for an ALP, the appropriate level of reduction under an ALP, and other provisions of such program.

d. Land Division Program

Section 101A(f)(4)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of rice, whether or not an ALP is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national

acreage of rice to desirable goals. Such land diversion payments shall be made available to producers who, to the extent prescribed by the Secretary, devote to approval conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any acreage reduction under an LDP would be at a producer's option.

Comments are requested with respect to the need for an optional paid LDP, appropriate payment rates, and the other provisions of such program.

e. National Program Acreage (NPA)

Section 101A(d) of the 1949 Act provides that the Secretary shall proclaim a NPA for the 1989 crop of rice not later than January 31, 1989. The NPA shall be the number of harvested acres the Secretary determines (on the basis of the weighted national average of the farm program payment yields for the crop for which the determination is made) will produce the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year 1989/90. If the Secretary determines that carryover stocks of rice are excessive or that an increase in stocks is needed to assure desirable carryover, the Secretary may adjust the NPA by the amount the Secretary determines will accomplish the desired increase or decrease in carryover stocks. The Secretary may later revise the NPA if the Secretary determines it to be necessary based upon the latest information. If an ALP is implemented for the 1989 crop of rice, the NPA shall not be applicable to such crop. If required, the likely NPA for the 1989 crop of rice would be:

1. Estimated Domestic Use, 86.0 million cwt. 1989/90.
2. Plus Estimated Exports, 63.0 million cwt. 1989/90.
3. Minus Imports 3.2 million cwt.

4. Minus Stock Adjustment 4.0 million cwt.
5. Divided by National Weighted Average Farm Program Payment Yield.
6. Equals 1989-crop NPA 3.44 million acres.

Comments on the NPA and the appropriate carryover level for the 1989 crop of rice, along with supporting data, are requested.

f. Whether a Voluntary Reduction Percentage Should be Proclaimed and, if so, the level of Such Voluntary Reduction Percentage

Section 101A(d)(3)(B) of the 1949 Act provides that the 1989 individual farm program acreage of rice may not be further reduced by application of an allocation factor (not less than 80 percent nor more than 100 percent) if the producer voluntarily reduces the acreage of rice planted for harvest on the farm from the 1989-crop rice acreage base established for the farm by at least the percentage recommended by the Secretary in the proclamation of the NPA for the 1989 crop.

If an ALP is implemented for the 1989 crop of rice, the voluntary reduction percentage shall not be applicable to such crop.

If required, the likely national recommended voluntary reduction percentage for the 1989 crop of rice would be:

1. 1989 Established Rice Acreage Base. 4.20 million acres.
2. Minus 1989 Preliminary NPA. 3.44 million acres.
3. Equals Acreage Reduction Needed from Acreage Base. 76 million acres.
4. Divided by 1989 Rice Acreage Base. 4.20 million acres.
5. Equals 1989-Crop Recommended Reduction Percentage. 18.1 percent.

Comments from interested persons with respect to the voluntary reduction percentage, if any, are requested.

g. Inventory Reduction Program

Section 101A(g) of the 1949 Act provides that the Secretary may make payments available to producers who: (1) Agree to forgo obtaining a loan or purchase agreement; (2) agree to forgo receiving deficiency and disaster payments; and (3) do not plant rice for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under the announced acreage limitation program. Such payments shall be made in the form of rice owned by CCC and shall be subject to the availability of such rice. Payments under this program shall be determined in the same manner as loan deficiency payments.

Comments are requested on whether the IRP should be implemented for the 1989 crop of rice.

h. Other Related Provisions

A number of other determinations such as commodity eligibility and other provisions must be made in order to carry out the rice loan and purchase programs.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: Secs. 101A and 107E of the Agricultural Act of 1949, as amended, 99 Stat. 1419, as amended, 1448 (7 U.S.C. 1441-1 and 1445e).

Signed at Washington, DC, on September 30, 1988.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 88-23025 Filed 10-5-88; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service**Temporary Emergency Food Assistance Program; Availability of Surplus Commodities for Fiscal Year 1989**

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of commodities for donation under the Temporary Emergency Food Assistance Program authorized by the Temporary Emergency Food Assistance Act of 1983 (Title II of Pub. L. 98-8, as amended). For Fiscal Year 1989, the Department will continue to donate flour, cornmeal and butter to State agencies that request them for distribution to eligible recipients through the Temporary Emergency Food Assistance Program.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Park Office Center, Alexandria, Virginia 22302 or telephone (703) 756-3660.

EFFECTIVE DATE: October 1, 1988.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and has been classified "nonmajor" because it meets none of the criteria in the Executive Order for classification of a major rule. The action will not have an annual effect on the economy of more than \$100 million; it will not cause major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment,

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

This action is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. The purpose of the action is to notify States, Congress, and the general public of the types and quantities of foods to be made available through the Temporary Emergency Food Assistance Program (TEFAP) for distribution during Fiscal Year 1989.

This action imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-20).

Background and Need for Action

Donations of commodities were administratively initiated in 1981 as part of efforts to reduce huge stockpiles of commodities. Also, the donations responded to Congressional and public concern over the costs to taxpayers of storing vast quantities of food while at a time of high unemployment there were persons in need of food assistance beyond the levels provided through established food programs. The Temporary Emergency Food Assistance Program (TEFAP) was codified in 1983 with the amount available for distribution limited to the amount determined by the Secretary to be in excess of the quantities needed to carry out other programs, including Commodity Credit Corporation (CCC) sales obligations and domestic and foreign food assistance programs.

Since 1983, the supply of available commodities has been drastically reduced. These reductions are the result of changes in the dairy price-support programs and accelerated donation and sales. Rice, cheese, nonfat dry milk and honey will not be distributed because surplus supplies of these products do not exist at this time.

The Secretary of Agriculture estimates the following commodities which have been acquired by the CCC under its price-support activities will be made available in the noted amounts for distribution through the Temporary Emergency Food Assistance Program during Fiscal Year 1989: butter, 72 million pounds; flour, 144 million pounds; and cornmeal, 48 million pounds.

The foods are being offered under the provisions of the Temporary Emergency Food Assistance Act of 1983 (Title II of Pub. L. 98-8, as amended) (TEFAA). The actual types and quantities of commodities made available by the

Department may differ from the above estimates because of agricultural production, market conditions and the distribution of these donated foods to other domestic outlets. The food made available under this notice shall be targeted to needy persons, including unemployed and low-income persons.

Under section 213 and 214 of the TEFAA, as added by section 104 of the Hunger Prevention Act of 1988 (Pub. L. 100-435, enacted on September 19, 1988), the Secretary is required to spend \$120 million to purchase, process and, distribute commodities in Fiscal Year 1989 in addition to those otherwise provided under TEFAP. Section 214 also requires that the Secretary purchase, to the extent practicable, types and varieties of commodities—(1) with high nutrient density per calorie; (2) that are easily and safely stored; (3) that are convenient to use and consume; (4) that are desired by recipient agencies; and (5) that will not displace commercial sales of the commodity. These sections have just been enacted and appropriations have not yet been made; therefore the Department is unable to announce the types and quantities of commodities to be purchased.

In addition to the amendments to the TEFAA, section 110 of the Hunger Prevention Act requires the Secretary to spend \$40 million to purchase, process and distribute additional commodities in Fiscal Year 1989 for distribution to soup kitchens and food banks. The types and quantities of the commodities to be purchased under this section are also not known at this time.

Date: September 30, 1988

Anna Kondratas,

Administrator.

[FR Doc. 88-28028 Filed 10-5-88; 8:45 am]

BILLING CODE 3410-30-M

Food Stamp Program; Striker Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: On March 31, 1987, a Notice was published as a result of a U.S. District Court Order. That court order enjoined the Secretary of Agriculture from enforcing the striker provisions in section (6)(d)(3) of the Food Stamp Act of 1977, as amended and 7 CFR 273.1(g) of the Food Stamp Program Regulations for all United Auto Workers (UAW) and United Mine Workers of America (UMWA)—represented strikers and their households.

On March 23, 1988, the Supreme Court of the United States upheld the striker provisions of the Food Stamp Act. *Lyng v. UAW, et al.*, 99 L.Ed.2d.380; 108 S. Ct.1184; 56 U.S.L.W. 4268. As a result, we are rescinding the March 31, 1987 Notice.

On April 22, 1988, a telegram was sent to all of the Food and Nutrition Service (FNS) Regional offices and all State agencies, to advise them that the provisions of the March 31, 1987 Notice were no longer in effect.

DATES: This action is effective April 22, 1988, the date of the above mentioned telegram. All State agencies must implement retroactive to April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Questions regarding this Notice should be addressed to Joseph H. Pinto, Supervisor, Certification Policy and Quality Control Section, Eligibility and Monitoring Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 756-3471.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1. This action will not have significant adverse effects upon competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115) this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). Anna Kondratas, Administrator of the Food and Nutrition Service has certified that this action does not have a significant economic impact on a substantial number of small entities. State welfare agencies are affected to

the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households are affected to the extent that they contain a member who is on strike and who is represented by either UAW or UMWA. Households which were eligible or received increased benefits by virtue of the provisions of the March 31, 1987 Notice would no longer receive those benefits.

Paperwork Reduction Act

Recordkeeping and reporting requirements mandated by the March 31, 1987 Notice were approved by the Office of Management and Budget under approval number 0584-0362. The State agencies were required to report monthly on the amount of benefits issued to the affected strikers and their households to which they would not have been entitled absent the court order. Affected households were granted due process provisions accorded by 7 CFR 273.15 of the regulations and were to be issued benefits until such issuance could be terminated in accordance with Program regulations.

Justification for Retroactive Implementation

We are issuing this Notice with a retroactive implementation date of April 22, 1988. Following the Supreme Court's decision of March 23, 1988, State agencies have already been advised by telegram to no longer follow the March 31, 1987 Notice as of April 22, 1988.

The provisions of the March 31, 1987 Notice were compelled by the District Court but contrary to the Food Stamp Act and Regulations. Based on this, it is necessary that the March 31 1987 Notice be rescinded.

Background

Judge Louis Oberdorfer of the U.S. District Court for the District of Columbia, in the case of *International Union, United Automobile, Aerospace and Agriculture Implement Workers of America, United Auto Workers (UAW) and United Mine Workers of America (UMWA), et al., v. Richard A. Lyng, Secretary, U.S. Department of Agriculture*, Civil Action No., 84-3903 enjoined the Secretary from enforcing the striker provisions in section (6)(d)(3) of the Food Stamp Act of 1977, as amended, and 7 CFR 273.1(g) of the Food Stamp Regulations for all UAW and UMWA represented strikers and their households. As a result of the court order, a Notice was issued on March 31, 1987, to implement the court order.

On direct appeal by the Department,

the Supreme Court of the United States, on March 23, 1988, reversed the District Court and upheld the striker provisions of the Food Stamp Act and Regulations.

On April 22, 1988, a telegram was sent to all FNS Regional offices and State agencies to advise them that the March 31, 1987 Notice was no longer in effect. As of that date, applicant households could not be certified under the provisions of the March 31, 1987 Notice. The telegram further directed that households participating at that time pursuant to the March 31, 1987 Notice must be informed that their certification would be terminated as soon as permitted by Program regulations. The households were granted the due process provisions of 7 CFR 273.13 and 273.15 of the regulations.

The UAW and UMWA posted a bond with the District Court to reimburse the Secretary for the value of benefits issued to their members pursuant to the court order. In order to monitor the amount of benefits issued pursuant to the court order, State agencies are required to maintain records on the amount of benefits issued to the affected striker households and the amount of benefits which would have been issued to such households if the provisions of 7 CFR 273.1(g) of the Food Stamp Regulations had been applied. We required that State agencies report monthly on the amount of benefits issued under the court order.

Instructions have been sent to the FNS regional offices on the deadline for the final data.

Conclusion

This Notice rescinds the provisions of the March 31, 1987 Notice published at 52 FR 10243. Consequently, the provisions of 7 CFR 273.1(g) of the Food Stamp Regulations must now be adhered to. Households are granted the due process provisions of 7 CFR 273.13 and 273.15 of the regulations.

Implementation

As stated above, the provisions of this Notice are effective retroactive to April 22, 1988. State agencies were notified by telegram that the provisions of the March 31, 1987, Notice were no longer in effect as of April 22, 1988.

Date: September 30, 1988.

Anna Kondratas,
Administrator.

[FR Doc. 88-23081 Filed 10-5-88; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Intent To Reanalyze the Forest Plan and To Supplement the Planning Records for the Arapaho and Roosevelt National Forests

Pursuant to the Chief's decision of July 15, 1987, pertaining to the Colorado Mountain Club's appeal (#1060) of the Arapaho and Roosevelt National Forests Land and Resource Management Plan, the Forest Service, Department of Agriculture is supplementing the planning records and reanalyzing the Forest Plan.

The Chief's decision requires the Forest to supplement the planning records with expanded discussion and documentation of the timber suitability Stage II analysis; to prepare an expanded analysis and documentation of the specific objectives to be attained through vegetation management; and, if needed, to amend the Forest Plan based on information gathered during the reanalysis.

The issues and concerns identified during Forest Planning have been supplemented to incorporate those items raised in the appeal and in the Chief's decision. In order to focus the reanalysis, the remand issues and concerns have been summarized in two planning problems. They are: Should the Forest's timber program have a return of revenues to the U.S. Treasury which meets or exceeds the cost of the timber production?; and What mix of vegetation treatments or no treatment is the most economical to achieve the multiple-use objectives on the Forest? Information on the remand issues and concerns, and the planning problems has been documented in a supplement to planning records. This document includes specific details on the purpose and need, issues, concerns, and opportunities involved in the reanalysis process. It is available for public review by contacting the Forest Supervisor at the address below.

Federal, State, and local agencies, individuals, and organizations are invited to submit comments on these or other issues which pertain to the reanalysis. Informal contacts will be made with representatives of the Colorado Mountain Club, the timber industry, and others known to be interested in the management of the Arapaho and Roosevelt National Forests. Additional public involvement opportunities will take place as the scale and scope of potential changes becomes more focused. This will tentatively include public contacts, news releases, legal notices, and letters.

The Forest will supplement the records used in the original planning effort. Additional documents will follow the "Planning Action" concept established in the original planning process. The Forest anticipates addendum sections to the following Planning Actions:

1. Addendum to Planning Action 1 (Issues, Concerns, and Opportunities; Purpose and Need; and Planning Questions).
2. Addendum to Planning Action 2 (Planning and Decision Criteria) sections on decision criteria for new planning questions, effects criteria, alternative formulation criteria, analysis of the management situation criteria, and inventory and data collection criteria.
3. Combined Addendum to Planning Action 4 (Analysis of the Management Situation), Planning Action 6 (Estimated Effects of Alternatives), and Planning Action 7 (Evaluation of Alternatives) sections on management areas prescription development, relationship between computer modeling and the Plan's management area prescriptions, efficiency of timber and nontimber prescriptions, alternative vegetation treatment options, cost reduction and revenue enhancement, land suited for timber production, benchmark analysis, constraint analysis, and effects and evaluation of alternative courses of action.

The reanalysis may lead to an amendment of the Forest Plan. A determination of the significance of that potential amendment will be made after the analysis has been completed. If a significant amendment of the plan is needed, a notice of intent to prepare an EIS and amend the Land and Resource Management Plan will be published in the *Federal Register* and the appropriate NFMA and NEPA requirements will be followed.

Gary E. Cargill, Regional Forester, Rocky Mountain Region, is the responsible official.

Please contact Raymond O. Benton, Forest Supervisor, Arapaho and Roosevelt National Forests, 240 W. Prospect St., Fort Collins, Colorado 80526; telephone (303) 224-1100, for further information or to provide comments on the reanalysis.

Raymond O. Benton,
Forest Supervisor.

Date: September 27, 1988.
[FR Doc. 88-23106 Filed 10-5-88; 8:45 am]
BILLING CODE 3410-11-M

Delegation of Authority to Forest Supervisors; Eastern Region

AGENCY: Forest Service, USDA.

ACTION: Notice; delegation of authority.

SUMMARY: The Eastern Region of the Forest Service hereby gives notice of the delegation of authority by the Regional Forester to selected Forest Supervisors to perform certain transactions related to the granting and terminating of easements on National Forest System lands.

EFFECTIVE DATE: This policy was effective August 16, 1988.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Timothy G. Curtis, Lands, Watershed, and Minerals Management Staff, Eastern Region, Forest Service, USDA, 310 West Wisconsin Avenue, Room 500, Milwaukee, Wisconsin 53203 (414) 291-1902.

SUPPLEMENTARY INFORMATION: Pursuant to 36 CFR 251.52 and the delegation of authority from the Chief of the Forest Service set forth in Forest Service Manual sections 2732.04 and 2733.04b, the Regional Forester for the Eastern Region has determined that certain National Forests have sufficient lands staff expertise to permit the delegation of authority to Forest Supervisors of those forests to:

1. Grant easements to public road agencies under the authority of the National Forest Roads and Trails Act of October 13, 1964, (78 Stat. 1089; 16 U.S.C. 533) and to terminate such easements with the consent of the grantee.

2. Issue easements and reservations for construction and use of roads, execute stipulations, and terminate such easements on the occurrence of a fixed or agreed upon condition, event, or time when the easement, by its terms, provides for such termination, pursuant to the Federal Land Policy and Management Act of October 21, 1976, (90 Stat. 2743; 43 U.S.C. 1715).

This authority has been delegated to the Forest Supervisors of the following national forests: Allegheny, Chippewa, Green Mountain, Hiawatha, Huron-Manistee, Mark Twain, Monongahela, Nicolet, Ottawa, Shawnee, Superior, Wayne-Hoosier, and the White Mountain by Region 9 Supplement #58, dated 8/88, to Forest Service Manual Chapter 2730—Road and Trail Rights-of-Way Grants.

James R. Jordan,
Deputy Regional Forester.

Dated: September 20, 1988.
[FR Doc. 88-22954 Filed 10-5-88; 8:45 am]
BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS**Iowa Advisory Committee; Agenda and Notice of Public Meeting**

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on October 21, 1988, at Hotel Fort Des Moines, 10th and Walnut Streets, Des Moines, Iowa. The purpose of the meeting is to review the status of current Committee projects and discuss issues which are possible subjects for future activities.

Persons desiring additional information should contact Committee Acting Chairperson, Lee Furgerson, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC September 28, 1988.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 88-23103 Filed 10-5-88; 8:45 am]

BILLING CODE 6335-01-M

Nebraska Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on October 20, 1988, at Ramada Inn-Airport, 2002 East Locust at Abbott Drive, Omaha, Nebraska. The purpose of the meeting is to review the status of current Committee projects and discuss issues which are possible subjects for future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard F. Duncan, or William F. Muldrow, Acting Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at

least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 28, 1988.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 88-23104 Filed 10-5-88; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on October 27, 1988 at the Hilton of Santa Fe, 100 Sandoval Street, Santa Fe, New Mexico 87501. The purpose of the meeting is to discuss civil rights issues affecting the State, and to plan future Advisory Committee projects.

Persons desiring additional information, or planning a presentation to the committee, should contact Committee Chairperson, Vincent Montoya, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213-894-3437). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 28, 1988.

Melvin Jenkins,
Acting Staff Director.

[FR Doc. 88-23105 Filed 10-5-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE**Bureau of the Census****Number of Employees, Payrolls, Geographic Location, Current Status, and Kind of Business for the Establishments of Multiestablishment Companies; Determination for Surveys**

In conformity with Title 13, United States Code, sections 182, 224, and 225 and due notice of consideration having been published on April 1, 1985 (50 FR 12843), I have determined that a 1988 Company Organization Survey is

needed to update the multiestablishment companies in the Standard Statistical Establishment List. The survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multiestablishment companies. These data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

Report forms will be furnished to firms included in the survey and additional copies of the form are available on request to the Director, Bureau of the Census, Washington, DC 20233.

I have, therefore, directed that a survey be conducted for the purpose of collecting these data.

Dated: September 30, 1988.

Bryant Benton,

Acting Director, Bureau of the Census.

[FR Doc. 88-23024 Filed 10-5-88; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-485-801; A-559-801; A-549-801]

Partial Rescission of Initiation of Antidumping Investigations and Dismissal of Petitions; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania, Singapore, and Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We are partially rescinding our initiation of the antidumping investigations of antifriction bearings (other than tapered roller bearings) and parts thereof (the subject merchandise) from Romania, Singapore, and Thailand (53 FR 15077, 53 FR 15078, 53 FR 15082, April 27, 1988), and we are dismissing that part of the petition upon which the rescinded investigations were based. We have determined that petitioner has not provided information reasonably available to it in support of its allegations of sales at less than fair value during the period of investigation for certain classes or kinds of the subject merchandise from Romania, Singapore, and Thailand.

EFFECTIVE DATE: October 6, 1988.

FOR FURTHER INFORMATION CONTACT: Contact Gray Taverman or Barbara

Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161 or 377-2438.

SUPPLEMENTARY INFORMATION:

Scope of Investigations

For a complete description of the products subject to these investigations, see Appendix I, attached to this notice.

Case History

On April 20, 1988, the Department initiated less than fair value (LTFV) investigations on the subject merchandise from the Federal Republic of Germany (FRG), France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom (UK).

Subsequent to our notices of initiation, we received numerous comments from petitioner, respondents, and other interested parties in the antidumping duty investigations concerning whether the subject merchandise constitutes one or more than one class of kind of merchandise. After careful consideration of all views expressed, and based on our discussions with product experts in the Department, at the U.S. Customs Service and at the International Trade Commission (ITC), we issued a decision memorandum on July 13, 1988, stating that the subject merchandise constitutes five separate classes or kinds of merchandise, as outlined below:

1. Ball bearings, mounted or unmounted, and parts thereof (ball bearings);
2. Spherical roller bearings, mounted or unmounted, and parts thereof (spherical roller bearings);
3. Cylindrical roller bearings, mounted or unmounted, and parts thereof (cylindrical roller bearings);
4. Needle roller bearings, mounted or unmounted, and parts thereof (needle roller bearings);
5. Plain bearings, mounted or unmounted, and parts thereof (plain bearings).

The July 13, 1988 decision memorandum is on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Analysis

Under section 732 of the Tariff Act of 1930, as amended (the Act), the Department may initiate an investigation based on a petition only where there are allegations of LTFV sales of a class or kind of foreign merchandise "which [are] accompanied by information reasonably available to the petitioner supporting those

allegations." In light of the decision that there are five classes or kinds of merchandise under investigation, the Department has re-examined the sufficiency of petitioner's LTFV allegations for each class or kind of merchandise in each country.

By letters dated July 11 and August 22, 1988, the Department informed petitioner that the petition lacked support for the LTFV allegations with respect to certain classes or kinds of merchandise. The Department gave petitioner an opportunity to provide additional information in support of its LTFV allegations. On August 1, 2, and 29, 1988, petitioner submitted additional data. However, we have determined that petitioner has submitted insufficient information supporting the claim of LTFV sales for the following classes or kinds of merchandise:

From Romania:

Cylindrical roller bearings
Needle roller bearings
Plain bearings

From Singapore:

Spherical roller bearings
Cylindrical roller bearings
Needle roller bearings
Plain bearings

From Thailand:

Spherical roller bearings
Cylindrical roller bearings
Needle roller bearings
Plain bearings

With respect to Romania, petitioner attempted to establish the likelihood of sales at LTFV for the above-referenced investigations using data which supported the LTFV allegation in the spherical roller bearing investigation. We have determined that the Department cannot continue the cylindrical roller, needle roller and plain bearings investigations based on petitioner's speculation that the alleged LTFV sales of one class or kind of merchandise from Romania provides a sufficient basis to believe or suspect that there is a likelihood that sales of other classes or kinds of merchandise are being made at LTFV.

With respect to Singapore and Thailand, petitioner failed to provide sufficient foreign market value (FMC) and U.S. price data to warrant the Department's continuation of the LTFV investigations of spherical roller, cylindrical roller, needle roller and plain bearings. For FMV, petitioner provided only Japanese prices of ball bearings, failing to provide such data for spherical roller, cylindrical roller, needle roller, and plain bearings. For U.S. price, petitioner provided only data on imports of the subject merchandise from other countries and companies which are

unrelated to those being investigated in Singapore and Thailand.

For the above reasons, we have determined that we have no basis for continuing the LTFV investigations with respect to the classes or kinds of merchandise listed above from Romania, Singapore, and Thailand.

In *Gilmore Steel Corporation v. United States*, 7 C.I.T. 219, 585 F. Supp. 670 (1984), the Court stated that the Department has the power under the Act to reconsider its determination to initiate an investigation. As stated by the Court, "[t]o require the ITA to continue an obviously unwarranted investigation, simply because material inaccuracies in the petition do not come to its attention until after the expiration of the 20-day period files in the face of reason." *Id.* at 674.

Therefore, we are rescinding our initiations with respect to the following investigations:

1. Cylindrical Roller bearings, Mounted or Unmounted, and Parts Thereof from Romania.
2. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof from Romania.
3. Plain Bearings, Mounted or Unmounted, and Parts Thereof from Romania.
4. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof from Singapore.
5. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof from Singapore.
6. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof from Singapore.
7. Plain Bearings, Mounted or Unmounted, and Parts Thereof from Singapore.
8. Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof from Thailand.
9. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof from Thailand.
10. Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof from Thailand.
11. Plain Bearings, Mounted or Unmounted, and Parts Thereof from Thailand.

We will notify the ITC of these actions. This notice is published pursuant to section 732(c)(3) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration

September 27, 1988.

Appendix I—Scope of These Investigations

The products covered by these investigations, certain bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) *Ball Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls (*Tariff Schedules of the United States Annotated* [TSUSA] items 680.3025 and 680.3030); ball bearings with integral shafts (TSUSA item 680.3300); ball bearings (including radial ball bearings) and parts thereof (TSUSA items 680.3704, 680.3708, 680.3712, 680.3717, 680.3718, 680.3722, 680.3727, and 680.3728); ball bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); ball bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other bearings (except tapered roller bearings) and parts thereof (TSUSA 680.3960). Wheel hub units which employ balls as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation. Finished but unground or semiground balls are not included in the scope of this investigation.

Imports of these products are also classified under the following Harmonized System (HS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(2) *Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearing which employ spherical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); spherical roller bearings and parts thereof (TSUSA items 680.3952 and 680.3956); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which

employ spherical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(3) *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearings type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ cylindrical rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(4) *Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all antifriction bearings which employ needle rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers (TSUSA item 680.3040); roller bearing type pillow blocks and parts thereof (TSUSA items 681.0410 and 681.0430); roller bearing type flange, take-up, cartridge, and hanger units, and parts thereof (TSUSA items 681.1010 and 681.1030); and other roller bearings (except tapered roller bearings) and parts thereof (TSUSA item 680.3960). Wheel hub units which employ needle rollers as the rolling element entering under TSUSA item 692.3295 are subject to investigation; all other products entering under this TSUSA item are not subject to investigation.

Imports of these products are also classified under the following HS

subheadings: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

(5) *Plain Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all plain bearings which do not employ rolling elements. Plain bearings entering under TSUSA items 681.3900 and 692.3295 are subject to investigation; other products entering under these TSUSA items are not subject to investigation.

Imports of these products are also classified under the following HS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8495.90.00, 8708.99.50.

These investigations cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to *finished* parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of these investigations. For *unfinished* parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are *not* covered by these investigations are those where the part will be subject to heat treatment after importation.

[FR Doc. 88-22939 Filed 10-5-88; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Amendment to General Conditions of Permits; Human/Marine Mammal Swim Programs

Notice is hereby given that the National Marine Fisheries Service (NMFS) intends to amend the General Conditions that apply to all public display permits issued under the authority of the Marine Mammal Protection Act of 1972 (MMPA), 16 U.S.C. 1361-1407, and its implementing regulations, specifically found at 50 CFR 216.31. The General Conditions are proposed to be amended by adding a new section 6.c. concerning Display Programs, as follows:

6. c. No marine mammal taken or imported hereunder may be used in any program in which a member of the public is allowed to enter the water with a marine mammal (human/marine mammal swim program) unless specifically authorized by the Assistant Administrator. For purposes of this

condition, a member of the public is anyone other than a person engaged by the permit holder to train or otherwise care for the marine mammal.

NMFS is proposing this amendment to eliminate any ambiguity with respect to the need for authorization to conduct human/marine mammal swim programs or other interactive displays. A permit program review is in progress and NMFS has not yet determined whether human/marine mammal swim programs constitute a legitimate use of marine mammals under the MMPA. In the meantime, NMFS interprets existing law to prohibit human/marine mammal swim programs unless specifically authorized by the Assistant Administrator.

NMFS has authorized four human/dolphin swim programs on an experimental and provisional basis until December 31, 1989 and has a pending application for authorization of an additional human/dolphin swim program. One facility is requesting additional animals for use in its authorized swim program. Experimental programs may provide important information on potential changes in the health or behavior of animals involved in human/dolphin swim programs. NMFS may end these experimental programs before December 31, 1989, if they are found to have an adverse effect on the health or well-being of the animals, if an ongoing review of public display permit authorities, procedures and criteria results in new regulations that disallow such programs, or if the terms of any special conditions, including the requirement for a strict monitoring program, are not being met (See 53 FR 33517, August 31, 1988).

The purpose of this amendment is to inform all other current public display permit holders of the fact that their permits to take and maintain marine mammals for public display do not include authority to use the animals in an experimental human/marine mammal swim program. That authority must be separately requested in a permit application or in a request for a modification of an existing permit. Except for those requests currently pending before NMFS, no further authorizations of human/marine mammal swim programs or other interactive programs are expected to be considered until the completion of the ongoing, experimental programs and concurrent policy reviews, on or before December 31, 1989.

Until November 1, 1988, holders of Public Display permits may request a hearing on this amendment by writing to the Director, Office of Protected Resources and Habitat Program (F/PR),

NMFS, 1335 East-West Highway, Silver Spring, MD 20910. NMFS will determine the time and place of any hearing(s), if requested, and may allow participation at the hearing by interested members of the public.

Dated: September 30, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-23062 Filed 10-5-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh; Correction

October 3, 1988.

In the table in the letter to the Commissioner of Customs published on January 12, 1988 (page 752 third column), add TSUSA number 384.2306 to the TSUSA's in footnote 1 for Category 640pt.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-23041 Filed 10-5-88; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 30, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 3, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT:

Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6581. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limits for certain cotton, wool and man-made fiber textile products are being adjusted, variously, for swing, shift, carryover and carryforward used.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 60, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 29, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 3, 1988, the directive of December 29, 1987 is being amended to adjust the limits for cotton, wool and man-made fiber textile products in the following categories, under the provisions of the current bilateral textile agreement between the Governments of the United States and Thailand:

Category	Adjusted 12-mo Limit ¹
219.....	8,308,164 square yards.
313.....	15,585,150 square yards.
314.....	26,430,234 square yards.
315.....	18,933,687 square yards.
317/326.....	8,039,619 square yards.
369-L ²	2,533,447 pounds.
611.....	4,659,895 square yards.
669-P ³	2,604 pounds.
Group II:	
239, 330-354, 359, 630-654 and 659, as a group.	83,315,350 square yards equivalent.
Sublevels in Group II:	
334/335.....	75,960 dozen.
342/642.....	281,780 dozen.
Group III:	
410, 414, 431-448 and 459, as a group.	3,069,680 square yards equivalent.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1987.

² In Category 369-L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.

³ In Category 669-P, only TSUSA number 385.5300.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-23042 Filed 10-5-88; 8:45 am]

BILLING CODE 23042

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 88-C0005]

Paty, Inc., et al.; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Flammable Fabrics Act.

SUMMARY: Under requirements of 16 CFR Part 1605.13, the Commission must publish in the *Federal Register* consent agreements which it provisionally accepts under the Flammable Fabrics Act. Published below is a provisionally-accepted Settlement Agreement with Paty Inc., a corporation, and Faride Abugattas, individually and as an officer of the corporation.

DATE: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary by October 21, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION:

Date: September 28, 1988.

Sheldon D. Butts,

Deputy Secretary.

Consent Order Agreement

In the Matter of Paty, Inc., a corporation, and Faride Abugattas, individually and as an officer of Paty, Inc., and

Paty, Inc., a corporation, and Faride Abugattas, President of Paty, Inc.

(hereinafter, "Respondents") enter into this Consent Order Agreement (hereinafter, "Agreement") with the staff (hereinafter, the "staff") of the Consumer Product Safety Commission (Commission) pursuant to the procedure for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR Part 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondents sold children's sleepwear that is subject to, but failed to comply with, the Flammable Fabrics Act and the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X, 16 CFR Part 1615 (hereinafter, the "Standard") issued thereunder, as more fully set forth in the complaint accompanying this Agreement.

Respondents and the Staff Agree: 1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Paty, Inc. (hereinafter, "Paty") is a corporation organized and existing under the laws of the state of Texas.

3. Respondent Faride Abugattas is the president of Paty, Inc.; and as such, she formulates, directs, and controls the acts, practices, and policies of respondent corporation.

4. Respondents are engaged in the manufacture and sale of children's day wear apparel and children's sleepwear, with their principal place of business and address located at 4800 34th Street, Suite A-9, Houston, Texas 77092.

5. Respondents are now and have been engaged in one or more of the following: The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Children's Sleepwear (Sizes 0 through 6X), 16 CFR Part 1615.

6. This Agreement is for settlement purposes only, does not constitute an admission by Respondents that either of them have violated the law, and becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon the Respondent.

7. Each Respondent waives (a) all requirements for findings of fact and conclusions of law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings.

8. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA, 15 U.S.C. 1196.

9. Violation of the provisions of the Order may subject each Respondent to a civil penalty for each such violation as prescribed by law.

10. The Commission may disclose the terms of this Consent Order Agreement.

11. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

12. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission may issue the following Order:

Order

I.

It is hereby ordered that Respondents, individually and severally, and the successors and assigns, agents, representatives, and employees of the Respondents, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device of instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material which fails to conform to the Flammability of Children's Sleepwear: Sizes 0 through 6X, 16 CFR Part 1615; the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 CFR Part 1616; or the Standard for the Flammability of Clothing Textiles, 16 CFR Part 1610. These standards were issued, amended, and continue in effect under the provisions of the Flammable Fabrics Act. For purposes of this Order, whether a product of wearing apparel is intended to be worn for sleeping or activities related to sleeping depends on factors including: (a) The suitability for use by children for sleeping activities related to sleeping, (b) the manner in which the product is distributed or

promoted, and (c) the likelihood that the product will be used by children primarily for sleeping or activities related to sleeping.

II.

It is further ordered that Respondents consider before importing or selling any style garment, subject to this Order: (a) The nature of the product and its suitability for use by children for sleeping or activities related to sleeping, (b) the manner in which the product is distributed or promoted, and (c) the likelihood that the product will be used by children primarily for sleeping or activities related to sleeping.

III.

It is further ordered that Respondents maintain records to demonstrate that they have considered each of the three factors enumerated in paragraph II above before deciding to import and/or to sell any style of garment. These records must be maintained for one year beyond such time as they have ceased the importation, sale, or distribution of the individual garment.

IV.

It is further ordered that in addition to the prohibitions of paragraph I above, Respondents, individually and severally, and the successors and assigns, agents, representatives, and employees of the Respondents, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related materials identical or similar to the following types of sleepwear garments that do not comply with the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X, 16 CFR Part 1615; or the Standard for

the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 CFR Part 1616.

a. Any long-sleeve convertible gown made of 100 percent cotton knit fabric, in a decorative design, with metal snaps that can convert the gown into a legged garment, size 3 months. A photograph of the type of garment that is the basis for and the subject of this prohibition is appended hereto as "Attachment A" and incorporated herein by this reference.

b. Any long-sleeve, below the ankle, gown made of 100 percent cotton knit fabric, in a decorative design, with or without a drawstring at the bottom that can be used to close the gown, size 3 months. A photograph of the type of garment that is the basis for and the subject of this prohibition is appended hereto as "Attachment B" and incorporated herein by this reference.

V.

It is further ordered that Respondents permit the Commission staff to conduct inspections; to obtain books, records, papers, and other documents; and to select samples of sleepwear or related articles of clothing in inventory at Respondents' place(s) of business for the purpose of determining compliance with this Order.

VI.

It is further ordered that Respondents shall forthwith distribute a copy of this Order to each of its operating divisions.

VII.

It is further ordered that Respondents shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

VIII.

It is further ordered that for a period of ten (10) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission at least thirty (30) days prior to any

proposed change in the way Respondent does business which may affect either of their compliance obligations arising out of this Order.

IX.

It is further ordered that the Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the Federal Register.

Any agreement, understanding, representation, or interpretation that is not contained in this Agreement and in the incorporated Order may not be used to vary or contradict the terms of the Order subsequently issued by the Commission.

Signed this 5 day of July, 1988.

Faride Abugattas,

*individually and as an officer of Paty, Inc.,
4800 34th Street, Suite A-9, Houston, Texas
77092.*

David Schmeltzer,

*Associate Executive Director Directorate for
Compliance And Administrative Litigation.*

Alan H. Schoem,

*Director, Division of Administrative
Litigation.*

Earl A. Gershenow,

*Trial Attorney, Division of Administrative
Litigation, Counsel for the Commission Staff.*

Consumer Product Safety
Commission, Washington, DC 20207

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the Federal Register.

So Ordered by the Commission, this 20th day of September, 1988.

Sadye E. Dunn,

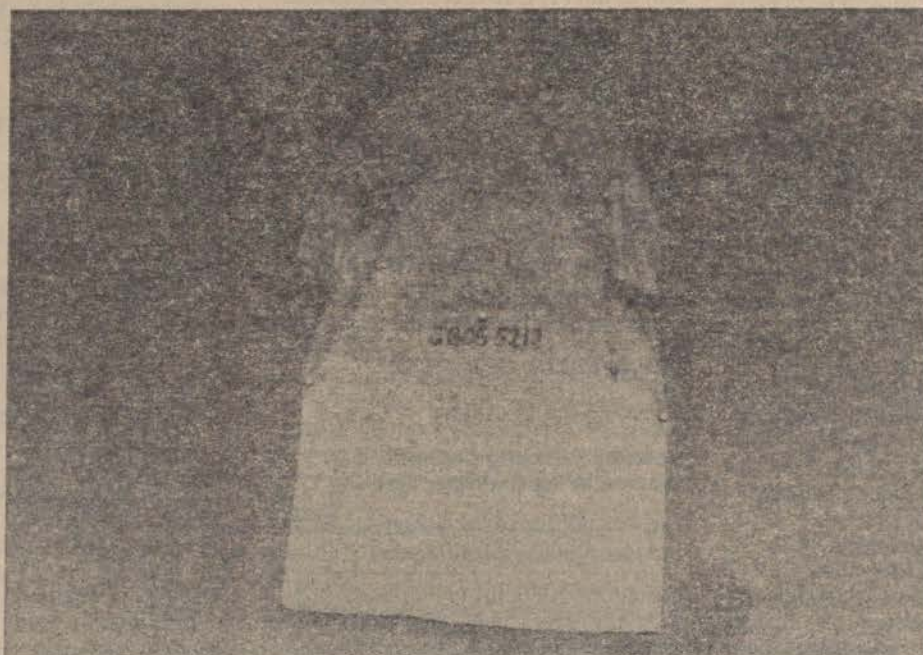
*Secretary Consumer Product Safety
Commission.*

BILLING CODE 6355-01-M

ATTACHMENT A



ATTACHMENT B



Complaint

The staff of the Consumer Product Safety Commission believes that Paty, Inc., a corporation, and Faride Abugattas, the principal officer of that corporation (hereinafter "Respondents"), 4800 34th Street, Suite A-9, Houston, Texas 77092, are subject to the provisions of the Flammable Fabrics Act, as amended, (15 U.S.C. 1191 *et seq.* hereinafter, the "FFA"); the Federal Trade Commission Act, as amended, (15 U.S.C. 41 *et seq.*; hereinafter, the "FTCA"); the standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X, 16 CFR Part 1615; the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14, 16 CFR Part 1616; or the Standard for the Flammability of Clothing Textiles, 16 CFR Part 1610. The staff further believes that Respondents have violated the aforementioned Acts and Standards.

It appears to the Commission from the information available to its staff that it is in the public interest to issue this complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the Consumer Product Safety Act, as amended, (15 U.S.C. 2079(b); hereinafter, the "CPSA") the Commission pursuant to sections 3 and 5 of the FFA, 15 U.S.C. 1192 and 1194, and section 5 of the FTCA, 15 U.S.C. 45, and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, hereby issues this complaint and states the staff's charges as follows:

1. Respondent Paty, Inc. is a corporation organized and existing under the laws of the state of Texas, with its principal place of business located at 4800 34th Street, Houston, Texas 77092.

2. Respondent Faride Abugattas is the president of Respondent Paty, Inc.; and in that capacity, she is responsible for the acts, practices, and policies of the respondent corporation.

3. Respondents are now and have been engaged in the manufacturing for sale, sale, and offering for sale, in commerce, and have introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale or shipment in commerce, as the term "commerce" is defined in section 2(b) of the FFA, 15 U.S.C. 1191(b), the following items of children's sleepwear:

a. Garment Style 572 (originally Garment Style 542), a long-sleeve convertible gown made of 100 percent cotton knit fabric, in a decorative design, with metal snaps that can convert the

gown into a legged garment, size 3 months.

b. Garment Style 512, a long-sleeve gown made of 100 percent cotton knit fabric, in a decorative design, with a drawstring at the bottom of the gown, size 3 months.

4. Each style of children's sleepwear identified in paragraph 3 of the complaint is intended to be worn primarily for sleeping or activities related to sleeping; and is therefore, an item of "children's sleepwear" within the meaning of § 1615.1(b) of the Standard, 16 CFR § 1615.1(p) and (c).

5. Respondents manufactured for sale, sold, and offered for sale in commerce, the items of sleepwear identified in paragraph 3 of the complaint, without having complied with the following requirements of the Standard:

a. Perform the sampling and prototype and production testing required by § 1615.4(c) of the Standard, 16 CFR 1615.4(c).

b. Assigning to, and labeling or tagging each item of children's sleepwear with, a Garment Product Unit (GPU) as required by § 1615.31(b)(8), 16 CFR 1615.31(b)(8).

c. Maintaining the manufacturing, production, and testing records required by § 1615.31(e), 16 CFR 1615.31(e).

6. The acts by Respondents set forth in paragraph 5 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under the FTCA, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desist order may be issued against Respondents pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the _____ day of _____, 1988.

By direction of the Commission.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

[FR Doc. 88-22634 Filed 10-5-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of conference.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming conference of the Defense Advisory

Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist and advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semi-annually.

DATE: November 13-17, 1988 (Detailed agenda follows).

ADDRESS: Irvine Marriott Hotel, 1800 Von Karman Avenue, Irvine, California, unless otherwise noted in detailed agenda.

Agenda: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions:

Sunday, November 13, 1988

10:00 a.m.-2:00 p.m.

Registration

11:00 a.m.-12:00 noon

Executive Committee Meeting

12:00 noon-2:00 p.m.

Get Acquainted Luncheon (Current DACOWITS members only)

Get Acquainted Luncheon (MilReps and Liaison Officers only)

2:00 p.m.-2:45 p.m.

Briefing: General Accounting Office Study-Job Opportunities for Military Women

2:45 p.m.-3:30 p.m.

Briefing: Naval Mobile Construction Battalions

4:00 p.m.-6:00 p.m.

Subcommittee Sessions (Evaluation and Disposition of Service Responses)

Subcommittee 1

Subcommittee 2—Briefing: Marine Corps Officer Candidate School Recruiting

Subcommittee 3—Briefing: Pregnancy in the Navy and its impact

7:00 p.m.-8:30 p.m.

Social Buffet

Monday, November 14, 1988

8:00 a.m.-8:30 a.m.

Official Opening

8:30 a.m.-9:15 a.m.

Briefing: Army Field Artillery Systems

9:15 a.m.-10:00 a.m.

Briefing: DoD Briefing—Sexual Harassment Survey and Climate Assessment Instruments and other DEOMI projects

10:00 a.m.-10:45 a.m.

Briefing: Marine Corps Study Group Issues

11:00 a.m.-11:45 a.m.

Briefing: Marine Corps Restructuring

12:00 noon-1:30 p.m.

OSD Luncheon (BY INVITATION ONLY)

1:45 p.m.-2:30 p.m.

Briefing: Air Force Security Guards

2:30 p.m.-3:15 p.m.

Briefing: Marine Corps Security Forces

3:15 p.m.-4:00 p.m.

Briefing: Air Force Composition Study

4:00 p.m.-5:30 p.m.

Subcommittee Sessions (Evaluation of Briefings and Sunday Resolutions)

7:00 p.m.-10:00 p.m.

OSD Reception and Dinner (BY INVITATION ONLY) at El Toro Officers' Club

Tuesday, November 15, 1988

Field trip hosted by the United States Marine Corps to Marine Corps Air Stations (MCAS) El Toro, Tustin, and Camp Pendleton.

6:30 a.m.-6:50 a.m.

Depart hotel via buses escorted by Marine Public Affairs Officers

7:00 a.m.-8:00 a.m.

Arrive Modular Club, MCAS El Toro for breakfast with enlisted Marines Greeted by MajGen Miller and BGen Shuter

8:00 a.m.-9:00 a.m.

Red bus en route MCAS Tustin (15 minute drive); Simulator demonstration of CH 53 and 46 helicopters

White bus en route MCAS El Toro (5 minute drive); Simulator demonstration of KC-130 aircraft

Blue bus en route MCAS El Toro MAG-11 area (10 minute drive); Simulator demonstration of F/A 18 aircraft

9:00 a.m.-10:30 a.m.

Static display of aircraft, to include: KC-130, F/A 18, R 4B, CH-46, and CH-53

Female Marines (25) standing by for discussions and questions

10:30 a.m.-11:45 a.m.

En route Camp Pendleton via helicopters

11:45 a.m.-1:00 p.m.

Lunch at Ranch House Courtyard with Marine officers from Camp Pendleton

1:00 p.m.-1:10 p.m.

En route MCAS Camp Pendleton via buses

1:10 p.m.-1:40 p.m.

Load helicopters; en route Red Beach

1:40 p.m.-1:50 p.m.

Remarks by CG, I Marine Expeditionary Force

1:50 p.m.-2:30 p.m.

Amphibious demonstration, to include a company size landing with: AAV's, LLAC's LAV's, and appropriate air support

2:30 p.m.-3:00 p.m.

Static display of infantry weapons, to include: AAV's, LAV's, SMAW, SAW, M-2, and 60mm mortar

3:00 p.m.-4:30 p.m.

Depart Camp Pendleton en route hotel

via helicopters

Wednesday, November 16, 1988

9:00 a.m.-9:30 a.m.

Presentation by Members of the Public

9:30 a.m.-11:45 a.m.

Subcommittee Sessions *

12:00 noon-2:00 p.m.

Installation Visit Luncheon

2:00 p.m.-5:00 p.m.

Executive Committee Mark-up

Thursday, November 17, 1988

8:00 a.m.-8:30 a.m.

Individual review of resolutions; coffee and pastries

8:30 a.m.-10:00 a.m.

General Business Session Adjourn.

FOR FURTHER INFORMATION CONTACT:

Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference:

(1) Members of the public will not be permitted to attend the official Department of Defense luncheon or reception and dinner.

(2) All business sessions, to include the Executive Committee meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 14, 1988.

(5) Length and number of oral presentations to be made will depend on the number of requests received from the members of the public.

(6) Oral presentations by members of the public will be permitted only from 9 a.m. to 9:30 a.m. on Wednesday, November 16, 1988, before the full committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS office with a copy of the presentation or 60 copies of the statement by October 21, 1988.

(8) Persons submitting a written statement only for inclusion in the

* Subcommittee Sessions will begin at 9:00 a.m. in the absence of presentation by Members of the Public.

minutes of the conference must submit one (1) copy either before or during the conference or within 5 days after the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussions conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee meetings, or the Business Session on Thursday, November 17, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 3, 1988.

[FR Doc. 88-23093 Filed 10-5-88; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Council on Vocational Education; Public Meeting

AGENCY: National Council on Vocational Education, Education.

ACTION: Notice of public meeting of the council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: October 16, 1988—6:00 p.m. to 8:00 p.m.; October 17, 1988—9:00 a.m. to 4:00 p.m.

ADDRESS: Hotel Washington, 515 15th Pennsylvania Ave., Washington, DC 20004.—October 16, Council Room, October 17, Capital Room. (202) 638-5900.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section

104 of the Vocational Education Amendments of 1968, Pub. L. 90-576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include: Committee Reports, Presentation and Discussion of National Awareness Campaign, Report on the National Assessment of Vocational Education, and a brief overview of other Council Business.

FOR FURTHER INFORMATION CONTACT:

Dr. Joyce Winterton, Executive Director, 330 C Street, SW., MES—Suite 4080, Washington, DC 20202-7580, (202) 732-1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC, September 30, 1988.

Joyce Winterton,
Executive Director.

[FR Doc. 88-23114 Filed 10-5-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Era Docket No. 87-40-NG]

Northwest Alaskan Pipeline Co.; Order Extending Authorization to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order extending authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has

issued an order extending Northwest Alaskan Pipeline Company's (Northwest Alaskan) existing authorization to import from Canada natural gas over the western leg of the prebuilt portion of the Alaska Natural Gas Transportation System. The order issued in ERA Docket No. 87-40-NG authorizes Northwest Alaskan to import up to 300,000 Mcf per day on an average daily basis from November 1, 2001, through October 31, 2012, for sale in the southern California market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. 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, DC September 30, 1988.

Constance L. Buckley,
Acting Director, Office of Fuels Programs,
Economic Regulatory Administration.

[FR Doc. 88-23115 Filed 10-5-88; 8:45 am]

BILLING CODE 8450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF88-535-000 et al.]

**Nassau District Energy Corp. et al.,
Electric Rate, Small Power Production,
and Interlocking Directorate Filings**

Take notice that the following filings have been made with the Commission:

1. Nassau District Energy Corp.

[QF88-535-000]

September 29, 1988.

On September 22, 1988, Nassau District Energy Corp. (Applicant) of 333 Park Avenue South, Suite 3A, New York, New York 10010, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Nassau County Central Utilities Plant, 185 Charles Lindbergh Boulevard, Uniondale, New York 11553. The facility will consist of a combustion turbine generator, an extraction/condensing steam turbine generator, a duct fired heat recovery steam generator, three back-up steam generators, switchyard and a 1.7-mile 69 KV underground electrical cable for interconnection with Long Island Lighting Company's power

system. The thermal energy recovered from the facility will be used for space heating and domestic hot water heating in the nearby buildings including county medical center and jail complex, a coliseum, a community college and a hotel.

Applicant is wholly-owned by Trigen Energy Corporation (Trigen). Majority stock of Trigen is owned and controlled by French corporation holding interest in electrical generation, transmission and distribution facilities outside of the United States. The net electric power production capacity of the facility will be 49 MW. The primary source of energy will be natural gas, with No. 2 oil as back-up fuel. The installation of the facility is expected to commence in February 1989.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER88-622-000]

September 30, 1988.

Take notice that on September 26, 1988, Pacific Power & Light Company, an assumed business name of PacifiCorp, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon and Bonneville Power Administration's (Bonneville) Determination of Average System Cost (ASC) for the state of Oregon (Bonneville's Docket No. 5-A1-8801). The Revised Appendix 1 calculates the ASC for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective February 1, 1988, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commission of Oregon and Bonneville's Direct Service Industrial Customers.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Vermont Electric Power Company, Inc.

[Docket No. ER88-624-000]

September 30, 1988.

Take notice that on September 26, 1988, Vermont Electric Power Company, Inc., tendered for filing, in accordance with § 35.15 of the Commission's regulations under the Federal Power

Act, a notice of termination of FERC Rate Schedule No. 241 to be effective November 1, 1988.

Notice of proposed termination has been served upon Boston Edison Company.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Vermont Electric Power Company, Inc.

[Docket No. ER88-623-000]

September 30, 1988.

Take notice that on September 26, 1988, Vermont Electric Power Company, Inc. tendered for filing, in accordance with § 35.15 of the Commission's regulations under the Federal Power Act, a notice of Termination of FERC Rate Schedule No. 242, effective November 1, 1988.

Notice of proposed termination has been served upon Public Service Company of New Hampshire.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER88-625-000]

September 30, 1988.

Take notice that on September 26, 1988, Minnesota Power & Light Company tendered for filing a Participation Power Transaction Agreement Between Minnesota Power & Light Company and Iowa-Illinois Gas and Electric Company. Under this Agreement, Minnesota Power & Light Company will sell participation power as available from its Syl Laskin steam electric station Unit No. 1 to Iowa-Illinois Gas and Electric Company on a participation power interchange basis in accordance with the Mid-Continent Area Power Pool Agreement, Service Schedule A. This Agreement provides for energy sales only during the period from May 1, 1988 through October 31, 1988 inclusive. The parties request a waiver of the Commission's 60 day filing period for this Agreement and a retroactive effective date of May 1, 1988 for such Agreement.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER88-626-000]

September 30, 1988.

Take notice that on September 26, 1988, Northeast Utilities Service Company tendered for filing a Notice of Termination for Rate Schedule FERC 349 to be effective December 1, 1988.

The rate schedule is to be terminated because it is no longer being utilized by

the parties to the agreement. The Commission is requested to allow the termination to take effect on December 1, 1988.

Notice of the proposed termination has been served upon the Vermont Electric Generation and Transmission Cooperative, Inc.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Appalachian Power Company, Indiana Michigan Power Company, Ohio Power Company

[Docket Nos. ER88-504-001; ER88-358-001]

September 30, 1988.

Take notice that on September 26, 1988, in accordance with ordering Paragraph (A) of the Commission's Order Revisions to Service Schedules for Filing without Suspension, Noting and Granting Interventions, Granting Waiver of Notice Requirements and Terminating Docket issued August 30, 1988 in Docket No. ER88-504-00, American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, and Ohio Power Company (sometimes collectively referred to as the AEP Parties), tendered for filing a Compliance Filing to the above referenced Docket Nos. ER88-504-000 and ER88-358-000.

The purpose of the Compliance Filing is to incorporate the changes ordered by the Commission in their above referenced order. This order requires the AEP Parties to add a statement that caps the AEP Parties' 10% adder for Emergency Energy generated by third parties at 1 mill per kilowatthour, per section 35.23 of the Commission's regulations.

Copies of the filing were served upon the public service commissions in the states of Ohio, Kentucky, Indiana, Michigan, Virginia, and West Virginia, and all parties.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER88-621-000]

September 30, 1988.

Take notice that on September 23, 1988, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to fourteen of its Rate Schedules:

Rate schedule No.	Supplement No.	Person receiving service
55	7	Philadelphia Electric Company.
56	7	Public Service Electric and Gas Company.
57	7	Northeast Utilities.
62	7	Orange and Rockland Utilities, Inc.
69	4	Northeast Utilities.
70	2	Niagara Mohawk Power Corporation and Pennsylvania Power and Light Company.
71	2	New England Power Company.
74	5	Pennsylvania Power and Light Company.
75	6	GPU Service Corporation.
78	5	Power Authority of the State of New York.
82	3	Baltimore Gas & Electric Company.
83	3	Atlantic City Electric Company.
84	3	Connecticut Municipal Electric Energy Cooperative.
88	2	Boston Edison.

The Supplements provides for an increase in rate from 2.3 mills to 2.4 mills per Kwh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus increasing annual revenues under the Rate Schedules by a total of \$36,910.30. Con Edison has requested waiver of notice requirements so that the Supplements can be made effective as of September 1, 1988.

Con Edison states that copies of the filing have been served by mail upon Philadelphia Electric Company, Public Service Electric and Gas Company, Northeast Utilities, Orange and Rockland Utilities, Inc., Niagara Mohawk Power Corporation, Pennsylvania Power and Light Company, New England Power Company, GPU Service Corporation, Power Authority of the State of New York, Baltimore Gas & Electric Company, Atlantic City Electric Company, Connecticut Municipal Electric Energy Cooperative, and Boston Edison.

Comment date: October 17, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-22992 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-479-000, CP87-480-000 et al]

Wyoming-California Pipeline Co. et al.; Availability of the Final WYCAL Supplement to the Mojave-Kern River-El Dorado Final Environmental Impact Report/Statement (WYCAL Supplement) and Notification of Schedule for Comment on the Final Supplement

October 3, 1988.

Notice is hereby given that the Federal Energy Regulatory Commission (FERC) and the California State Lands Commission (SLC) have issued a joint Final WYCAL Supplement to the Final Environmental Impact Report/Statement (FEIR/S) which was made available in December 1987 for the then various proposals to transport natural gas from various sources outside California to the Bakersfield, California area for use in enhanced oil recovery (EOR) and related cogeneration projects.

Background

On August 4, 1987, Wyoming-California Pipeline Company (WyCal) filed an application with the FERC to transport natural gas from various sources outside of California to the Bakersfield, California area for use in EOR and related cogeneration projects. Two other projects to supply natural gas to the same Bakersfield area were the subject matter of the FEIR/S issued in December 1987. Specifically, Kern River Gas Transmission Company (Kern River) proposed to build an 837 mile pipeline (Docket No. CP85-552-000) and Mojave Pipeline Company (Mojave) proposed to build a 389 mile pipeline (Docket No. CP85-437-000). On December 14, 1987, the FERC issued a Notice of Intent of Prepare a Supplement to the FEIR/S in order to analyze the WyCal project and stated that the Supplement would address only those aspects of the WyCal project not previously addressed in the FEIR/S for the Kern River and Mojave projects.

The proposed WyCal pipeline deviates from Kern River's proposal at the northern end of the project from Opal to Evanston, Wyoming for approximately 55 miles. From that point on, except as noted below, WyCal proposes to follow the very same right-of-way (ROW) which Kern River proposed from a point approximately 5 miles east of Evanston, Wyoming to Kern River's proposed milepost (MP) 491 where it would intersect with the East Las Vegas System Alternative route identified in the FEIR/S. WyCal would follow the very same ROW examined along this alternative to Piute Junction, California where it would interconnect with the route proposed by Mojave. WyCal then proposes to follow the exact same ROW which Mojave proposed both east to Topock, Arizona and west to Bakersfield, California. Since the proposed WyCal project is on the very same ROW proposed by both Kern River and Mojave in many areas, a significant amount of work has already been completed relevant to the environmental impact caused by the construction and operation of the pipeline. The Supplement was therefore structured in such a way as to tier or build upon the FIER/S issued in December 1987. The Draft Supplement, issued by FERC on July 25, 1988, and noticed by the Environmental Protection Agency on July 29, 1988, in the *Federal Register* only addressed those areas of the WyCal project which deviate from the Mojave and Kern River proposals and the East Las Vegas route alternative previously analyzed in the FEIS. A route variation identified in the FEIS as the Wasatch Variation was reexamined in the Supplement as well as deviations of compressor site locations. Public meetings to receive comments on the Draft Supplement were announced and subsequently held on August 22 and 23, 1988, in Las Vegas, Nevada and Salt Lake City, Utah, respectively.

Commenting on the Final Supplement

As with the FEIR/S, the Final Supplement will be used in the regulatory process at both the FERC and SLC. On August 2, 1988, the FERC established by Commission order that those wishing to file comments on the Final Supplement with the Commission must do so by October 15 1988. Further, anyone wishing to file reply comments must file them with the Commission by October 31, 1988. Comments should be sent to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. While the period for filing motions to intervene in these cases has expired, motions to intervene

out-of-time can be filed with the FERC in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The Final Supplement has been placed in the public files of the FERC and SLC and is available for public inspection in the FERC Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426 and at the SLC, 1807-13th Street, Sacramento, CA 95814. Copies have been sent to the interested members of the public, all parties to the proceeding, and Federal, State, and local officials, and are available in limited quantities from the FERC's Division of Public Information and from the SLC.

Additional information about the project is available either from Mr. Robert Arvedlund, FERC Project Manager, Environmental Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, telephone (202) 357-9091, or Ms. Mary Griggs, SLC Project Manager, telephone (916) 322-0354. *A copy of all initial and reply comments should also be sent to Mr. Arvedlund.*

Lois Cashell,

Secretary

[FR Doc. 88-23019 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3572-001]

North Stratford Equipment Corp.; Intent To Hold Public Scoping Meetings for the Livermore Falls Hydroelectric Project

September 30, 1988.

The Commission previously notified interested parties and the public that it intends to prepare an environmental impact statement (EIS) dealing with the proposed Livermore Falls Hydroelectric Project. The major issues to be evaluated in this EIS will be discussed at two public meetings, both scheduled to be held on Thursday, October 27, 1988. Prior to this date, a scoping document will be mailed to all recipients of this notice. The document will be discussed during the public meetings and subsequently revised to reflect any new information provided at these meetings.

The first public meeting, which will be held from 1:30 p.m. to 4:30 p.m., at the classroom in the State Armory, located at 7 Armory Road, Plymouth, New Hampshire, 03264-1510, will be a technical session at which officials from

agencies, representatives of interested organizations, and the Commission staff exchange information relevant to the Livermore Falls EIS.

The second meeting, which will be held from 7:30 p.m. to approximately 9:30 p.m., at the Plymouth Area High School cafeteria, located at Old Ward Bridge Road, Plymouth, New Hampshire, 03264, will be a public hearing at which interested persons and agencies may provide oral or written comments and recommendations, including any supporting data, on the scope of the planned EIS.

Both scoping meetings will be recorded by a stenographer, and all statements (oral or written) will become part of the Commission's public record for Project No. 3572-001. Interested persons who are unable to attend the scoping meetings may still provide written comments and recommendations for the public record. All correspondence regarding the subject EIS should be filed with the Commission on or before November 30, 1988, and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. All correspondence should clearly show the following caption on the first page: Livermore Falls Hydroelectric Project, New Hampshire, Docket No. 3572-001.

For further information, please contact the FERC EIS Coordinator, Jim Haines at (202) 376-9479.

Lois D. Cashell,
Secretary.

[FR Doc. 88-22991 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-833-000 et al.]

Transcontinental Gas Pipe Line Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transcontinental Gas Pipe Line Corporation

[Docket No. CP88-832-000]

September 28, 1988.

Take notice that on September 23, 1988, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP88-832-000, 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 PSI, Inc. (PSI) under its blanket certificate issued in Docket No. CP88-328-000 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.

Transco states that the total volumes of natural gas to be transported for PSI on a peak day would be 20,000 dt; on an average day would be 20,000 dt; and on an annual basis would be 7,300,000 dt.

Transco states that it would receive the natural gas at West Cameron Block 342, offshore, Texas and would deliver the natural gas at West Cameron Block 167, offshore Louisiana. Transco further states that no new facilities would be constructed by Transco in order to provide the proposed transportation service. Transco indicates that it commenced the transportation of natural gas for PSI on July 16, 1988, at Docket No. ST88-5216, for a 120-day period pursuant to § 284.223(a)(1) of the Regulations (18 CFR 284.223(a)(1)).

Comment date: November 14, 1988, in accordance with Standard Paragraph G at the end of this notice.

2. Premier Enterprises, Inc.

[Docket No. C188-633-000]

September 29, 1988.

Take notice that on September 1, 1988, Premier Enterprises, Inc. (Premier) of 5670 Greenwood Plaza Boulevard, Suite 420, Englewood, Colorado 80111, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: October 17, 1988, in accordance with Standard Paragraph J at the end of the notice.

3. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP88-811-000, Docket No. CP88-813-000, Docket No. CP88-815-000]

September 29, 1988.

Take notice that on September 14, 1988 and September 15, 1988, ¹ Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-811-000, CP88-813-000 and CP88-815-000 ² requests, pursuant to § 284.223 of the Commission's Regulations, for authorizations to provide transportation services for Kimball Resources, Inc. (Kimball), a producer; Apache Marketing, Inc. (Apache), a marketer;

¹ Docket Nos. CP88-813-000 and CP88-815-000 were filed on September 15, 1988.

² These dockets are not consolidated.

and American Central Gas Marketing Company (American Central), a marketer; respectively, under Northern's blanket certificate issued in Docket No. CP88-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the applications which is on file with the Commission and open to public inspection.

Northern proposes to transport up to 50,000 MMBtu per day of natural gas for Kimball, up to 10,000 MMBtu per day for Apache and up to 200,000 MMBtu per day for American Central from numerous receipt points to several delivery points in various states.

The peak day volumes, average daily volumes and annual volumes as indicated for each end-user are listed on the attached appendix. Northern states that services respective to the provisions stipulated under Section 284.223(a) are reported in Docket No. ST88-5352 for Docket No. CP88-811-000, ST88-5292 for Docket No. CP88-813-000 and ST88-5280 for Docket No. CP88-815-000.

Comment date: November 14, 1988, in accordance with Standard Paragraph G at the end of this notice.

[Docket Nos. CP88-811-000, et al.]

APPENDIX

Docket No.	Shipper	Volumes (MMBtu)
CP88-811-000	Kimball	50,000 peak day. 37,500 average.
Daily		18,250,000 annual.
CP88-813-000	Apache	10,000 peak day. 7,500 average.
Daily		3,650,000 annual.
CP88-815-000	American Central	200,000 peak day. 150,000 average. 73,000,000 annual.

Great Lakes Gas Transmission

[Docket No. CP88-826-000]

September 29, 1988.

Take notice that on September 21, 1988, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP88-826-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Great Lakes to transport natural gas, on an interruptible basis, for the account of POCO Petroleum Ltd. (POCO), until November 1, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In particular, Applicant states that POCO has requested that Great Lakes transport up to 30,000 Mcf per day for the account of POCO, from a point on

the International Border between the United States and Canada, at Emerson, Manitoba, where the facilities of Great Lakes interconnect with the facilities of TransCanada Pipelines Limited, to existing points of interconnection between the facilities of Great Lakes and ANR Pipeline Company at Fortune Lake, Michigan (Fortune Lake delivery point) and Farwell, Michigan (Farwell delivery point). POCO and Great Lakes entered into a Transportation Service Agreement (Agreement) dated August 29, 1988, which implements these arrangements.

This Agreement provides for a rate for the transportation service to the Farwell delivery point which is equal to the 100 percent load factor rate applicable to deliveries in the eastern zone under existing Rate Schedule T-4 of Great Lakes' FERC Gas Tariff, under which volumes of gas are also transported from Emerson to Great Lakes' eastern zone. The Agreement provides for a rate for transportation service to the Fortune Lakes delivery point which is equal to the 100 percent load factor rate determined from the transportation components applicable to deliveries in Great Lakes' central zone under existing Rate Schedule CQ-2, under which volumes of gas are also transported from Emerson to Great Lakes' central

zone. No new facilities are required to provide this proposed service.

Comment date: October 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Midwestern Gas Transmission Company

[Docket No. CP88-755-000]

September 29, 1988.

Take notice that on September 1, 1988, Midwestern Gas Transmission Company (Midwestern), 1010 Milam, Houston, Texas 77002 filed in Docket No. CP88-755-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interruptible transportation of 225,000 dt equivalent of natural gas per day for ProGas U.S.A., Inc. (ProGas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern states that it would receive the gas at the United States-Canada border at Emerson, Manitoba, and redeliver the gas to ProGas at 23 points in the United States. It is indicated that ProGas would charge a transportation rate equal to Midwestern's Rate Schedule IT-2 rate and would provide Midwestern gas for

system fuel and use requirements. It is asserted that this transportation service would benefit ProGas by providing access to additional markets for its Canadian gas.

Comment date: October 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. National Fuel Gas Supply Corporation

[Docket No. CP88-823-000]

September 29, 1988.

Take notice that on September 20, 1988, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88-823-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate sales tap facilities to attach new residential customers of National Fuel Gas Distribution Corporation (Distribution), an affiliate, under authorization issued in Docket No. CP83-4-000 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.

National proposes to construct sales tap facilities to serve eleven additional residential customers of Distribution, as noted below:

Applicant	Line name	Location	Estimate annual consumption (Mcf)
Richard S. McLaine.....	T-3	Highland Township, Clarion County, PA	150
James E. Arner, Jr.	P-30	Madison Township, Clarion County, PA	150
Richard A. McWilliams.....	F-4	Millstone Township, Elk County, PA	150
Kerry J. Corbin.....	P-2	North East Township, Erie County, PA	150
Gary C. Barnes.....	S	Cranberry Township, Venango County, PA	150
Clyde V. Raybuck.....	K-W 5724	Eldred Township, Jefferson County, PA	150
Roger L. Brosius.....	G-19	Knox Township, Jefferson County, PA	150
Howard W. Stormer.....	S	Jackson Township, Mercer County, PA	150
Fred P. Geer.....	K-140	Eldred Township, Jefferson County, PA	150
George J. Richardson.....	PY-10	Town of Centerville, Allegany County, NY	150
Charles R. Glenn.....	K-2	Millcreek Township, Clarion County, PA	150

National states that the total peak-day deliveries are estimated to be 16 Mcf and 1,650 Mcf annually.

Comment date: November 14, 1988, in accordance with Standard Paragraph G at the end of this notice.

7. Natural Gas Pipeline Company of America

[Docket No. CP88-827-000]

September 29, 1988.

Take notice that on September 22, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP88-827-000, a request pursuant to §§ 157.205 and 284.223 of the

Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authority to provide interruptible transportation service for Ladd Gas Marketing, Inc. (Ladd), a marketer of natural gas, under Natural's blanket transportation certificate accepted effective January 29, 1988, in Docket No. CP88-582-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to transport for Ladd up to 25,000 MMBtu equivalent of natural gas per day, plus additional volumes of gas accepted by Natural pursuant to the overrun provisions of

Natural's Rate Schedule ITS or approximately 5,475,000 MMBtu of gas annually, based on an average day amount of 15,000 MMBtu of gas. Natural states that transportation service commenced, under the automatic 120-day authorization of § 284.223(a) of the Commission's Regulations, on August 1, 1988, pursuant to the transportation agreement dated January 1, 1988. Natural states that it notified the Commission of the commencement of the transportation service in Docket No. ST88-5807 on September 22, 1988.

Comment date: November 14, 1988, in accordance with Standard Paragraph G at the end of this notice.

Tennessee Gas Pipeline Company

[Docket No. CP88-838-000]

September 30, 1988.

Take notice that on September 26, 1988, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-838-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Delta Pipeline Company (Delta), a marketer, under the certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated August 31, 1988, it proposes to transport up to 30,000 dekatherms per day equivalent of natural gas on an interruptible basis for Delta from points of receipt listed in Exhibit "A" of the agreement to delivery points also listed in Exhibit "A", which transportation service involves interconnections between Tennessee and various transporters. Tennessee states that it would receive the gas at various existing points on its system offshore Louisiana, and that it would transport and redeliver the gas to Delta at various points in Louisiana, Mississippi, and Ohio. It is further stated that the ultimate delivery points of the gas are located in the states of West Virginia, Ohio, Pennsylvania, New York, Louisiana, Texas, Arkansas, Missouri, Illinois, Indiana, New Jersey, Mississippi, Alabama, Tennessee, and Kentucky.

Tennessee advises that service under § 284.223(a) commenced September 2, 1988, as reported in Docket No. ST88-5781 (filed September 20, 1988). Tennessee further advises that it would transport 2,677 dt on an average day and 977,105 dt annually.

Comment date: November 14, 1988, in accordance with Standard Paragraph G at the end of this notice.

9. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-810-000]

September 30, 1988.

Take notice that on September 14, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP88-810-000 a request, as supplemented on September 23, 1988, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and

284.223) for authorization to perform an interruptible transportation service for Panda Resources, Inc., a marketer, (Panda), under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7(c) 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 pursuant to a transportation agreement dated July 22, 1988, it proposes to receive up to 100 billion Btu per day from Panda at specified points in the states of Oklahoma, Kansas, Texas, and at specified Northern Border pipeline sources and redeliver the gas at delivery points in the states of Nebraska, Kansas, Wisconsin, Texas, Iowa, Minnesota, and Michigan. Northern states that the peak day, average day, and annual volumes would be 100 billion Btu, 75,000 billion Btu, and 36,500 billion Btu, respectively. It is indicated that on August 6, 1988, Northern initiated a 120-day transportation service for Panda under § 284.223(a) as reported in Docket No. ST88-5349.

Northern further states that no facilities need be constructed to implement the service. Northern states that the primary term of the transportation service would expire two years from the date of initial delivery but would continue on a month-to-month basis unless terminated upon thirty days written notice. Northern proposes to charge the maximum rate under its Rate Schedule IT-1, or any effective superseding rate schedule on file with the Commission.

Comment date: November 14, 1988, in accordance with Standard Paragraph G at the end of this notice.

10. U-T Offshore System

[Docket No. CP76-118-017]

September 30, 1988.

Take notice that on September 23, 1988, U-T Offshore System (U-TOS), 2800 Post Oak Boulevard, P.O. Box 1396, Houston, Texas 77251, filed a petition to amend in Docket No. CP76-118-017 pursuant to section 7(c) of the Natural Gas Act, to amend the certificate of public convenience and necessity issued in Docket No. CP76-118 so as to delete the biennial cost-of-service study condition set forth therein, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In the Commission's Order of March 7, 1978, which is here sought to be amended, the Commission permitted U-TOS to file an interim rate, just as it had earlier allowed High Island Offshore

System (HIOS) to file an interim rate in Docket No. CP75-104. The basis for its determination as to U-TOS was that U-TOS' facilities are the functional extension of HIOS. In the order, the Commission required U-TOS to submit a cost-of-service study every two years to justify its then existing rates or to provide a basis for a rate charge, just as it had earlier conditioned HIOS.

U-TOS states that the Commission has never legally justified the imposition of the biennial rate review condition on U-TOS and therefore it appears that, if not illegal, it is certainly discriminatory when compared to more recent decisions of the Commission which have either provided for a single two-year review or a review every three years.

Comment date: October 30, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further 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.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file 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 the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell

Secretary.

[FR Doc. 88-22993 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS73-417 et al.]

Helen Shelton Tantalo (George M. Shelton) et al.; Applications for Small Producer Certificates¹

October 3, 1988.

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 Commission's 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 any protest with reference to said applications should on or before October 18, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition 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.

Lois D. Cashell,

Secretary.

Docket No.	Date filed	Applicant
CS73-417.....	9-19-88	Helen Shelton Tantalo (George M. Shelton), c/o Gary L. Thurman, Attorney-in-Fact, P.O. Box 1411, Midland, TX 79702.
CS88-94-000.....	9-12-88	Crown Resources, Inc., P.O. Box 694, Midland, TX 79702.
CS88-95-000.....	9-12-88	Crump Petroleum Corporation, and BC Oil Company, P.O. Box 1732, Midland, TX 79702.
CS88-96-000.....	9-16-88	COREXCAL, INC., 2100, 444-5 Avenue, SW., Calgary, Alberta, Canada T2P 2T8.
CS88-97-000.....	9-19-88	Alpine Oil & Gas Corporation, P.O. Box 2567, Durango, CO 81302.
CS88-98-000.....	9-19-88	Empire Land Corporation, 200 Carondelet Street, Suite 1500, New Orleans, LA 70130.

¹ By letter dated August 16, 1988, Applicant states that George M. Shelton died on May 14, 1976, and that his estate was subject to probate proceedings for a lengthy period of time. Applicant states that Helen Shelton Tantalo, as George M. Shelton's sole heir, desires that the small producer certificate issued to George M. Shelton in Docket No. CS73-417 be redesignated in her name.

[FR Doc. 88-23002 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9932-002 Colorado]

Sinclair Buckstaff, Jr.; Surrender of Preliminary Permit

September 28, 1988.

Take notice that Sinclair Buckstaff, Jr., permittee for the Continental Reservoir Dam Project No. 9932, has requested that his preliminary permit be terminated. The preliminary permit was issued August 28, 1986, and would have expired on July 31, 1989. The project would have been located on North Clear Creek, near Lake City, in Hinsdale County, Colorado.

The permittee filed the request on August 8, 1988, and the preliminary permit for Project No. 9932 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 88-23004 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-25-001]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 30, 1988.

Take notice that on September 28, 1988, Black Marlin Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC GAS Tariff, Original Volume No. 1:

1st Revised Sheet No. 100
2st Revised Sheet No. 105
1st Revised Sheet No. 110
1st Revised Sheet No. 114
1st Revised Sheet No. 204
1st Revised Sheet No. 205
1st Revised Sheet No. 206
1st Revised Sheet No. 208
1st Revised Sheet No. 209

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

1st Revised Sheet No. 210
1st Revised Sheet No. 213
1st Revised Sheet No. 216
Substitute Original Sheet No. 220
Substitute Original Sheet No. 221

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by October 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-22995 Filed 10-5-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-260-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 3, 1988.

On September 27, 1988, CNG Transmission Corporation ("CNG") submitted for filing, as part of its FERC Gas Tariff Original Volume No. 1, the following tariff sheets:

First Revised Sheet No. 74
Superseding Original Sheet No. 74
First Revised Sheet No. 79
Superseding Original Sheet No. 79
First Revised Sheet No. 80
Superseding Original Sheet No. 80
First Revised Sheet No. 120
Superseding Original Sheet No. 120
First Revised Sheet No. 127
Superseding Original Sheet No. 127
Third Revised Sheet No. 125
Superseding Second Revised Sheet No. 125

CNG has requested that the Commission grant all waivers necessary to permit this filing to become effective as of October 1, 1988, except for Third Revised Sheet No. 125, which will become effective November 1, 1988.

CNG states that copies of the filing were served upon all of its Volume No. 1 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 Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests shall be filed on or before October 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-22996 Filed 10-5-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EL88-38-000]

Minnesota Power & Light Co.; Filing

October 3, 1988.

Take notice that on September 27, 1988, Minnesota Power & Light Company (MP&L) tendered for filing a Petition for Declaratory Ruling that MP&L's accounting and rate treatment of certain fuel purchases used for Off-System Sales is just, reasonable and consistent with § 35.14 of the Commission's Regulations. In its Petition, MP&L seeks to remove any uncertainty as to the acceptability of the Company's accounting and rate treatment of the cost of coal purchased for Off-System Sales based on spot-market coal prices.

Specifically, MP&L seeks a declaratory ruling that:

(1) MP&L's accounting and rate treatment of the cost of fuel purchased for Off-System Sales based on spot-market coal prices is just, reasonable and is consistent with the Commission's Regulations;

(2) MP&L's accounting and rate treatment of the cost of fuel purchased for Off-System Sales based on spot-market coal prices is consistent with the fuel cost adjustment clauses of its wholesale electric service rates; and

(3) MP&L's accounting and rate treatment of the cost of fuel purchased for Off-System Sales to Manitoba Hydro Electric Board and to Iowa Electric Light & Power Company, based on spot-market coal prices, were and are consistent with the Commission Regulations and with MP&L's wholesale fuel cost adjustment clause.

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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests shall be filed on or before October 17, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-22997 Filed 10-5-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-254-000]

Mitco Pipeline Co.; Petition for Waiver of Electronic Media Filing Requirements

September 30, 1988.

Take notice that on September 16, 1988, Mitco Pipeline Company (Mitco) filed a petition for waiver of the electronic media filing requirements of Order No. 493.

Mitco states that it is a very small gas pipeline consisting of approximately 8.5 miles of pipeline. Mitco states that the acquisition, lease purchase and/or contracting of the data processing technology which would be necessary to comply with the provisions of § 385.2011 would cause Mitco severe economic hardship.

Mitco states that it will comply with the Commission's requirements for submitting all affected filings in the traditional paper formats.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before October 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-22998 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-259-000]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

October 3, 1988.

Take Notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on September 28, 1988 tendered for filing proposed changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2. Northern states that the proposed changes would: *First*, adjust Northern's rates resulting in a decrease in revenues from sales, transportation and gathering services by \$15.4 million annually, based on volumes and costs for the twelve months ended May 31, 1988, as adjusted for the Test Period; *Second*, modify the GS-1, Field Sales and Gulf Coast rate design methodology prospectively as well as the payment schedule for GS-1 customers. Northern also proposes to establish a Federal Income Tax Tracker in its Tariff. The Revised Tariff Sheets will not result in an increase in the level of charges to any of Northern's jurisdictional customers. Northern has requested that the proposed tariff changes filed therein be made effective October 27, 1988, without suspension.

Northern states that the decrease in the sales, transportation and gathering rate levels results from an increase in its cost of operation offset by increased system throughput.

Northern advises that the filed-for revenue level is actually \$18.2 million less than the annual revenues required to recover the Test Period Cost of Service. Northern states that in addition to the proposed rate decrease for certain services, it has voluntarily maintained the currently effective level of any derived rate which would have otherwise increased in order to maintain the marketability of its system in light of today's intensely competitive market environment.

Northern recognizes that, due to the transitional nature of the industry, matters other than the rates specifically proposed by Northern's filing herein may be considered in the course of the proceedings before the Commission. Such matters may include the terms and conditions of Northern's sales and

transportation services, seasonal rates, or other rate matters.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to 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, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before October 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-23000 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-624-001]

Northwest Pipeline Corp.; Amendment

October 3, 1988.

Take notice that on September 20, 1988, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88-624-001, an amendment to its pending application filed July 22, 1988, in Docket No. CP88-624-000, pursuant to section 7(b) of the Natural Gas Act, which requested permission and approval to abandon part of its Rate Schedule ODL-1 natural gas sales service to Northwest Natural Gas Company (Northwest Natural). The amendment, as proposed herein, revises the amount of requested reduction in the certificated level of sales service, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

On July 22, 1988, Northwest submitted an abbreviated application in Docket No. CP88-624-000 for permission and approval to partially abandon its Rate Schedule ODL-1 natural gas sales service to Northwest Natural by reducing, effective July 1, 1988, Northwest Natural's firm sales contract demand under Rate Schedule ODL-1 from 2,860,440 therms per day to 2,002,337 therms per day. Northwest

states that this proposed abandonment of 858,103 therms per day of sales contract demand represented the volume of firm service which Northwest Natural, by letter dated July 6, 1988, had elected to convert to firm transportation service under proposed section 5.3(a) of Northwest's Rate Schedule ODL-1, in response to the unlimited conversion opportunity offered by Northwest pursuant to 18 CFR § 284.10(c)(3)(ii). Northwest states that, in order to implement this conversion to firm transportation service, Northwest and Northwest Natural entered into a Firm Transportation Agreement, dated June 24, 1988, which provided for service at a contract demand level of 85,810.3 MMBtu equivalent of natural gas per day (858,103 therms) under Rate Schedule TF-1 in Volume No. 1-A of Northwest's FERC Gas Tariff.

Northwest states that, subsequently, by Commission order issued July 28, 1988, in Docket No. CP88-578-015, *et al.*, Northwest was directed in refire tariff sheets to eliminate the restrictions proposed in section 5.3(a) of its Rate Schedule ODL-1 which impacted the conversion rights afforded its customers under § 284.10. That order also directed Northwest to give its customers 45 days from the date of a final order on the merits of Northwest's proposed restrictions to make initial nominations for an unlimited conversion from firm sales to transportation, it is stated.

Northwest states that, as a result of the foregoing, by letter dated August 4, 1988, Northwest Natural revoked its July 6, 1988, unlimited conversion request, requested a new transportation agreement to implement its original March 11, 1988, request for a 15 percent conversion, and stated its intent to provide a new nomination for an unlimited conversion by August 31, 1988. Northwest states that, accordingly, Northwest and Northwest Natural entered into a new Transportation Agreement dated August 24, 1988 (Transportation Agreement) which replaced the June 24, 1988, Transportation Agreement, effective July 1, 1988. Northwest states that the new Transportation Agreement has a contract demand of 42,907 MMBtu equivalent of natural gas per day to 15 percent of the 2,860,440 therms per day of firm sales contract demand under the October 1, 1982, ODL-1 service agreement between Northwest and Northwest Natural. Northwest states further that service commenced under this Transportation Agreement on July 27, 1988, pursuant to § 284.102, as reported to the Commission on August 26, 1988, in Docket ST88-5404.

Northwest proposes herein to amend its application for authority to partially abandon its authorization for firm ODL-1 sales service to Northwest Natural in order to reflect the 15 percent contract demand conversion level stipulated in Northwest Natural's August 4, 1988, letter instead of the approximately 30 percent conversion requested in its July 6, 1988, letter. Accordingly, Northwest states that, as provided in § 284.10(d)(1), it requests herein permission and approval to abandon its authorization to provide the 429,070 therms per day of firm ODL-1 sales service to Northwest Natural which Northwest Natural already has converted to firm transportation. It is stated that the remaining authorized maximum volume level for ODL-1 service to Northwest Natural then will be 2,431,370 therms per day. Northwest states that, although Northwest Natural has not executed a new ODL-1 service agreement to reflect a lower contract demand, upon Commission approval of the requested partial abandonment of service, Northwest's authorization to provide service under the existing October 1, 1982, ODL-1 service agreement with Northwest Natural will be limited to a maximum volume of 2,431,370 therms per day. However, the maximum daily delivery obligations for existing delivery points to Northwest Natural as set forth on the latest effective exhibits to Northwest Natural's October 1, 1982, service agreement will remain unchanged, it is stated. Northwest further requests that the abandonment be made effective July 1, 1988, the effective date of the new firm Transportation Agreement.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before October 24, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons

who have heretofore filed need not file again.

Lois D. Cashell,
Secretary.

[FR Doc. 88-22999 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-93-000 and RP88-40-000]

Questar Pipeline Co.; Informal Settlement Conference

September 30, 1988.

Take notice that on October 17, 1988, at 10:00 a.m. in the Commission's offices at 825 North Capitol Street NE., Washington, DC, 20426 informal settlement discussions will resume in an effort to resolve the above-captioned proceeding.

All parties may at their option attend, but mere attendance will not serve to make one formally a party to the proceedings.

Lois D. Cashell,
Secretary.

[FR Doc. 88-22990 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-10-002]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

September 30, 1988.

Take notice that on September 27, 1988, Ringwood Gathering Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1: First Revised Sheet No. 66, Superseding Substitute Original Sheet No. 66; First Revised Sheet No. 67, Superseding Substitute Original Sheet No. 67; First Revised Sheet No. 75, Superseding Original Sheet No. 75; First Revised Sheet No. 76, Superseding Substitute Original Sheet No. 76; Original Sheet No. 106A; Original Sheet No. 106B; Original Sheet No. 106C; Original Sheet No. 129; Original Sheet No. 130; Substitute Original Sheet No. 131.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed

by October 7, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 88-23001 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA88-17-000]

Sandefer Oil & Gas, Inc.; Petition for Adjustment

Issued: September 30, 1988.

On July 28, 1988, Sandefer Oil & Gas, Inc. filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 502(c) of the Natural Gas Policy Act of 1978 and Subpart K of the Commission's Rules of Practice and Procedure, a petition for waiver of a portion of a Btu refund obligation owed to Arkla Energy Resources (Arkla) under Commission Order Nos. 399, 399-A, and 399-B.

Petitioner states that it previously operated the subject wells but that it owned no economic interest therein and received a monthly fee paid by the working interest owners. Petitioner further states that the time of Order Nos. 399 *et seq.* it instructed Arkla to recoup such refunds from payments for production, and that the initial recoupment was made but the interest accruing on the refund obligation was not recouped. Petitioner submits that subsequently Graham Resources assumed operation of these wells. Petitioner further submits that it has no ability to withhold payments from existing gas sales because those amounts are no longer paid to petitioner. Petitioner requests a staff adjustment to relieve it from its remaining Btu refund obligation.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register. The petition is on file

with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-23017 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

Valley Gas Transmission, Inc.; Filing

[Docket No. RP88-135-002]

September 30, 1988.

Take notice that on September 22, 1988, Valley Gas Transmission, Inc. (Valley) filed Second Substitute Second Revised Sheet No. 177 and Second Substitute First Revised Sheet No. 180A to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1988.

Valley states that these tariff sheets are filed to correct certain inadvertent errors made in cross-referencing the new provisions of its revised PGA tariff sheets filed on August 22, 1988.

Valley states that a copy of this filing is being served on its two jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before October 11, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-23003 Filed 10-5-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of August 5 Through August 12, 1988

During the week of August 5 through August 12, 1988, the appeals and

applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

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 any 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, DC 20585.

September 29, 1988.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 5 through Aug. 12, 1988]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 9, 1988.....	Frensey, Towerman & Willis, Kansas City, MO.....	KFA-0210	Appeal of an Information Request Denial. If granted: The July 11, 1988 Freedom of Information Request Denial issued by the DOE Albuquerque Operations Office would be rescinded and Frensey, Towerman and Willis would receive access to certain documents pertaining to the Contract No. DF-AC04-85AL30675 regarding construction of the Radiation Hardened Integrated Circuits Facility.
Aug. 9, 1988.....	International Union of Operating Engineers Kansas City, MO.	KFA-0207	Appeal of an Information Request Denial. If granted: The July 15, 1988 Freedom of Information Request Denial issued by the DOE Albuquerque Operations Office would be rescinded and the International Union of Operating Engineers would receive access to complete copies of certain payroll reports.
Aug. 9, 1988.....	International Union of Operating Engineers Kansas City, MO.	KFA-0208	Appeal of an Information Request Denial. If granted: The July 11, 1988 Freedom of Information Request Denial issued by the DOE Albuquerque Operations Office would be rescinded and the International Union of Operating Engineers would receive complete copies of certain payroll reports.
Aug. 9, 1988.....	International Union of Operating Engineers Kansas City, MO.	KFA-0209	Appeal of an Information Request Denial. If granted: The July 14, 1988 Freedom of Information Request Denial issued by the DOE Albuquerque Operations Office would be rescinded and the International Union of Operating Engineers would receive access to complete copies of certain payroll reports.
Aug. 9, 1988.....	Point Landing/International Trading & Transport Washington, DC.	RR122-1	Request for Modification/Rescission. If granted: The July 18, 1988 Decision and Order issued to International Trading & Transport (Case No. RF122-9) would be modified and the firm's application in the Point Landing, Inc. refund proceeding would be approved.

REFUND APPLICATION RECEIVED

[Week of Aug. 5 through Aug. 12, 1988]

Date	Name of refund proceeding/name of refund applicant	Case No.
2/6/88	Henderson Oil Co.....	RF225-11042
8/8/88	Francesville Gas & Farm.	RF265-2730

REFUND APPLICATION RECEIVED—Continued

[Week of Aug. 5 through Aug. 12, 1988]

Date	Name of refund proceeding/name of refund applicant	Case No.
8/8/88	Winona Hardware.....	RF265-2731
8/8/88	Tjaden Oil Co.....	RF265-2732

REFUND APPLICATION RECEIVED—Continued

[Week of Aug. 5 through Aug. 12, 1988]

Date	Name of refund proceeding/name of refund applicant	Case No.
8/8/88	Smith Oil Co.....	RF265-2733
8/8/88	Ellington Propane.....	RF265-2734

REFUND APPLICATION RECEIVED— Continued

(Week of Aug. 5 through Aug. 12, 1988)

Date	Name of refund proceeding/name of refund applicant	Case No.
8/8/88	Monarch Gas Co.....	RF265-2735
8/8/88	McNamar's LP Gas.....	RF265-2736
8/8/88	Kramer Propane Gas Heat.....	RF265-2737
8/8/88	Juif's Oil Co.....	RF265-2738
8/8/88	B&H Crop.....	RF265-2739
8/8/88	Hummel Hardware.....	RF265-2740
8/8/88	Holt Gas Co., Inc.....	RF265-2741
8/8/88	Seward Propane Co.....	RF265-2742
8/8/88	Ortman's Gas-Mart.....	RF265-2743
8/9/88	Sapp Bros. Truck Plaza Inc.....	RF310-109
8/9/88	Grohs Oil Co., Inc.....	RF310-110
8/9/88	Service Oil Co., Inc.....	RF310-111
8/9/88	Alma Motors.....	RF310-112
8/9/88	Joslin Tire Service.....	RF310-113
8/9/88	Sorensen I-80 APCO.....	RF310-114
8/9/88	Hunter Oil Co.....	RF310-115
8/9/88	Spartan Oil Corp.....	RF310-116
8/9/88	Lansing Ice & Fuel Co.....	RF310-117
8/9/88	Schluckebier Oil Co.....	RF310-118
8/9/88	James Oil Co.....	RF310-119
8/9/88	Johnson's Apco Oil Co., Inc.....	RF310-120
8/9/88	Dandy Oil Co., Inc.....	RF310-121
8/9/88	Tony's Gas & Chemical House.....	RF310-122
8/9/88	Albert C. Smith.....	RF310-123
8/9/88	Rand Oil Co.....	RF310-124
8/9/88	The Lorraine Oil Co.....	RF310-125
8/9/88	Harkins Oil Co.....	RF310-126
8/9/88	Walter L. Hart.....	RF310-127
8/9/88	Robson Oil Co., Inc.....	RF310-128
8/9/88	Lloyd B. Hill Oil Co.....	RF310-129
8/9/88	Howard Baird.....	RF265-2744
8/9/88	Howard Baird.....	RF265-2745
8/10/88	Mid-West Petroleum, Inc.....	RF310-130
8/10/88	Panama Skelgas, Inc.....	RF265-2746
8/11/88	Minnesota Air National Guard.....	RF300-10492
8/11/88	Skylake Gulf.....	RF300-10493
8/11/88	East Gate Gulf.....	RF300-10494
8/11/88	David's Gulf Station.....	RF300-10495
8/12/88	Brentwood Union Free School.....	RF300-10496
8/5/88 thru 8/12/88	Crude Oil Refund Applications Received.....	RF272-74627 thru RF272-74699
8/5/88 thru 8/12/88	Exxon Refund Applications Received.....	RF307-3355 thru RF307-3964
8/5/88 thru 8/12/88	Atlantic Richfield Refund Applications Received.....	RF304-4073 thru RF304-4202

[FR Doc. 88-23116 Filed 10-05-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 5 Through September 9, 1988

During the week of September 5 through September 9, 1988 the decisions and orders summarized below were issued with respect to appeals and applications for relief filed with the

Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Budget Rent a Car, 9/9/88, RF272-23982

The DOE issued a Decision and Order denying an Application for Refund filed in the Subpart V crude oil refund proceedings. The Applicant was a car rental agency that purchased refined petroleum products during the period August 19, 1973 through January 27, 1981. The OHA has determined that car rental agencies are resellers for the purpose of the crude oil refund proceedings. Because the Applicant did not demonstrate that it was injured due to the crude oil overcharges it was ineligible for a crude oil refund.

Getty Oil Company/Widmer Oil Company, 9/9/88, RF265-1349, RF265-1350, RF265-1351

The DOE issued a Decision and Order concerning three Applications for Refund filed by a reseller of motor gasoline, middle distillates and propane that were covered by a Consent Order that the DOE entered into with Getty Oil Company. The applicant submitted information indicating Getty purchases of 8,915,575 gallons of motor gasoline, 1,222,916 gallons of middle distillates and 3,616,181 gallons of propane. It elected to limit its claims on the basis of the level-of-distribution presumption of injury methodology and was eligible for a refund below the \$50,000 threshold. The sum of the refund approved in this Decision is \$19,861, representing \$9,886 in principal and \$10,176 in accrued interest.

Mid-America Farm Lines, Inc., 9/9/88, RF272-7419

The Department of Energy issued a Decision and Order denying an Application for Refund filed by Mid-America Farm Lines, Inc. on the ground that the firm had waived its right to a crude oil refund in the proceedings under 10 CFR Part 205, Subpart V when it filed a claim for a refund from the Surface Transporters Escrow established by the Settlement Agreement in the DOE Stripper Well Exemption Litigation.

Mobil Oil Corp./Carbo Industries, Inc., 9/6/88, RF225-5304

The DOE issued a Decision and Order granting an Application for Refund filed by Carbo Industries, Inc. in the Mobil Oil Corp. special refund proceeding. Mobil Oil Corp., 13 DOE ¶ 85,339 (1985). Carbo, a retailer of home heating oil,

claimed a refund on its purchases of 37,474,832 gallons of No. 2 fuel from Mobil. After examining the firm's cost banks and applying a three-part competitive disadvantage test, the DOE concluded that Carbo should receive a refund on the product that it purchased from Mobil at above-market prices. The total refund granted to Carbo was \$5,591, representing \$4,477 in principal and \$1,114 in accrued interest.

Olmos Construction Company, 9/9/88, RF272-74785

On September 9, 1988, the DOE issued a Supplemental Decision and Order granting an additional refund to Olmos Construction Company (Olmos) from crude oil overcharge funds. In that Decision, the DOE determined that Olmos was entitled to receive \$606 in addition to the refund amount previously granted to the firm, based upon its documented purchases of refined petroleum products during the period from August 19, 1973 through January 27, 1981.

Dismissals

The following submissions were dismissed:

Name	Case No.
Alleghany Motor Market.....	RF300-7653
Blackburn Propane Service.....	RF300-5717
Bob's Gulf.....	RF300-78
Cardinal Farms.....	RF272-68022
Carl Parsons Gulf.....	RF300-300
City Gulf Service.....	RF300-41
Cloe's Gulf.....	RF300-432
Crawford Service Station.....	RF300-1143
Curry Ford Gulf.....	RF300-44
Dixon's Grocery & Station.....	RF300-7333
Dugger's Gulf.....	RF300-2560
Eastgate Gulf.....	RF300-9
Ferguson Service Station.....	RF300-7370
Firth Gulf Service.....	RF300-26
Fore, Inc.....	RF307-1241
Galle's Gulf Service.....	RF300-3423
George and Bill's Gulf.....	RF300-4761
Graham's Gulf Service.....	RF300-5850
Hayes Gulf Station.....	RF300-3083
Highland Park Gulf.....	RF300-7708
Hobbs Gulf (Ray's Gulf).....	RF300-970
Hodge & Villars Gulf.....	RF300-3828
Holiday Gulf.....	RF300-142
Hospital Gulf Service.....	RF300-652
John's Gulf Service.....	RF300-2817
Ketchum Gulf.....	RF300-2662
Lucky Gulf Service.....	RF300-3209
Matovcik Gulf.....	RF300-1908
Mimosa Gulf.....	RF300-3351
Mimosa Gulf.....	RF300-7361
N. Middletown Gulf, Inc.....	RF300-130
Phillips Gulf Service Station.....	RF300-7575
Plaza Gulf.....	RF300-2293
Reeder Distributors, Inc.....	RF300-1237
Russell Creek Gulf.....	RF300-269
Seymore's Service Station.....	RF300-351
Southend Gulf Service.....	RF300-2838
Strube Propane, Inc.....	RF300-7
Triangle Gulf.....	RF300-360
Wagner Service Station.....	RF300-368
Wilkerson Gulf.....	RF300-1694
Windsor's Gulf.....	RF300-7731

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

September 29, 1988.

[FR Doc. 88-23117 Filed 10-5-88; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-815-DR]

Major Disaster and Related Determinations; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA-815-DR), dated September 29, 1988, and related determinations.

DATED: September 29, 1988.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated September 29, 1988, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of California, resulting from wildfires which occurred September 11-24, 1988, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I, therefore, declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You are also authorized to provide Public Assistance in the affected areas, if requested and necessary, and an acceptable State commitment for these purposes is provided. Consistent with the requirement that Federal

assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated areas.

Pursuant to Section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joseph G. Del Monte of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster: The Counties of Nevada, Shasta, Solano, and Yuba for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 88-23029 Filed 10-5-88; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007590-049.

Title: United States/Colombia Conference.

Parties:

CTMT, Inc.

Flota Mercante Grancolombiana, S.A.

Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed modification would authorize the parties to independently enter into service contracts for the carriage of bananas.

Agreement No.: 203-011063-006.

Title: U.S. Jamaica Discussion

Agreement.

Parties:

Crowley Caribbean Transport, Inc.

Kirk Lines Ltd.

Sea-Land Service, Inc.

Zim Israel Navigation Co.

Calypso Container Lines

Shipping Corporation of Trinidad and Tobago, Ltd.

Synopsis: The proposed modification would add West Indies Shipping Corporation as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

Dated: September 30, 1988.

[FR Doc. 88-22979 Filed 10-5-88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the *Federal Register* in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 102-008454-004.

Title: Guam Rate Agreement.

Parties:

American President Lines, Ltd. Sea-Land Service, Inc.

Synopsis: The proposed modification would authorize the parties to establish a self-policing neutral body.

Filing Party: James C. Olsson, Secretary, Guam Rate Agreement, 221 Main Street, Suite 530, San Francisco, California 94105.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated October 3, 1988.

[FR Doc. 88-23089 Filed 10-5-88; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Crown Cruise Line of Florida, Inc.,
Vacaciones del Mar S.A., 2790 N.
Federal Highway, Boca Raton,
Florida 33431

Vessel: CROWN DEL MAR

Dated: October 3, 1988.

Joseph C. Polking,
Secretary.

[FR Doc. 88-23049 Filed 10-5-88; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Consortium of Federal, Academic and Industry Logistics Experts; Meeting

Notice is hereby given that the Consortium of Federal, Academic, and Industry Logistics Experts will meet October 14, 1988, from 10:00 a.m. to 12:00 noon in Crystal Mall Building 4, Room 1129, Arlington, Virginia. The purpose of the meeting is to provide a forum for exchange on logistics issues, among member civilian agencies.

The agenda for this meeting will include discussions on the freight

transportation initiative and the proposed fiscal year 1989 agenda topics. There will also be an observance of the Consortium's second anniversary and a recognition of the significant contributions of some of the members of the Consortium.

The meeting will be open to the public. Less than 15 days notice of this meeting is being provided because of scheduling difficulties.

For further information contact Mr. William B. Foote, Assistant Commissioner for Customer Service and Marketing, GSA/FSS, Washington, DC 20406, telephone (703) 557-7970.

Dated: September 28, 1988.

Roger D. Daniero,

Deputy Commission, Federal Supply Service,
GSA.

[FR Doc. 88-23107 Filed 10-5-88; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Reallotment of Funds for FY 1987; Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Family Support Administration, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Secretary has determined that no funds from FY 1987 will be reallocated. This determination is based on the fact that, of the \$2,857.84 available for reallocation, most grantees would receive grant awards of less than one dollar (\$1.00). Other grantees would receive grant awards of less than fifty (\$50.00). It would not be cost effective to reallocate this small amount of funds.

FOR FURTHER INFORMATION CONTACT:

H. Gary Mounts, Deputy Associate Administrator for Grants Management, Family Support Administration, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447; telephone (202) 252-4583.

Dated: September 30, 1988.

Wayne A. Stanton,

Administrator.

[FR Doc. 88-23085 Filed 10-5-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 88M-0105]

Allergan Optical; Premarket Approval of ProFree Plus™ Weekly Enzymatic Cleaner

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Allergan Optical, Irvine, CA, for premarket approval, under the Medical Device Amendments of 1976, of ProFree Plus™ Weekly Enzymatic cleaner for use in sterile saline solution to remove protein and reduce its buildup on rigid gas permeable contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of March 9, 1988, of the approval of the application.

DATE: Petitions for administrative review by November 7, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On May 21, 1987, Allergan Optical Irvine, CA 92715, submitted to CDRH an application for premarket approval of ProFree Plus™ Weekly Enzymatic Cleaner for use in sterile saline solution to remove protein and reduce its buildup on rigid gas permeable contact lenses as listed in the approved labeling.

On November 17, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 9, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office

upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of ProFree Plus™ Weekly Enzymatic Cleaner states that the solution is indicated for use in sterile saline solution to remove protein and reduce its buildup on rigid gas permeable contact lenses.

Manufacturers of rigid gas permeable contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the *Federal Register* of the approval of a new solution for use with an approved rigid gas permeable contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before November 7, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this

document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 23, 1988.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 88-22987 Filed 10-5-88; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice; amendment.

SUMMARY: The Food and Drug Administration is amending a public advisory committee meeting notice of the Veterinary Medicine Advisory Committee to reflect a change in the location of the meeting. Notice of the October 11 and 12, 1988, meeting was published in the *Federal Register* of September 19, 1988 [53 FR 36372 at 36373].

SUPPLEMENTARY INFORMATION: In FR Doc. 88-21294, appearing at page 36373 in the *Federal Register* of September 19, 1988, a change is made under the heading "Veterinary Medicine Advisory Committee." On page 36373, first column, the *Date, time, and place* paragraph is revised to read as follows: *Date, time, and place.* October 11, 1988, 8:45 a.m., October 12, 1988, 8 a.m., Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD.

Dated: October 3, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-23203 Filed 10-4-88; 2:44 pm]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of November 1988:

Name: Council on Graduate Medical Education.

Time: November 3, 1988 8:30 a.m.—3:00 p.m.; November 4, 1988 3:00 p.m.—4:45 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B) and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: This will be the first meeting of the Council following the issuance of its first report to the Secretary of DHHS and the Congress in July 1988. Agenda items will include reactions to the report, and a discussion of the Council's future agenda, including the need for continuing subcommittees, particularly in the areas of physician manpower, and medical education programs and financing. A major presentation will be made by Eli Ginzberg, Ph.D., on the article co-authored by him and Robert H. Ebert, M.D., on "The Reform of Medical Education", followed by a reactor panel to discuss this subject in greater detail.

Anyone requiring information regarding the subject Council should contact Dr. Donald L. Weaver, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6190.

Name: Subcommittee on Graduate Medical Education Programs and Financing of the Council on Graduate Medical Education.

Time: November 3, 1988, 3:00 p.m.—5:00 p.m.; November 4, 1988 8:30 a.m.—3:00 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative

financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

Agenda: Agenda items include: Followup on first report of the Council on Graduate Medical Education to the Secretary of DHHS and the Congress. Subcommittee priorities, objectives, and approaches to be developed for future meetings, settings.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D., Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6326.

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education.

Time: November 3, 1988 3:00 p.m.—5:00 p.m.; November 4, 1988 8:30 a.m.—3:00 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Open for entire meeting.

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

Agenda: Followup on first report of the Council on Graduate Medical Education to the Secretary of DHHS and the Congress. Subcommittee priorities, objectives, and approaches to be developed for future meeting settings.

Anyone requiring information regarding the subject Subcommittee should contact Jerald Katzoff, Subcommittee principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone (301) 443-6364.

Agenda Items are subject to change as priorities dictate.

Date: October 3, 1988.

Jackie E. Baum,
Advisory Committee Management Officer,
HRSA.

[FR Doc. 22989 Filed 10-5-88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

National Center for Health Services Research and Health Care Technology Assessment; Announcement of Assessment Protein A Column Immunoabsorption for the Treatment of Idiopathic Thrombocytopenia Purpura (ITP) and Other Medical Conditions

The Public Health Service (PHS) through the Office of Health Technology Assessment (OHTA) announces that it is conducting an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use of protein A immunoabsorption. Specifically, we are interested in the medical indications for the procedure and its clinical acceptability. For the approved indication in the treatment of Idiopathic Thrombocytopenia Purpura (ITP), should its use be considered first-line treatment or relegated to use only after failure of other therapies, and are there other medical indications for which its use is regarded as safe and effective?

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, PHS recommendations will be formulated to assist the Health Care Financial Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing on or before January 4, 1989.

The information being sought is a review and assessment of past, current, and planned research related to this technology, bibliographies of published controlled clinical trials and other well-designed clinical studies, as well as other information related to characterization of the patient population most likely to benefit from this technology. Information on the clinical acceptability and effectiveness of this technology is also being sought. Proprietary information is not being sought.

Written material should be submitted to: Dr. Harry Handelsman, Office of Health Technology Assessment, 5600 Fishers Lane, Room 19A-27, Rockville, MD 20857, (301) 443-4990.

Dated: September 29, 1988.

Donald E. Goldstone,
Acting Director, Office of Health Technology
Assessment.

[FR Doc. 88-23086 Filed 10-5-88; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-060-08-4322-02]

Moab District Grazing Advisory Board Meeting

September 29, 1988.

AGENCY: Bureau of Land Management,
Moab, Interior.

ACTION: Moab District Grazing Advisory
Board Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Moab District Grazing Advisory Board will be held on November 9, 1988. The meeting will begin at 10:00 am in the conference room of the Bureau of Land Management, San Juan Resource Area Office, at 435 North Main, Monticello, Utah 84535.

The agenda for the meeting will include: (1) Election of Officers, (2) briefing on Section 8 Committee, (3) update on San Juan and San Rafael RMPs, (4) review of the Indian Creek Riparian Demonstration Area, (5) changes in Grazing Billing Procedures, (6) review of Price River RPS Update, (7) review of Grand Resource Area Monitoring Evaluation/Potential Decisions, and (8) prioritization of District Range Improvement Projects.

The meeting is open to the public. Interested persons may make oral statements to the Board between 2:00 pm and 3:00 pm on November 9, 1988, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532 by November 1, 1988.

Summary minutes of the Board meeting will be maintained in the District Office and will be available within thirty (30) days following the meeting.

William C. Stringer,
Acting District Manager.

[FR Doc. 88-23092 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-030-08-4111-01]

Rawlins District Advisory Council; Meeting**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of meeting of the Rawlins District Advisory Council.**SUMMARY:** Notice is hereby given in accordance with Pub. L. 94-579 that a meeting of the Rawlins District Advisory Council will be held.**DATE:** October 27, 1988.**ADDRESS:** Bell Air Inn, 23rd and Spruce, Rawlins, Wyoming.**FOR FURTHER INFORMATION CONTACT:** Grant Petersen, Public Affairs Specialist or Dick Bastin, District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324-7171.**SUPPLEMENTARY INFORMATION:** The meeting will be held at 10:00 a.m. at the Bell Air Inn in Rawlins, Wyoming.

A public comment period will be held at 10:30 a.m. with a discussion of the agenda items to follow. The meeting will include a discussion of Cultural Resource protection at Bairoil, the Operation Respect/Hunter Access Program, status of the Wilderness Study Areas, and the Sun Stewardship Program.

The meeting is open to the public. Anyone interested in attending the meeting and/or making an oral statement should notify the District Manager by October 24, 1988. Written statements also may be filed before the meeting for the Board's consideration.

Summary minutes will be available for review within 30 days after the meeting at the Rawlins District Office. Copies of the minutes may be obtained for the cost of duplication.

Richard Bastin,
District Manager.

[FR Doc. 22984 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-22-M

[CA-940-08-5410-10-ZBKG; CACA 22929]

Conveyance of Mineral Interests in California**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of segregation.

SUMMARY: The private lands described in this notice, aggregating 518.99 acres, are segregated and made unavailable for filings under the public land laws, including the mining laws, to determine their suitability for conveyance of the reserved mineral interest pursuant to

section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, California State Office, Federal Office Building, 2800 Cottage Way, Room-2841, Sacramento, California 95825, (916) 978-4815.

Serial No.—CACA 22929T. 4 S., R. 16 E., Mount Diablo Meridian, Sec. 36, SE $\frac{1}{4}$ SE $\frac{1}{4}$.T. 4 S., R. 17 E., Mount Diablo Meridian, Sec. 30, lots 4-9, 11, E $\frac{1}{2}$ SW $\frac{1}{4}$;Sec. 31, lots 1-4, 6, E $\frac{1}{2}$ NW $\frac{1}{4}$.

County—Mariposa

Minerals Reservation—Coal and other minerals

Upon publication of this Notice of Segregation in the Federal Register as provided in 43 CFR 2720.1-1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate by publication of an opening order in the Federal Register specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interests; or two years from the date of publication of this notice, whichever occurs first.

Dated: September 29, 1988.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 88-23099 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-40-M

[AA-48597-BH]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48597-BH has been received covering the following lands:

Fairbanks Meridian, AlaskaT. 21 S., R. 5 E.,
Sec. 17, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$5 per acre per year, and royalty increased to 16% percent. The \$500 administrative fee and the cost of publishing this Notice have been paid.

Having met all the requirements for reinstatement of lease AA-48597-BH as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1988, subject to the terms and conditions cited above.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 88-23096 Filed 10-5-88; 8:45 pm]

BILLING CODE 4310-JA-M

[OR-943-09-4220-11; GP-08-270; OR-39219]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: This action informs the public of the conveyance of 320 acres of public lands out of Federal ownership. This action will also open 678 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 320 acres of lands in Lane County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette MeridianT. 12 S., R. 3 E.,
Sec. 18, N $\frac{1}{2}$ NE $\frac{1}{4}$.T. 2 S., R. 5 W.,
Sec. 9, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$.T. 14 S., R. 8 W.,
Sec. 33, all that portion of lot 2 and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ lying northerly of the center of Little Lobster Creek.T. 15 S., R. 7 W.,
Sec. 6, lot 7, SE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 15 S., R. 8 W.,

Sec. 23, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 26, SE $\frac{1}{4}$.

The areas described aggregate 676 acres in Benton, Lane, Linn, and Yamhill Counties.

3. At 8:30 a.m., on November 14, 1988, the lands described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on November 14, 1988, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on November 14, 1988, the lands described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on November 14, 1988, the lands described in paragraph 2 will be open to applications and offers under the mineral leasing laws subject to outstanding oil and gas leases.

Dated: September 27, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-22983 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-33-M

[AZ-920-08-4212-12; A-18270]

Arizona; Conveyance of Public Land in Exchange for Private Land

September 23, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of land.

SUMMARY: This action informs the public of the completion of an exchange between the United States and Rancho Verdada, a Wyoming Partnership. The United States transferred 90 acres of public land in Pima County out of Federal ownership and accepted title to 77.16 acres of private land in Pima

County lying within the Saguaro National Monument.

FOR FURTHER INFORMATION CONTACT: Marsha Luke, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011 (602) 241-5534.

SUPPLEMENTARY INFORMATION: On May 16, 1988, the Bureau of Land Management transferred the following described land by Patent No. 02-88-0031, pursuant to the Federal Land Policy and Management Act of October 21, 1976 and section 307 of Pub. L. 94-578:

Gila and Salt River Meridian, Arizona

T. 12 S., R. 11 E.,

Sec. 25, SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$.

Comprising 90 acres in Pima County.

In exchange the following described land was conveyed to the United States:

Gila and Salt River Meridian, Arizona

T. 12 S., R. 12 E.,

Sec. 31, lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

Comprising 77.16 acres in Pima County.

The land acquired by the United States in this exchange lies within the boundaries of the Saguaro National Monument and will be administered by the National Park Service.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-22985 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-32-M

[CA-060-08-7122-10-1018; CA-22587]

Realty Action; Exchange of Public and Private Lands, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands CA-22587.

SUMMARY: The following described lands, owned by The Nature Conservancy and located in Riverside County, have been offered for exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716). These lands have been identified for acquisition in the Coachella Valley Fringe-toed Lizard Habitat Conservation Plan, written by the U.S. Fish and Wildlife Service:

San Bernardino Meridian, California

T. 4S., R. 6E.

Section 1

Lot 2 of the NE $\frac{1}{4}$ and Lot 2 of the NW $\frac{1}{4}$; Excepting therefrom those portions conveyed to the County of Riverside for Thousand Palms Canyon Road.

Section 13

All; Excepting therefrom those portions conveyed to the County of Riverside for Thousand Palms Canyon Road and Excepting that portion of the SE $\frac{1}{4}$ properly described in the conveying deed and referred to as the Hidden Palms Oasis area and also Excepting from the NE $\frac{1}{4}$ and S $\frac{1}{2}$, 50% of all oil, gas, and other hydrocarbon and minerals;

Section 14

SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, SE $\frac{1}{4}$; Excepting therefrom those portions conveyed to the County of Riverside for Thousand Palms Canyon Road.

T. 4S., R. 7E.

Section 6

Lot 2 of the NE $\frac{1}{4}$, E $\frac{1}{2}$ of Lot 2 of the NW $\frac{1}{4}$, S $\frac{1}{2}$ of Lot 2 of the SW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$; Excepting those portions within the rights-of-way of record for an aqueduct road and transmission line.

Section 7

E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$; Excepting 50% of all mineral, gas, and geothermal rights and substances;

Section 8

E $\frac{1}{2}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;

Section 9

W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$;

Section 15

All;

Section 16

E $\frac{1}{2}$, NW $\frac{1}{4}$; Excepting all oil, gas, hydrocarbon substances and minerals in the E $\frac{1}{2}$, and Excepting all oil, gas, oil shale, coal, phosphate, sodium, gold, silver, and all other mineral deposits in the NW $\frac{1}{4}$;

Section 17

NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$.

Containing 3,483.08 acres, more or less.

The lands to be acquired will be subject to the following reservations:

1. Those easement rights for power transmission lines, poles and conduits issued to Imperial Irrigation District.

2. Those easement rights for water mains, pipes, pipelines and conduits issued to Rancho Ramon Water Company.

3. Those easements rights for roads, ditches, conduits and pipelines issued to Coachella Valley County Water District.

4. Those easements rights for electrical transmission and distribution lines issued to Southern California Edison Company.

5. Those easement rights for gas pipelines issued to Southern California Gas Company and Southern Counties Gas Company of California.

6. Those easements rights for powerlines, electrical transmission lines

and utilities issued to the Metropolitan Water District of Southern California.

In exchange for these lands, The Nature Conservancy (TNC) will receive public lands that have been determined to be suitable for disposal by exchange. The public lands so identified will be noted and publication of the disposal determination will be made at the time of identification. The public will have the opportunity to comment on the public land disposal determination when the specific parcels of public land have been identified and posted through publication. The values of the lands to be exchanged will be equal or approximately equal; full equalization of values will be achieved through acreage adjustment or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership. All reservations to be included in the conveyance from the United States shall be listed in the publication.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-federal lands within the 13,030 acre preserve for the Coachella Valley fringe-toed lizard through a method which will enhance the management capabilities for the Preserve. The lizard is federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres of private land within the preserve. The acres being acquired do not constitute habitat for the lizard, but provide a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions of the Preserve. The public interest will be well served by completing the exchange(s) involved with the acquisition of the above-cited private (offered) lands.

For detailed information concerning this exchange, including the environmental assessment and land report, contact Pete Kempenich or Mike Selman, BLM Indio Resource Area Office, (619) 323-4421.

For a period of 45 days after publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become the final

determination of the Department of the Interior.

Dated: September 27, 1988.

Hugh W. Riecken,

Associate District Manager.

[FR Doc. 88-23108 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-40-M

[OR-090-09-4212-21: GP9-001: OROR 41765]

Realty Action; Noncompetitive Lease of Public Lands for Commercial Occupancy Purposes; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—noncompetitive occupancy lease of public lands in Lane County, Oregon.

SUMMARY: Federal Register Document 87-3682 appearing in 52 FR 5503 on February 23, 1987 is hereby modified to reduce the acreage included in the proposed lease from 8.2 to 7.1 acres, described by metes and bounds within the SW 1/4 NE 1/4 of Section 33, T. 17 S., R. 4 W., W.M. and further to increase the term of the proposed lease from 15 to 20 years. In all other respects, the original notice is unchanged.

DATE: For a period of up to and including November 21, 1988, interested parties may submit comments to the Eugene District Manager at the address shown below. Any objections will be reviewed by the Oregon State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

ADDRESSES: Detailed information concerning this lease, including the environmental assessment, is available for review at the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Eugene District Office, at (503) 683-6403.

Date of Issuance: September 30, 1988.

Elaine Zielinski,

Associate District Manager.

[FR Doc. 88-23109 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-33-M

[UT-060-08-4212-14, UTU-62050]

Realty Action; Noncompetitive Sale of Public Lands; Carbon County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, UTU-62050, noncompetitive sale of public land in Carbon County, Utah.

SUMMARY: The following described parcels of public land have been examined and through the development of land use planning decisions based upon public input, resource considerations, regulations and Bureau policies, have been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct sale) procedures (43 CFR 2711.3-3):

Salt Lake Meridian, Utah.

T. 14 S., R. 10 E.,

Section 9, lot 10, lot 24, lot 27, lot 28.

The described land aggregates 9.15 acres.

The land is being offered as a direct sale to Price City, Utah, in accordance with 43 CFR 2711.3-3. The land will not be offered for sale until at least sixty (60) days after publication of this notice. Sale will be at no less than fair market value determined to be \$4,575.00.

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

The Terms and Conditions Applicable to the Sale Are

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Moab District Office and the Price River Resource Area Office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights and reservations of record include, but are not limited to, Federal oil and gas lease UTU-62627 and gas pipeline right-of-way UTU-67467.

Sale Procedures: Price City will be given a thirty (30) day time period to submit ten (10) percent of the sale price of the property and then 180 days to submit the balance of the money due. If the funds are not received by the required dates, the bid will be rejected,

the deposit forfeited and the lands reoffered over the counter to the general public until sold or withdrawn from the market. Sealed bids would be accepted at the Price River Resource Area Office during regular business hours, 7:45 a.m. to 4:30 p.m.

Bidder Qualifications: Bidders must be U.S. citizens, 18 years of age or more; a State or State instrumentality authorized to hold property; a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers or withdraw the land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

DATES: For a period of forty-five (45) days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION:

Additional information concerning the lands and the terms and conditions of the sale may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637-4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Date: September 26, 1988.

William C. Stringer,
District Manager.

[FR Doc. 88-22981 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

September 29, 1988.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am, September 29, 1988.

The plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, and

the subdivision of section 19, T. 6 S., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 841, was accepted September 14, 1988.

This survey was executed by the Rocky Mountain Region to support its timber sales and trespass program.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Marlin G. Livermore,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-23097 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-JB-M

[ID-943-09-4520-12]

Filing Plats of Survey; Idaho

AGENCY: Bureau of Land Management, Interior.

The plats of survey of the following lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho on the dates hereinafter states:

T. 26 N., R. 1 E., Group No. 749, accepted June 22, 1988, officially filed on July 12, 1988.

T. 49 N., R. 3 E., Supplemental plat, accepted July 19, 1988, officially filed on July 27, 1988.

T. 30 N., R. 4 E., Group No. 757, accepted July 19, 1988, officially filed on July 27, 1988.

T. 48 N., R. 5 E., Supplemental plat, accepted August 29, 1988, officially filed on September 15, 1988.

T. 48 N., R. 2 E., Group No. 758, accepted August 25, 1988, officially filed on September 15, 1988.

T. 21 N., R. 21 E., Group No. 743, accepted September 9, 1988, officially filed on September 13, 1988.

T. 30 N., R. 1 W., Group No. 628, accepted September 16, 1988, officially filed on September 19, 1988.

The above plats represent dependent resurveys and supplemental plats.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: September 30, 1988.

Donald Simpson,

Chief, Land Services Section.

[FR Doc. 88-23098 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-GG-M

[NM-940-08-4520-12]

New Mexico; Filing of Plat of Survey

September 26, 1988.

The plats of survey described below

were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on the dates shown.

A Survey representing the dependent resurvey and survey of Township 23 South, Range 1 East, New Mexico Principal Meridian, New Mexico, Group 876 NM, filed on September 19, 1988.

The survey was requested by the District Manager, Las Cruces District, Las Cruces, NM.

The supplemental plat showing correct lottings for lots 14 and 15, which had been inadvertently misrepresented as small holding claims in section 18, Township 5 South, Range 1 East, New Mexico Principal Meridian, New Mexico, filed September 23, 1988.

The supplemental plat showing correct lottings for lots 10 and 11, in sections 7 and 8 respectively, which has been inadvertently misrepresented as a small holding claim, Township 5 South, Range 1 East, New Mexico Principal Meridian, New Mexico, filed September 23, 1988.

The supplemental plat correcting erroneous lottings in section 22, Township 12 North, Range 10 West, Indian Meridian, Oklahoma, filed September 23, 1988.

The dependent resurvey of a portion of the subdivisional lines and the subdivision of section 21, Township 12 North, Range 10 West, Indian Meridian, Oklahoma, Group 52 filed September 23, 1988.

The dependent resurvey of a portion of the Third Standard Parallel North, a portion of the subdivisional lines, a portion of the adjusted record meanders of the right bank of the North Fork of the Canadian River in section 2, and the reestablishment of a portion of the 1973 left bank, the survey of partition lines, and the survey of the 1873 medial line of the avulsed portion of the North Fork of the Canadian River in section 2, Township 12 North, Range 7 West, Indian Meridian, Oklahoma, Group 52, filed September 23, 1988.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of \$2.50 per sheet.

John P. Bennett,

Chief, Branch of Cadastral Survey.

[FR Doc. 88-22982 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-FB-M

[OR-942-08-4520-12: GP8-271]

Filing of Plats of Survey; Oregon/Washington**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian**Oregon**

T. 24 S., R. 4 W., accepted August 20, 1988
 T. 7 S., R. 3 E., accepted August 20, 1988
 T. 31 S., R. 11 W., accepted September 9, 1988
 T. 13 S., R. 4 E., accepted September 9, 1988

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: September 28, 1988.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88-23100 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service**Development Operations Coordination Document; TXP Operating 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 TXP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6651, Block 316, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on September 26, 1988. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 825 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

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. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management

Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 27, 1988.

J. Rogers Percy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-22986 Filed 10-5-88; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31330]

Chicago and North Western Transportation Co.; Trackage Rights Exemption; Iowa Interstate Railroad, Ltd.

Iowa Interstate Railroad, Ltd. has agreed to grant 2.678 miles of overhead trackage rights to Chicago and North Western Transportation Company between milepost 358.568 and milepost 355.89 in Des Moines, IA. The trackage rights will be effective on or after September 23, 1988.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: September 21, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-22880 Filed 10-5-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31326]**The Great Smoky Mountains Railway, Inc.; Modified Rail Certificate**

September 28, 1988.

The Great Smoky Mountains Railway, Inc. ("GSMR") filed for a modified certificate of public convenience and necessity under 49 CFR 1150.23(1987). By contract with the North Carolina Department of Transportation ("NCDT"), GSMR was authorized to provide rail passenger and freight service on 67.2 miles of the Murphy Branch between Dillsboro (milepost T-47.0) and Murphy (milepost T-114.2) in Jackson, Swain, Graham, and Cherokee Counties within the State of North Carolina (the "Murphy Branch").

The Murphy Branch was formerly owned and operated by the Southern Railway Company ("Southern") and was authorized for abandonment between Dillsboro (milepost T-48.0) and Murphy (T-114.2) in Docket No. AB-290 (Sub-No. 8) *Southern Railway Company—Abandonment—Dillsboro to Murphy, NC*, dated June 14, 1988, served June 21, 1988.

The NCDT acquired the Murphy Branch between Dillsboro (milepost T-48.0) and Murphy (milepost T-114.2) from Southern on July 18, 1988, and entered into a lease and operating agreement with GSMR on July 28, 1988.¹ The agreement is for a 25-year period.

A copy of this modified certificate notice shall be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, Jane F. Mackall,
Director, Office of Proceeding.

Kathleen M. King,

Acting Secretary.

[FR Doc. 22881 Filed 10-5-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31318]**Norfolk and Western Railway Co. and The Wheeling and Lake Erie Railway Co.; Merger Exemption**

The Norfolk and Western Railway Company (NW) and The Wheeling and Lake Erie Railway Company (W&LE)

¹ In finance Docket No. 31325, NCDT and GSMR filed a notice of exemption for NCDT to acquire and GSMR to operate an additional one mile of track between milepost T-47.0 and milepost T-48.0. Also, in the proceeding GSMR filed a notice of exemption to acquire trackage rights over 0.1 miles of Southern track between mileposts T-45.3 and T-45.4.

have filed a notice of exemption for the merger of W&LE into NW, with NW as the surviving corporation. The merger was expected to be consummated on September 16, 1988.

NW, a wholly owned subsidiary of Norfolk Southern Corporation, is a class I rail common carrier. W&LE leases its Ohio lines and most of its property to NW, which controls W&LE through majority stock ownership.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction that will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: J. Gary Lane, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

Decided: September 14, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-22882 Filed 10-5-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 44X)]**Norfolk and Western Railway Co.; Abandonment Exemption; Town Hill Branch in Richards, VA**

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 1.71-mile line of railroad, known as the Town Hill Branch, between milepost TH-0.00 and Milepost TH-1.71 near Zeal, in Richlands, VA.

Applicant has certified (1) that no local or overhead traffic has moved over the line for at least 2 years, 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 any U.S. District Court, or has been decided in favor of

the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 5, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions for intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)² must be filed by October 17, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 26, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Solicitor, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 3, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 41 C.C.2d 400 (1988).

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 [52 48440-48446].

upon environmental or public use conditions.

Decided: September 22, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-23044 Filed 10-5-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 38X)]

**Southern Railway Co.; Exemption;
Abandonment Between Isbell and
Rockwood, AL**

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 2.53-mile line of railroad between milepost I-0.5 at Isbell, AL, and milepost I-3.03 at Rockwood, AL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and overhead traffic is not moved over the line or may be rerouted; and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 1050.5(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 5, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² must be filed by October 17, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 26, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by October 11, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7318.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 26, 1988.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-22877 Filed 10-5-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 18X)]

**Southern Railway Co.; Abandonment
Exemption, Hawkinsville, GA**

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 0.715-mile line of railroad between milepost L-9.53 and milepost L-10.245 at Hawkinsville, GA.

Applicant has certified that (1) no local or overhead traffic has moved over the line for at least 2 years and (2) 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

² See *Exempt. of Rail Abandonments or Discontinuance—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 1050.5(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 5, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² must be filed by October 17, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 26, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by October 11, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission,

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

² See *Exempt. of Rail Abandonments or Discontinuance—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 26, 1988.

By the Commission, Jane F. Mackell, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 88-22878 Filed 10-5-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

October 3, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 and to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the Department of Justice's Clearance Officer of your intent as soon as possible. The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

New Collection

(1) Adoption of Common Rule—Part 66, Uniform Administrative

Requirements for Grants and Cooperative Agreements

(2) No form number. Office of the Comptroller, Office of Justice Programs

(3) On occasion.

(4) Businesses or other for-profit, State or local governments, Federal agencies or employees, non-profit institutions. The Common Rule contains collection-of-information requirements necessary to ensure minimum fiscal control and responsibility for Federal funds and to deter fraud, waste and abuse. Information collected covers pre-award, post-award, and closeout information from both governmental and nongovernmental entities.

(5) 1,736 respondents at 70 hours each.

(6) 121,520 estimated annual public burden hours.

(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Nationwide Law Enforcement Training Needs Assessment

(2) No form number, Federal Bureau of Investigation

(3) On occasion.

(4) State or local governments. Surveys 1,000 state/local law enforcement agencies throughout the United States to determine specific job activities where Federal training assistance is most needed. Data will be used in allocating resources in support of state/local law enforcement training.

(5) 1,000 annual respondents at one hour each.

(6) 1,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

(1) 1988 National Jail Census

(2) CJ-3, Bureau of Justice Statistics

(3) Quinquennial

(4) State or local governments. Needed to provide current information on inmate population and jail facilities throughout the Country.

(5) 3,400 respondents at .5 hours each.

(6) 1,700 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88-23088 Filed 10-5-88; 8:45 am]

BILLING CODE 4410-16-M

Drug Enforcement Administration

[Docket No. 88-48]

Ashton Discount Pharmacy, Detroit, MI; Hearing

Notice is hereby given that on March 24, 1988, the Drug Enforcement Administration, Department of Justice, issued to Ashton Discount Pharmacy an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BA0205612 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, November 3, 1988, commencing at 10:00 a.m., at the United States Claims Court, Courtroom 10, Room 309, 717 Madison Place NW., Washington, DC.

Dated: September 29, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-23071 Filed 10-5-88; 8:45 am]

BILLING CODE 4410-09-M

Nicolas B. Bello, M.D.; Revocation of Registration

On October 20, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nicolas B. Bello, P.O. Box 5098, Princeton, West Virginia 24740, proposing to revoke DEA Certificate of Registration AB9644320 and deny any pending applications for renewal of such registration. The statutory basis for proposed action was that the continued registration of Dr. Bello would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

The Order to Show Cause was sent to Dr. Bello by registered mail and was received on October 28, 1988. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Bello is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that the West Virginia State Police began an

investigation on Dr. Bello after receiving information that Dr. Bello was indiscriminate in his prescribing of controlled substances. The investigation revealed that on August 29, 1986, Dr. Bello issued a prescription for Tylox in the name of one of his employees for no legitimate medical purpose. Pursuant to Dr. Bello's instructions, the employee had the Tylox prescription filled and returned the Tylox tablets to Dr. Bello.

The investigation also revealed that many individuals were obtaining prescriptions for Schedule II controlled substances, including Tylox, Percocet, and Dilaudid, from Dr. Bello in exchange for money and not for any legitimate medical purpose. Individuals went to Dr. Bello's office where they told him which controlled substance they wanted and Dr. Bello told them the price. He charged \$600.00 for a prescription of 100 Tylox tablets and \$2,000 for a prescription of 100 Dilaudid tablets.

On October 13, 1986, while working with the State Police, a cooperating individual purchased a prescription for 50 Tylox tablets from Dr. Bello in exchange for \$300.00. During this visit, the individual also paid Dr. Bello \$400.00 to apply toward a \$600.00 debt that the individual owed Dr. Bello for a prescription of 100 Tylox tablets that the individual had obtained on September 22, 1986. None of the prescriptions were issued for legitimate medical purposes.

As a result of the investigation, Dr. Bello was indicted by the McDowell County Grand Jury, West Virginia, on one count of fraudulently obtaining a Schedule II controlled substance (Tylox) and two counts of feloniously delivering a prescription for a Schedule II controlled substance (Tylox) for monetary considerations.

The Administrator also finds that Dr. Bello was prescribing Schedule II and IV controlled substances for his wife, who was a drug addict, without maintaining medical records. In September 1986, the West Virginia Board of Medicine advised Dr. Bello to discontinue this practice unless medical records were maintained on his wife. As of January 21, 1987, Dr. Bello continued to prescribe controlled substances for his wife. On February 25, 1987, the West Virginia Board of Medicine served a subpoena on Dr. Bello directing him to produce medical records on his wife. Dr. Bello failed to produce any medical records.

The Administrator further finds that on March 11, 1987, DEA Investigators served an Administrative Inspection Warrant on Dr. Bello at his office, the St. Nicholas Medical Center. With the exception of three incomplete DEA order forms, Dr. Bello could not produce any records, nor could he account for

controlled substances he had ordered. An audit of selected Schedule II and III controlled substances was conducted for the period from January 1984 through March 1987. Since Dr. Bello failed to produce any inventory, a zero starting balance was used for the initial inventory. The audit revealed a shortage of 2,000 Tylox tablets and 1,000 Preludin tablets which represented a 100% shortage of these substances. The audit also revealed a 100% shortage, totalling 2,574 dosage units, of the Schedule III controlled substances audited. During the audit, Dr. Bello explained that after controlled substances were delivered to the St. Nicholas Medical Center, he transferred them to his residence in Princeton, West Virginia. Neither the St. Nicholas Medical Center, nor Dr. Bello's residence, were DEA registered locations.

Based on the foregoing, the Administrator concludes that the continued registration of Dr. Bello would be inconsistent with the public interest. Dr. Bello has exhibited a total disregard for controlled substance laws and regulations. He has abused his registration and the trust placed in him as a registrant and as a physician. He has clearly demonstrated that he can no longer be entrusted with a DEA controlled substances registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AB9644320, previously issued to Nicholas B. Bello, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal be, and they hereby are, denied. This order is effective November 7, 1988.

John C. Lawn,
Administrator.

Dated: September 30, 1988.

[FR Doc 88-23079 Filed 10-5-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-50]

**Denis C. Chan, M.D., Walpahu, HI;
Hearing**

Notice is hereby given that on March 22, 1988, the Drug Enforcement Administration, Department of Justice, issued to Denis C. Chan, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AC4559475 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for

a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 1, 1988, commencing at 10:00 a.m., United States Coast Guard Courtroom, 300 Ala Moana Boulevard, Room 9143, Honolulu, Hawaii.

Dated: September 29, 1988.

John C. Lawn,
Administrator, Drug Enforcement
Administration.

[FR Doc. 88-23072 Filed 10-5-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-58]

**Leon D. Goggin, M.D., Midland, PA;
Hearing**

Notice is hereby given that on June 3, 1988, the Drug Enforcement Administration, Department of Justice, issued to Leon D. Goggin M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AC1664742 and BG0906377 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, November 22, 1988, commencing at 10:00 a.m., United States Claims Court, 717 Madison Place NW., Courtroom No. 10, Room 309, Washington, DC.

Dated: September 29, 1988.

John C. Lawn,
Administrator, Drug Enforcement
Administration.

[FR Doc. 88-23073 Filed 10-5-88; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-16]

**Jacob Gold, M.D., Houston, TX;
Hearing**

Notice is hereby given that on February 2, 1988 the Drug Enforcement Administration, Department of Justice, issued to Jacob Gold, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AC0864719 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in

this matter will be held on Tuesday, November 29, 1988, commencing at 10:00 a.m., at the United States Tax Court, Room 505, Pacific Building, 1900 Pacific Avenue, Dallas, Texas.

Dated September 29, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-23074 Filed 10-5-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-35]

Orr M. Ledford, M.D., Columbia, SC, Hearing

Notice is hereby given that on February 22, 1988, the Drug Enforcement Administration, Department of Justice, issued to Orr M. Ledford, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, November 10, 1988, commencing at 10:00 am, at the United States Claims Court, 717 Madison Place, NW., Courtroom No. 10, Room 309, Washington, DC.

Dated: September 29, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-23075 Filed 10-5-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-41]

Alan Liebowitz, R.Ph. d/b/a/ Prairie Clinical Pharmacy, Inc., Detroit, MI; Hearing

Notice is hereby given that on March 14, 1988, the Drug Enforcement Administration, Department of Justice, issued to Alan Liebowitz, R.Ph., d/b/a/ Prairie Clinical Pharmacy, Inc., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AP6401119 and deny any pending applications.

Thirty days having elapsed since the said Order to show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, November 30, 1988, commencing at 10:00 am, at the United States Claims Court,

Courtroom 10, Room 309, 717 Madison Place, NW., Washington, DC.

Dated: September 29, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88-23076 Filed 10-5-88; 8:45 am]

BILLING CODE 4410-09-M

Myrtle L. Miller, D.O.; Revocation of Registration

On February 11, 1988, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Myrtle L. Miller, D.O., of 1119 Sevier Avenue, Suite 3, Knoxville, Tennessee 37920, proposing to revoke her DEA Certificates of Registration, BM0457728, BM1055082, and BM0178524. The Order to Show Cause alleged that the continued registration of Dr. Miller would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a)(4). Additionally, citing his preliminary finding that Dr. Miller's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of her registrations pending the outcome of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served on Dr. Miller on February 26, 1988. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Miller is deemed to have waived her opportunity for a hearing. Accordingly, the Administrator not enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that in September 1987, an advertisement appeared in the local newspaper indicating that Dr. Miller would take Medicaid patients. Immediately thereafter, the Knoxville Police Department and the Tennessee Bureau of Investigation (TBI) began to receive complaints from pharmacists concerning Dr. Miller's prescribing practices, prompting the two agencies to conduct a joint investigation of Dr. Miller. Between October 1987 and January 1988, two undercover TBI agents and an undercover Knoxville police officer visited Dr. Miller's office on eight different occasions. During each visit, Dr. Miller prescribed controlled substances, including Percocet, Didrex, Fiorinal, Valium, Lortab, Tylenol #3, and Tylenol #4, to the undercover

officers for no legitimate medical purpose. Dr. Miller did not conduct any type of medical examination prior to prescribing the controlled substances to the undercover officers. The office visits consisted of conversations about everything except medical problems and then asking the undercover officers "what they wanted." Additionally, on some occasions, Dr. Miller prescribed both stimulant and depressant drugs during the same office visit.

On January 28, 1988, Dr. Miller was arrested by the Knoxville Police Department and the Tennessee Bureau of Investigation. She was charged with 32 counts of feloniously receiving medical assistance payments or falsifying documents for the purpose of receiving medical assistance (Medicaid) payments to which she was not entitled and 72 counts of feloniously delivering or dispensing controlled substances by writing prescriptions for no legitimate medical purpose.

On February 1, 1988, a pharmacist contacted the Knoxville Police Department concerning prescriptions for Valium and Tylenol #4 which Dr. Miller issued on January 29, 1988. Additionally, on February 4, 1988, another pharmacist contacted the DEA Nashville Office concerning prescriptions Dr. Miller issued to at least eight individuals. The prescriptions were for Percodan, Lorcet, Valium, Tylenol #3 and Tylenol #4.

A DEA registration authorizes a physician to prescribe or dispense controlled substances only within the usual course of his or her professional practice. For a prescription to have been issued within the course of a practitioner's professional practice, it must have been written for a legitimate medical purpose within the context of a valid physician-patient relationship. Legally, there is absolutely no difference between the sale of an illicit drug on the street and the illicit dispensing of a licit drug by means of a physician's prescription. In the instant case, Dr. Miller's prescribing practice, as documented by the results of the undercover investigation, was clearly outside of her professional practice. There was not even a pretense that the prescriptions were issued for a legitimate medical purpose. Dr. Miller has shown a total disregard for the health and welfare of her patients, demonstrated a lack of appreciation for the inherently dangerous nature of the drugs she prescribed and has abandoned the responsibilities placed upon her by possession of a DEA registration. The Administrator, therefore, concludes that the continued registration of Myrtle L. Miller would be

inconsistent with the public interest. Dr. Miller's registrations must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration BM0457728, BM1055082, and BM0178524, previously issued to Myrtle L. Miller, D.O., be, and they hereby are, revoked. It is further ordered that any pending applications for renewal be, and they hereby are, denied. This order is effective immediately.

John C. Lawn,
Administrator.

Dated: September 30, 1988.

[FR Doc. 88-23078 Filed 10-5-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-4]

Frank V. Rueckl, M.D.; Denial of Application

On December 3, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Frank V. Rueckl, M.D., of 890 Mill Street, Suite 400, Reno, Nevada 89502. The Order to Show Cause sought to deny the application for DEA registration executed by Dr. Rueckl on July 6, 1987, for reason that Dr. Rueckl was convicted in the United States District Court, District of Nevada, of one count of conspiracy to distribute cocaine in violation of 21 U.S.C. 846.

Dr. Rueckl, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was scheduled for June 2, 1988, in Reno, Nevada. By letter dated May 9, 1988, Dr. Rueckl's attorney withdrew the request for a hearing and on May 31, 1988, filed a Statement of Position, enclosing the Findings of Fact, Conclusions of Law and Order issued by the Nevada State Board of Medical Examiners, the transcript of the State Board proceeding, and the exhibits in that proceeding. On June 3, 1988, Judge Bittner issued an order terminating the proceedings. Accordingly, the Administrator enters this final order based on the record as it appears, which includes all of the aforementioned documents submitted on Dr. Rueckl's behalf. 21 CFR 1301.54(c) and 1316.67.

The Administrator finds that in December 1985, a reliable confidential informant told DEA that Dr. Rueckl was

consuming cocaine prior to making his rounds at the hospital and prior to arriving at his office. The informant also stated that Dr. Rueckl was interested in selling large quantities of cocaine. Based on this information, an undercover DEA Special Agent has several meetings with Dr. Rueckl to negotiate the sale of cocaine. During one of those meetings, Dr. Rueckl stated that he was only interested in selling kilogram quantities of cocaine and that his office has been a good cover for drug transactions. On or about December 6, 1985, the Agent paid Dr. Rueckl five hundred fifty dollars in exchange for approximately 6.8 grams of cocaine. On December 9, 1985, the Agent and Dr. Rueckl had a meeting to negotiate the sale of a kilogram of cocaine. They agreed to a price of fifty-four thousand dollars for one kilogram. They met again on December 18, 1985, to make further arrangements for the purchase of the kilogram of cocaine. At this meeting, Dr. Rueckl offered to give the Agent two ounces of cocaine to "keep his customers happy" while Dr. Rueckl put the kilogram deal together. The Agent did not accept the cocaine. On January 21, 1986, Dr. Rueckl advised the Agent that Delbert Loose had three ounces of cocaine from their Los Angeles source, that while the quality was questionable, he was willing to sell it to the Agent for two thousand three hundred dollars. Dr. Rueckl also stated that he was close to having the kilogram of cocaine for the Agent. On January 24, 1986, Dr. Rueckl distributed one-quarter ounce of cocaine to the confidential informant with instructions that it be given to the Agent, to "appease" his customers. Dr. Rueckl and Delbert Loose later met with the Agent and distributed two ounces of cocaine to him.

As a result of the foregoing, Dr. Rueckl was arrested and charged with violating 21 U.S.C. 841(a)(1), 843(b), 844, and 846, all felony offenses under the Controlled Substance Act. On June 2, 1986, he pled guilty to one count of conspiracy to distribute cocaine. On September 19, 1986, he was sentenced to eighteen months imprisonment. His sentence was modified on December 24, 1986, and further amended on January 16, 1987.

The Administrator further finds that as a result of Dr. Rueckl's conspiracy conviction, the Nevada State Board of Medical Examiners took administrative action with regard to Dr. Rueckl's license to practice medicine in the State of Nevada. On May 7, 1987, Dr. Rueckl appeared before the Board and on May 28, 1987, the Board issued their Findings of Fact, Conclusions of Law and Order. Although the Board revoked Dr. Rueckl's

license to practice medicine, execution of the Order of Revocation was stayed. The Board placed Dr. Rueckl on probation, with numerous terms and conditions, for a minimum of ten years.

The Administrator has consistently held that a felony conviction relating to controlled substances, even though unrelated to a registrant's professional practice, can warrant loss or denial of registration. See, *Coleman Preston McCown, D.D.S.*, Docket No. 82-28, 49 FR 45818 (1984) (illegal distribution of cocaine); *Tilman J. Bently, D.O.*, Docket No. 82-22, 49 FR 35049 (1984) (conspiracy to manufacture methaqualone); *Raymond H. Wood, D.D.S.*, Docket No. 82-32, 48 FR 48727 (1983) (conspiracy to import marijuana); and *Aaron Moss, D.D.S.*, Docket No. 80-2, 45 FR 72850 (1980) (smuggling cocaine into the United States). Based on Dr. Rueckl's felony conviction relating to a controlled substance, and the facts underlying that conviction, the Administrator finds that the granting of Dr. Rueckl's application for registration would be clearly inconsistent with the public interest. On more than one occasion, he sold cocaine to an undercover DEA Special Agent. Further, it is clear from the evidence that Dr. Rueckl was arranging to sell a kilogram of cocaine to the Agent in order to make a substantial profit. The Administrator has considered the various documents submitted on behalf of Dr. Rueckl in mitigation and does not find that evidence to be persuasive.

While Dr. Rueckl appears to have made great strides in his personal rehabilitation from cocaine addiction, his egregious cocaine trafficking activities require that his application for registration be denied. Dr. Rueckl clearly thought and understood that the undercover agent would be supplying cocaine to others. A physician, more so than others, must know the dangers inherent in cocaine abuse. Dr. Rueckl abandoned his responsibility as a physician when he dealt in this deadly commodity. He cannot now be entrusted with the legal responsibility of handling the wide variety of dangerous drugs available under a DEA registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration as a practitioner, executed by Frank V. Rueckl, M.D. on July 6, 1987, be, and it

hereby is, denied. This order is effective immediately.

John C. Lawn,
Administrator.

Dated: September 30, 1988.

[FR Doc. 88-23080 Filed 10-5-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-43]

Thrifty Discount Center and Pharmacy Inc., East Detroit, MI; Hearing

Notice is hereby given that on March 24, 1988, the Drug Enforcement Administration, Department of Justice, issued to Thrifty Discount Center and Pharmacy, Inc. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AT3111236 and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, November 3, 1988, commencing at 10:00 am, at the United States Claims Court,

Courtroom 10, Room 309, 717 Madison Place, NW., Washington, DC.

Dated: September 29, 1988.

John C. Lawn,
Administrator, Drug Enforcement
Administration.

[FR Doc. 88-23077 Filed 10-5-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; ACA Denver Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for

adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 17, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 17, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC, 20213.

Signed at Washington, DC this 26th day of September 1988.

Marvin M. Fooks,
Director, Office of Trade Adjustment
Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ACA Denver (Company)	Denver, CO	9/26/88	9/16/88	21,046	Oil & Gas.
ACCO Babcock, Inc. (USA)	Warren, MI	9/26/88	9/9/88	21,047	Material Handling Equipment.
Alliance Machine Co. (USWA)	Alliance, OH	9/26/88	8/22/88	21,048	Steel Mill Machinery.
Amerada Hess Corp., Southeast Production Region (Workers).	Lafayette, LA	9/26/88	2/20/87	21,049	Oil.
Amerada Hess Corp., Gulf Coast Explor. Div. (Workers).	Lafayette, LA	9/26/88	9/20/87	21,050	Do.
American Tubular Systems, Inc. (Workers)	Oklahoma City, OK	9/26/88	9/15/88	21,051	Oil & Gas.
Amtel Consulting Co. (Company)	Houston, TX	9/26/88	9/11/88	21,052	Do.
Arrow Pump & Supply Co. (Workers)	ADA, OK	9/26/88	9/15/88	21,053	Do.
Arrow Pump & Supply Co. (Workers)	Seminole, OK	9/26/88	9/15/88	21,054	Do.
B.J. Titan Serv. (Workers)	Hays, KS	9/26/88	9/14/88	21,055	Oil.
B.J. Titan Serv. (Workers)	Plainville, KS	9/26/88	9/14/88	21,056	Do.
Badlands Shot Hole Serv. (Company)	Dickinson, ND	9/26/88	9/13/88	21,057	Do.
Barad & Co., Inc. (Workers)	Salem, MI	9/26/88	9/1/88	21,058	Ladies' Night Gowns & Robes.
Barad & Co., Inc. (Workers)	St. Louis, MO	9/26/88	9/1/88	21,059	Do.
Beacon Construction Co. (Workers)	Pittsburg, PA	9/26/88	9/14/88	21,060	Electric Mechanical Assemblies for Subway Cars.
Big "B" Industries, Inc. (Company)	Normangee, TX	9/26/88	9/12/88	21,061	Oil & Gas.
Big Springs Drilling Inc. (Workers)	Wichita, KS	9/26/88	9/9/88	21,062	Oil.
Cachuma Drilling Co. (Workers)	Oklahoma City, OK	9/26/88	9/17/88	21,063	Do.
Cachuma Drilling Co. (Workers)	Vernal, UT	9/26/88	9/17/88	21,064	Do.
Cannelton Industries, Inc.—Indian Creek Div. (Workers).	Peytona, WV	9/26/88	9/12/88	21,065	Coal.
Chance Collar Manger (Workers)	Lafayette, LA	9/26/88	9/15/88	21,066	Repaired Drill Collars.
Chase Well Service (Workers)	Plainville, KS	9/26/88	9/10/88	21,067	Oil.
Chevron (Workers)	Houston, TX	9/26/88	9/2/88	21,068	Oil & Gas.
Chiles—Alexander Offshore, Inc. (Company)	Lafayette, LA	9/26/88	9/15/88	21,069	Do.
Clint Hart Drilling & Associates, Inc. (Workers)	Midland, TX	9/26/88	9/10/88	21,070	Do.
Compo Chemical Co., Inc. (Company)	Mansfield, MA	9/26/88	9/1/88	21,071	Adhesives for the Shoe Industry.
Compulog, Inc. (Company)	Shreveport, LA	9/26/88	9/9/88	21,072	Oil & Gas.
Cooper Industries, Flow Control Div. (Workers)	Shreveport, LA	9/26/88	9/14/88	21,073	Oil.
Cooper Industries (Workers)	Marshall, TX	9/26/88	9/14/88	21,074	Oil & Gas.
Cooper's Testing Serv., Inc. (Company)	Lafayette, LA	9/26/88	9/13/88	21,075	Do.
Crystal Brands, Inc. (ILGWU)	Aston, PA	9/26/88	9/12/88	21,076	Distribute Ladies Blouses & Skirts.
Cypress Oil Field Contractors, Inc. (Workers)	Eunice, LA	9/26/88	9/13/88	21,077	Oil & Gas.
Dale Exploration (Company)	Vidalia, LA	9/26/88	9/12/88	21,078	Oil.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Davis Great Guns Logging, Inc. (Workers)	Wichita, KS	9/26/88	9/13/88	21,079	Oil & Gas.
Dawson Geophysical Co. (Workers)	Midland, TX	9/26/88	9/6/88	21,080	Do.
Dielco Service Co. (Workers)	Irann, TX	9/26/88	9/9/88	21,081	Do.
Double E Well Service (Workers)	St. Louis, OK	9/26/88	9/10/88	21,082	Oil.
Dunncraft, Inc. (ILGWU)	Philadelphia, PA	9/26/88	9/12/88	21,083	Dresses.
Eagle Well Service (Workers)	Zurich, KS	9/26/88	9/11/88	21,084	Oil & Gas.
Ed Martin Drilling Co., Inc. (Workers)	Oil City, LA	9/26/88	9/8/88	21,085	Oil.
Forest Oil Corp. (Workers)	Denver, CO	9/26/88	9/14/88	21,086	Oil & Gas.
Gearhart Industries, Inc. (Company)	Forth Worth, TX	9/26/88	9/15/88	21,087	Do.
Geo-Search Corp. (Company)	Midland, TX	9/26/88	9/13/88	21,088	Do.
Geo-Search Corp. (Company)	Denver, CO	9/26/88	9/13/88	21,089	Do.
Geo-Search Corp. (Company)	Oklahoma, OK	9/26/88	9/13/88	21,090	Do.
Geo-Search Corp. (Company)	Houston, TX	9/26/88	9/13/88	21,091	Do.
Geo-Search Corp. (Company)	Lubbock, TX	9/26/88	9/13/88	21,092	Do.
Geo-Search Corp. (Company)	Dallas, TX	9/26/88	9/13/88	21,093	Do.
Geo-Search Corp. (Company)	Tyler, TX	9/26/88	9/13/88	21,094	Do.
General Motors Corp. (Workers)	Thousand Oaks, CA	9/26/88	8/30/88	21,095	Automobiles.
Global Marine Drilling Co. (Workers)	Houston, TX	9/26/88	9/13/88	21,096	Oil & Gas.
Grant Norpac, Inc. (Workers)	Houston, TX	9/26/88	9/6/88	21,097	Do.
Grant Norpac, Inc. (Workers)	Travis City, MI	9/26/88	9/16/88	21,098	Do.
Grant Norpac, Inc. (Workers)	New Liberia, LA	9/26/88	9/16/88	21,099	Do.
Grant Norpac, Inc. (Workers)	Baskerville, CA	9/26/88	9/16/88	21,100	Do.
Grant Norpac, Inc. (Workers)	Denver, CO	9/26/88	9/16/88	21,101	Do.
Grant Norpac, Inc. (Workers)	Midland, TX	9/26/88	9/16/88	21,102	Do.
Great Southern Oil & Gas (Company)	Lafayette, LA	9/26/88	9/12/88	21,103	Do.
Great Western Energy, Inc. (Workers)	Littleton, CO	9/26/88	9/13/88	21,104	Do.
Glendel Drilling (Workers)	Abbeville, LA	9/26/88	9/12/88	21,105	Oil.
Hack Drilling Co. (Workers)	Abilene, TX	9/26/88	9/6/88	21,106	Oil & Gas.
Halliburton Services (Workers)	Eunice, LA	9/29/88	9/12/88	21,107	Do.
Houze Glass Corp. (AFGW)	Point Marion, PA	9/26/88	9/12/88	21,108	Decorated Ceramic & Glassware.
Inexco Oil Co. (Workers)	Houston, TX	9/26/88	9/14/88	21,109	Oil & Gas.
King Drilling Co. (Company)	Tullos, LA	9/26/88	9/12/88	21,110	Oil.
Klaus & Son Machine Co. (Workers)	Hill City, KS	9/26/88	9/6/88	21,111	Do.
London Knitting Mills (ILGWU)	Philadelphia, PA	9/26/88	9/12/88	21,112	Knit Sweaters.
Louis Clark (ILGWU)	Philadelphia, PA	9/26/88	9/12/88	21,113	Blouses & Dresses.
Lyons Petroleum, Inc. (Company)	Shreveport, LA	9/26/88	9/14/88	21,114	Oil & Gas
MGF Oil Corporation (Company)	Midland, TX	9/26/88	9/10/88	21,115	Do.
MRM Operating Co. (Company)	Abilene, TX	9/26/88	9/6/88	21,116	Do.
Mansfield Apparel Co., Inc. (Texas) (Workers)	Mansfield, LA	9/26/88	9/12/88	21,117	Ladies' & Men's Pants & Shorts.
Mansfield Apparel Co., Inc. (Franklin's Wash.)	Mansfield, LA	9/26/88	9/12/88	21,118	Do.
McConathy Oil & Gas (Company)	Shreveport, LA	9/26/88	9/12/88	21,119	Oil & Gas.
Milprint, Inc. (UPIU)	Milwaukee, WI	9/26/88	9/13/88	21,120	Imprinted Flexible Packaging
Mon-Dak, Tank Inc. (Workers)	Williston, ND	9/26/88	9/13/88	21,121	Oil.
Moore Petroleum Services, Inc. (Workers)	Laredo, TX	9/26/88	9/12/88	21,122	Oil & Gas.
Neumin Production, Co. (Company)	Point Comfort, TX	9/26/88	9/13/88	21,123	Do.
OWS, Inc. (Company)	Plainville, KS	9/26/88	9/14/88	21,124	Oil.
Offshore Navigation, Inc. (Company)	Harahan, LA	9/26/88	9/9/88	21,125	Oil & Gas.
Ostrom Well Service, Inc. (Workers)	Plainville, KS	9/26/88	9/7/88	21,126	Oil.
Patterson Drilling Co. (Workers)	Snyder, TX	9/26/88	9/10/88	21,127	Oil & Gas.
Parker Drilling Co. (Workers)	Odessa, TX	9/26/88	9/6/88	21,128	Do.
R. Say Enterprises (Company)	Wheat Ridge, CO	9/26/88	9/15/88	21,129	Oil.
Republic Drilling Co. (Workers)	Wichita, KS	9/26/88	9/14/88	21,130	Oil & Gas.
Riley Drilling Co. (Company)	Big Spring, TX	9/26/88	9/6/88	21,131	Oil.
Ruthco, Inc. (Workers)	Midland, TX	9/26/88	9/12/88	21,132	Do.
Ruthco, Inc. (Workers)	Levellan, TX	9/26/88	9/12/88	21,133	Oil & Gas.
Ruthco, Inc. (Workers)	Gainsville, TX	9/26/88	9/12/88	21,134	Do.
Ruthco, Inc. (Workers)	Perryton, TX	9/26/88	9/12/88	21,135	Do.
Ruthco, Inc. (Workers)	Hobbs, NM	9/26/88	9/12/88	21,136	Do.
Ruthco, Inc. (Workers)	Bryan, TX	9/26/88	9/12/88	21,137	Do.
Schlumberger Offshore Services (Workers)	Corpus Christi, TX	9/26/88	9/9/88	21,138	Do.
South Texas Drilling Co. (Workers)	Pleasanton, TX	9/26/88	9/13/88	21,139	Do.
Southern Well Surveys, Inc. (Company)	Henderson, KY	9/26/88	9/10/88	21,140	Oil.
Spun Steel, Inc. (Workers)	Canton, OH	9/26/88	9/12/88	21,141	Spun Steel Automotive Pulleys.
States Exploration, Inc. (Workers)	Denver, CO	9/26/88	9/15/88	21,142	Oil & Gas.
Superior Brands, Inc. (Workers)	Curwensville, PA	9/26/88	9/24/88	21,143	Dog Treats.
TMBR/Sharp Drilling, Inc. (Workers)	Midland, TX	9/26/88	9/13/88	21,144	Oil.
Transit America, Inc. (Company)	Philadelphia, PA	9/26/88	9/8/88	21,145	Railroad Cars.
(The) Estate of William G. Helis, A Partnership (Workers)	Denver, CO	9/26/88	9/9/88	21,146	Oil & Gas.
(The) Lee Apparel Co., Inc. (UGWA, #488)	Stevenson, AL	9/26/88	9/9/88	21,147	Denim Jeans.
West Sierra Drilling Co. (Workers)	Abilene, TX	9/26/88	9/13/88	21,148	Oil & Gas.
Western Sky Oil & Gas (Company)	Abilene, TX	9/26/88	9/6/88	21,149	Do.
Willis Drilling Co. (Workers)	Edinburg, TX	9/26/88	9/13/88	21,150	Do.
Wilson Drilling Co. (Workers)	Lafayette, LA	9/26/88	9/14/88	21,151	Do.
WISCO, Inc. (Workers)	Williston, ND	9/26/88	9/7/88	21,152	Do.
Wright Drilling Co. (Workers)	Sunbright, TN	9/26/88	9/15/88	21,153	Do.

[FR Doc. 88-23064 Filed 10-5-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,742, et al.]

**Emple Knitting Mills, Brewer, ME, et al.;
Amended Certification Regarding
Eligibility to Apply for Worker
Adjustment Assistance**

In the matter of: TA-W-20,742, Emple Knitting Mills, Brewer, Maine; TA-W-20,742A, Maine Gear, Brewer, Maine; TA-W-20,742B, Maine Gear, Bar Harbor, Maine; TA-W-20,742C, Maine Gear, Camden, Maine; TA-W-20,742D, Maine Gear, Lincoln, New Hampshire; and TA-W-20,742E, Maine Gear, Meredith, New Hampshire.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 26, 1988 applicable to all workers of Emple Knitting Mills, Brewer, Maine. The Certification was published in the *Federal Register* on September 7, 1988 (53 FR 34596).

Based on new information furnished by the company, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information revealed that Emple Knitting Mills owns and operates five retail outlet stores which sold only sweaters produced by Emple Knitting Mills. Worker separations at the retail outlets occurred simultaneously with those at Emple Knitting Mills.

The intent of the certification is to cover all workers of Emple Knitting Mills, Brewer, Maine and its five retail outlets called Maine Gear. The amended notice applicable to TA-W-20,742 is hereby issued as follows:

All workers of Emple Knitting Mills, Brewer, Maine and all workers of Maine Gear in Brewer, Maine; Bar Harbor, Maine; Camden, Maine; Lincoln, New Hampshire and Meredith, New Hampshire who became totally or partially separated from employment on or after June 15, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of September, 1988.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88-23065 Filed 10-5-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,716]

**GNB Inc., Zanesville, OH; Negative
Determination Regarding Application
for Reconsideration**

By an application dated August 24,

1988, Local #1394 of the International Brotherhood of Electrical Workers requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance. The denial notice was signed on August 1, 1988 and will soon be published in the *Federal Register*.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that imports of garden tractor and motorcycle batteries adversely affected sales and production beginning in 1986.

Workers at Zanesville produced automotive, heavy duty and specialty batteries. Workers were not separately identifiable by product. Production ceased at Zanesville in June, 1988.

The findings show that battery production increased at Zanesville in 1987 compared to 1986. All production was transferred to three of the company's domestic plants when the Zanesville plant closed in mid-1988. A domestic transfer of production would not form a basis for certification.

The union alleges company imports of garden tractor batteries and motorcycle batteries. The findings show that the Zanesville plant did not produce motorcycle batteries in 1987 or in 1988. The findings also show that the company did not import garden tractor batteries in the period applicable to the petition.

The union claims that imported vehicles (autos, trucks and motorcycles) contain imported batteries which adversely affected GNB production and sales of batteries at Zanesville. Imports of articles incorporating a battery are not like or directly competitive with the articles produced at the workers' firm. This issue was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO v. Bedell*, 506 F.2d, (DC Cir. 1974) the court held that imported finished women's shoes were not like or directly competitive

with shoe components—shoe counters. Accordingly, only increased imports of batteries can be considered in determining import injury to workers producing batteries at Zanesville.

Lastly, in reviewing the investigative case file, the Department noticed that the union claimed on its petition that GNB Zanesville was owned by a foreign corporation—Pacific Dunlop Ltd. of Australia. This issue was not previously addressed. Ownership is not one of the three statutory criteria for group eligibility and would not, in itself, form a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of September 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-23066 Filed 10-5-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,714]

**Hallden Machine Co., Thomaston, CT;
Negative Determination Regarding
Application for Reconsideration**

By an application dated August 26, 1988 the United Auto Workers Union, Local #1251 requested administrative reconsideration on the subject petition for trade adjustment assistance. The denial notice was signed on August 1, 1988 and published in the *Federal Register* on August 17, 1988 (53 FR 31119).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Workers at Thomaston produced large metal-shearing machines (guillotine and

rotary shear) for the steel industry. The firm was sold to Hayden Merger Corporation in July, 1987 and then purchased by an English firm in May, 1988. Hallden Machine did not import.

Investigation findings show that the increased import criterion was not met. U.S. imports of punching and shearing machines declined absolutely and relative to domestic shipments in 1987 compared to 1986.

Further, the major share of production at Thomaston was for the export market. Reduced production or sales for the export market would not form a basis for certification.

The Department surveyed major declining customers for the smaller domestic segment of Hallden's total market. The survey showed that none of the customers reported imports of metal-shearing equipment in 1986, 1987 or in the first six months of 1988. These customers accounted for a major portion of Hallden's 1987 sales decline.

Investigative findings also show that, during the period applicable to the petition, the foreign purchaser of Hallden did not produce any metal-shearing machines or ship any into the U.S. market. Company officials indicated that the reason for the foreign purchase of Hallden was to be ready to service the European steel industry.

Conclusion

After a review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of September 1988.

Barbara Ann Farmer,

*Director, Office of Program Management,
UIS.*

[FR Doc. 88-23067 Filed 10-5-88; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; I. Robeach and Sons et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 12-16 1988, and September 19-23, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each

of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-20,817; *I Robeach & Sons Div. of Crown Brands, Inc., Farmingdale, NJ*

TA-W-20,831; *Indiana Gas & Chemical Corp., Terre Haute, IN*

TA-W-20,821; *Tultex, Vesta, VA*

TA-W-20,843; *DeRossi & Son Co., Vineland, NJ*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,788; *Jack Winter Apparel, Inc., Milwaukee, WI*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,789; *Air Products & Chemicals Inc., Wilkes Barre, PA*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,803; *Trio Accessories, Inc., Jersey City, NJ*

U.S. imports of fur on the skin hats decreased absolutely in 1987 compared with 1986.

TA-W-20,805; *Aris Isotoner, Inc., Secaucus, NJ*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,833; *Kochy's, Inc., Middlefield, OH*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-20,822; *Abtex, Inc./Brinkerhoff Oil Co., Houston, TX*

The investigation revealed that criterion (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,828; *Foster Canning Co., Farmington, NJ*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,827; *Ford Laboratories 239 Moonachie Avenue, Moonachie, NJ*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,830; *Humberland Dress Co., Mt. Carmel, PA*

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,825; *Caterpillar, Inc., Bettendorf, IA*

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-20,796; *J.F.C. Industries Inc., Hialeah, FL*

A certification was issued covering all workers separated on or after June 29, 1987.

TA-W-20,815; *Head Sports Inc., Boulder CO*

A certification was issued covering all workers separated on or after June 27, 1987.

TA-W-20,811; *DMS, Inc., Whitman, MA*

A certification was issued covering all workers separated on or after July 5, 1987.

TA-W-20,808; *Crown Central Petroleum Corp., Exploration & Production Div. Bellaire, TX*

A certification was issued covering all workers separated on or after July 1, 1987.

TA-W-20,809; *Crown Central Petroleum Corp., Exploration & Production Div., Midland, TX*

A certification was issued covering all workers separated on or after July 1, 1987.

TA-W-20,810; *Crown Central Petroleum Corp., Exploration & Production Div., Oklahoma City, OK*

A certification was issued covering all workers separated on or after July 1, 1987.

TA-W-20,861; *Parsons Footwear Inc. Parsons, WV*

A certification was issued covering all workers of the Prefit Department engaged in the production of injection molded footwear separated on or after August 1, 1987.

TA-W-20,840; Westinghouse Elevator, Randolph, NJ

A certification was issued covering all workers separated on or after July 14, 1987 and before November 1, 1988.

TA-W-20,832; Inmed Corp., Alpharetta, GA

A certification was issued covering all workers separated on or after July 14, 1987 and before November 1, 1988.

TA-W-20,839; Wonderknit/Score Board Co., Galax, VA

A certification was issued covering all workers separated on or after July 12, 1987.

TA-W-20,824; Caterpillar Inc., Davenport, IA

A certification was issued covering all workers engaged in the production of townmotor axles, loader parts winches and pusharms separated on or after July 1, 1987.

TA-W-20,838; W.E. Stephens Manufacturing Co., Inc., Carthage, TN

A certification was issued covering all workers separated on or after July 7, 1987.

TA-W-20,818; H.G. Toys Inc., New Brunswick, NJ

A certification was issued covering all workers separated on or after July 7, 1987.

TA-W-20,819 and TA-W-20,820 Queen Casuals Inc. Philadelphia, PA and Atco, NJ

A certification was issued covering all workers separated on or after June 30, 1987.

TA-W-20,826; Cooper Lighting Group, Manufacturing Operation LaPalma, CA

A certification was issued covering all workers separated on or after January 1, 1988 and before September 10, 1988.

I hereby certify that the aforementioned determinations were issued during the period September 12-16 1988 and September 19-23 1988. Copies of these determinations are available for inspection in Room 6434 U.S. Department of Labor 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed

to persons who write to the above address.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

Dated: September 27, 1988.
[FR Doc. 88-23063 Filed 10-5-88; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-20,662, TA-W-20,662A]

New England Mackintosh Co., Inc., Brockton, MA and Brockton Coat Co., Brockton, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 30, 1988 applicable to all workers of New England Mackintosh Company, Incorporated, Brockton, Massachusetts. The Certification was published in the *Federal Register* on July 12, 1988 (53 FR 26329).

Based on new information received from the company, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information from the company revealed that the Brockton Coat Company was a wholly owned contractor for the New England Mackintosh Company, Inc., a manufacturer of ladies' coats. The Brockton Coat Company, Brockton, Massachusetts was closed permanently on November 31, 1987. The New England Mackintosh Company manufacturers ladies' coats but at a reduced level.

The intent of the certification is to cover all workers of Brockton Coat Company, Brockton, Massachusetts and the New England Mackintosh Company, Brockton, Massachusetts. The amended notice applicable to TA-W-20,622 is hereby issued as follows:

All workers of the Brockton Coat Company, Brockton, Massachusetts who became totally or partially separated from employment on or after April 29, 1987 and before January 31, 1988 and all workers of New England Mackintosh Company, Incorporated, Brockton, Massachusetts who became totally or partially separated from employment on or after April 29, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of September 1988.

Stephen A. Wandner,
Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-23068 Filed 10-5-88; 8:45 am]
BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The annual list of labor surplus areas is effective October 1, 1988, through September 30, 1989.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas, which includes civil jurisdictions with a population of 25,000 or more as required by Pub. L. 99-272.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue NW., Room N4470, Attention: TEES, Washington, DC 20210. Telephone: 202-535-0185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR Part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR Part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is

publishing the annual list of labor surplus areas.

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615, April 12, 1983) and are effective October 1, 1988, through September 30, 1989.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on September 27, 1988.

Roberts T. Jones,

Assistant Secretary of Labor.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER 30, 1989**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Alabama	
Anniston City	Anniston City in Calhoun County.
Baldwin County	Baldwin County.
Barbour County	Barbour County.
Bessemer City	Bessemer, City in Jefferson County.
Bibb County	Bibb County.
Birmingham City	Birmingham City in Jefferson County.
Blount County	Blount County.
Bullock County	Bullock County.
Butler County	Butler County.
Cherokee County	Cherokee County.
Chilton County	Chilton County.
Choctaw County	Choctaw County.
Clarke County	Clarke County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Colbert County	Colbert County.
Conecuh County	Conecuh County.
Crenshaw County	Crenshaw County.
Covington County	Covington County.
Cullman County	Cullman County.
Dale County	Dale County.
Balance of Dallas County	Dallas County less Selma City.
De Kalb County	De Kalb County.
Decatur City	Decatur City in Morgan County.
Escambia County	Escambia County.
Balance of Etowah County	Etowah County less Gadsden City.
Fayette County	Fayette County.
Florence City	Florence City in Lauderdale County.
Franklin County	Franklin County.
Gadsden City	Gadsden City in Etowah County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER 30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Greene County	Greene County.
Hale County	Hale County.
Henry County	Henry County.
Jackson County	Jackson County.
Lamar County	Lamar County.
Lawrence County	Lawrence County.
Lowndes County	Lowndes County.
Marengo County	Marengo County.
Marion County	Marion County.
Marshall County	Marshall County.
Mobile City	Mobile City in Mobile County.
Balance of Mobile County	Mobile County less Mobile City.
Monroe County	Monroe County.
Balance of Morgan County	Morgan County less Decatur City.
Perry County	Perry County.
Phenix City	Phenix City in Lee County.
Pickens County	Russell County.
Prichard City	Pickens County.
Selma City	Prichard City in Mobile County.
Sumter County	Selma City in Dallas County.
Talladega County	Sumter County.
Tuscaloosa City	Talladega County.
Walker County	Tuscaloosa, City in Tuscaloosa County.
Washington County	Walker County.
Wilcox County	Washington County.
Winston County	Wilcox County.
	Winston County.

Alaska	
Anchorage City	Anchorage City in Anchorage Borough.
Bethel census area	Bethel census area.
Bristol Bay Borough Div	Bristol Bay Borough Div.
Dillingham census area	Dillingham census area.
Fairbanks City	Fairbanks City in Fairbanks North Star Borough.
Balance of Fairbanks North Star Borough	Fairbanks North Star Borough less Fairbanks City.
Haines Borough	Haines Borough.
Kenai Peninsula Borough	Kenai Peninsula Borough.
Ketchikan Gateway Borough	Ketchikan Gateway Borough.
Matanuska-Susitna Borough	Matanuska-Susitna Borough.
Nome census area	Nome census area.
Northwest Arctic Borough	Northwest Arctic Borough.
Prince of Wales outer Ketchikan	Prince of Wales Outer Ketchikan.
Sitka Borough	Sitka Borough.
Skagway Yakutat Angoon census area	Skagway Yakutat Angoon census area.
Southeast Fairbanks census area	Southeast Fairbanks census area.
Valdez-Cordova census area	Valdez-Cordova census area.
Wade-Hampton census area	Wade-Hampton census area.
Wrangell-Petersburg census area	Wrangell-Petersburg census area.
Yukon-Koyukuk census area	Yukon-Koyukuk census area.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER 30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Arizona	
Apache County	Apache County.
Balance of Cochise County	Cochise County less Sierra Vista City.
Balance of Coconino County	Coconino County less Flagstaff City.
Flagstaff City	Flagstaff, City in Coconino County.
Gila County	Gila County.
Graham County	Graham County.
Greenlee County	Greenlee County.
La Paz County	La Paz County.
Mohave County	Mohave County.
Navajo County	Navajo County.
Pinal County	Pinal County.
Santa Cruz County	Santa Cruz County.
Sierra Vista City	Sierra Vista City in Cochise County.
Yuma City	Yuma City in Yuma County.
Balance of Yuma County	Yuma County less Yuma City.
Arkansas	
Ashley County	Ashley County.
Bradley County	Bradley County.
Chicot County	Chicot County.
Clark County	Clark County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Cleveland County	Cleveland County.
Columbia County	Columbia County.
Conway County	Conway County.
Balance of Crittenden County	Crittenden County less West Memphis City.
Cross County	Cross County.
Dallas County	Dallas County.
Desha County	Desha County.
Drew County	Drew County.
El Dorado City	El Dorado City in Union County.
Faulkner County	Faulkner County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Balance of Garland County	Garland County less Hot Springs City.
Grant County	Grant County.
Greene County	Greene County.
Hot Spring County	Hot Spring County.
Hot Springs City	Hot Springs City in Garland County.
Independence County	Independence County.
Jackson County	Jackson County.
Jacksonville City	Jacksonville City in Pulaski County.
Johnson County	Johnson County.
Lafayette County	Lafayette County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Little River County	Little River County.
Logan County	Logan County.
Lono County	Lono County.
Madison County	Madison County.
Balance of Miller County	Miller County less Texarkana City, Ark.
Mississippi County	Mississippi County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Nevada County	Nevada County.
Newton County	Newton County.
Ouachita County	Ouachita County.
Perry County	Perry County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Phillips County.....	Phillips County.
Pike County.....	Pike County.
Pine Bluff City.....	Pine Bluff City in Jefferson County.
Poinsett County.....	Poinsett County.
Polk County.....	Polk County.
Prairie County.....	Prairie County.
Randolph County.....	Randolph County.
Searcy County.....	Searcy County.
Balance of Sebastian County.....	Sebastian County less Forth Smith City.
Sevier County.....	Sevier County.
St. Francis County.....	St. Francis County.
Stone County.....	Stone County.
Texarkana City Ark.....	Texarkana City, Ark. in Miller County.
Balance of Union County.....	Union County less El Dorado City.
Van Buren County.....	Van Buren County.
West Memphis City.....	West Memphis, City in Crittenden County.
White County.....	White County.
Woodruff County.....	Woodruff County.

California

Baldwin Park City.....	Baldwin Park City in Los Angeles County.
Bell Gardens City.....	Bell Gardens City in Los Angeles County.
Balance of Butte County.....	Butte County less Chico City.
Calaveras County.....	Calaveras County.
Colusa County.....	Colusa County.
Compton City.....	Compton City in Los Angeles County.
Del Norte County.....	Del Norte County.
El Centro City.....	El Centro City in Imperial County.
El Monte City.....	El Monte City in Los Angeles County.
Fairfield City.....	Fairfield City in Solano County.
Fresno City.....	Fresno City in Fresno County.
Balance of Fresno County.....	Fresno County less Clovis City.
Gilroy City.....	Gilroy, City in Santa Clara County.
Glenn County.....	Glenn County.
Humboldt County.....	Humboldt County.
Huntington Park City.....	Huntington Park City in Los Angeles County.
Balance of Imperial County.....	Imperial County less El Centro City.
Balance of Kern County.....	Kern County less Bakersfield City.
Kings County.....	Kings County.
Lake County.....	Lake County.
Lassen County.....	Lassen County.
Lodi City.....	Lodi City in San Joaquin County.
Lynwood City.....	Lynwood City in Los Angeles County.
Madera County.....	Madera County.
Manteca City.....	Manteca City in San Joaquin County.
Marina City.....	Marina City in Monterey County.
Mendocino County.....	Mendocino County.
Merced City.....	Merced City in Merced County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Balance of Merced County.....	Merced County less Merced City.
Modesto City.....	Modesto, City in Stanislaus County.
Modoc County.....	Modoc County.
Balance of Monterey County.....	Monterey County less Marina City.
Oxnard City.....	Oxnard, City in Ventura County.
Paramount City.....	Paramount City in Los Angeles County.
Plumas County.....	Plumas County.
Redding City.....	Redding City in Shasta County.
Richmond County.....	Richmond City in Contra Costa County.
Salinas City.....	Salinas City in Monterey County.
San Benito County.....	San Benito County.
Balance of San Joaquin County.....	San Joaquin County less Lodi City.
Santa Maria City.....	Santa Maria City in Santa Barbara County.
Seaside City.....	Seaside City in Monterey County.
Balance of Shasta County.....	Shasta County less Redding City.
Sierra County.....	Serra County.
Siskiyou County.....	Siskiyou County.
Balance of Stanislaus County.....	Stanislaus County less Modesto City.
Stockton City.....	Stockton City in San Joaquin County.
Sutter County.....	Sutter County.
Tehama County.....	Tehama County.
Trinity County.....	Trinity County.
Tulare City.....	Tulare City in Tulare County.
Balance of Tulare County.....	Tulare County less Tulare City.
Tuolumne County.....	Tuolumne County.
Turlock, City.....	Turlock, City in Stanislaus County.
Visalia City.....	Visalia, City in Tulare County.
Watsonville City.....	Watsonville City in Santa Cruz County.
Woodland City.....	Woodland City in Yolo County.
Balance of Yolo County.....	Yolo County less Davis City.
Yuba County.....	Yuba County.

Colorado

Balance of Admas County.....	Adams County less Arvada City.
Alamosa County.....	Alamosa County.
Archuleta County.....	Archuleta County.
Chaffee County.....	Chaffee County.
Clear Creek County.....	Clear Creek County.
Consejos County.....	Conejos County.
Costilla County.....	Costilla County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Crowley County.....	Crowley County.
Custer County.....	Custer County.
Delta County.....	Delta County.
Dolores County.....	Dolores County.
Balance of El Paso County.....	El Paso County less Colorado Springs City.
Elbert County.....	Elbert County.
Fremont County.....	Fremont County.
Garfield County.....	Garfield County.
Gilpin County.....	Gilpin County.
Grand Junction City.....	Grand Junction City in Mesa County.
Greeley City.....	Greeley City in Weld County.
Huerfano County.....	Huerfano County.
La Plata County.....	La Plata County.
Lake County.....	Lake County.
Las Animas County.....	Las Animas County.
Loveland City.....	Loveland City in Larimer County.
Balance of Mesa County.....	Mesa County less Grand Junction City.
Mineral County.....	Mineral County.
Moffat County.....	Moffat County.
Montezuma County.....	Montezuma County.
Montrose County.....	Montrose County.
Morgan County.....	Morgan County.
Otero County.....	Otero County.
Ouray County.....	Ouray County.
Park County.....	Park County.
Pueblo City.....	Pueblo City in Pueblo County.
Balance of Pueblo County.....	Pueblo County less Pueblo City.
Rio Blanco County.....	Rio Blanco County.
Rio Grande County.....	Rio Grande County.
Routt County.....	Routt County.
Saguache County.....	Saguache County.
San Juan County.....	San Juan County.
San Miguel County.....	San Miguel County.
Teller County.....	Teller County.

Florida

Balance of Bay County.....	Bay County less Panama City.
Calhoun County.....	Calhoun County.
Columbia County.....	Columbia County.
Fort Pierce City.....	Fort Pierce City in St. Lucie County.
Gulf County.....	Gulf County.
Hamilton County.....	Hamilton County.
Hardee County.....	Hardee County.
Hendry County.....	Hendry County.
Holmes County.....	Holmes County.
Indian River County.....	Indian River County.
Lakeland City.....	Lakeland City in Polk County.
Okeechobee County.....	Okeechobee County.
Panama City.....	Panama City in Bay County.
Balance of Polk County.....	Polk County Less Lakeland City.
St. Lucie County Less Port.....	Pierce City.
Balance of St. Lucie County.....	Port St. Lucie City.
Washington County.....	Washington County.

Georgia

Albany City.....	Albany City in Dougherty County.
Appling County.....	Appling County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Augusta City.....	Augusta City in Richmond County.
Baker County.....	Baker County.
Bartow County.....	Bartow County.
Brantley County.....	Brantley County.
Burke County.....	Burke County.
Butts County.....	Butts County.
Calhoun County.....	Calhoun County.
Chattahoochee County.....	Chattahoochee County.
Crisp County.....	Crisp County.
Dodge County.....	Dodge County.
Dooley County.....	Dooley County.
Balance of Dougherty County.....	Dougherty County less Albany City.
Early County.....	Early County.
Elbert County.....	Elbert County.
Emanuel County.....	Emanuel County.
Hancock County.....	Hancock County.
Jefferson County.....	Jefferson County.
Jenkins County.....	Jenkins County.
La Grange City.....	La Grange City in Troup County.
Lincoln County.....	Lincoln County.
Long County.....	Long County.
Macon County.....	Macon County.
McIntosh County.....	McIntosh County.
Meriwether County.....	Meriwether County.
Mitchell County.....	Mitchell County.
Pierce County.....	Pierce County.
Polk County.....	Polk County.
Putnam County.....	Putnam County.
Quitman County.....	Quitman County.
Scriven County.....	Scriven County.
Stephens County.....	Stephens County.
Stewart County.....	Stewart County.
Sumter County.....	Sumter County.
Talbot County.....	Talbot County.
Taliaferro County.....	Taliaferro County.
Taylor County.....	Taylor County.
Telfair County.....	Telfair County.
Terrell County.....	Terrell County.
Toombs County.....	Toombs County.
Turner County.....	Turner County.
Ware County.....	Ware County.
Wayne County.....	Wayne County.
Webster County.....	Webster County.
Worth County.....	Worth County.

Idaho

Adams County.....	Adams County.
Balance of Bannock County.....	Bannock County less Pocatello City.
Bear Lake County.....	Bear Lake County.
Benewah County.....	Benewah County.
Bingham County.....	Bingham County.
Blaine County.....	Blaine County.
Boise County.....	Boise County.
Bonner County.....	Bonner County.
Boundary County.....	Boundary County.
Camas County.....	Camas County.
Balance of Canyon County.....	Canyon County less Nampa City.
Caribou County.....	Caribou County.
Cassia County.....	Cassia County.
Clearwater County.....	Clearwater County.
Fremont County.....	Fremont County.
Gem County.....	Gem County.
Idaho County.....	Idaho County.
Jefferson County.....	Jefferson County.
Jerome County.....	Jerome County.
Kootenai County.....	Kootenai County.
Lemhi County.....	Lemhi County.
Lewis County.....	Lewis County.
Minidoka County.....	Minidoka County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Nampa City.....	Nampa City in Canyon County.
Balance of Nez Perce County.....	Nez Perce County less Lewiston City.
Payette County.....	Payette County.
Pocatello City.....	Pocatello City in Bannock County.
Power County.....	Power County.
Shoshone County.....	Shoshone County.
Twins Falls City.....	Twins Falls City in Twin Falls County.
Valley County.....	Valley County.

Illinois

Alexander County.....	Alexander County.
Alton City.....	Alton City in Madison County.
Aurora City.....	Aurora City in Du Page County.
	Kane County.
Belleville City.....	Belleville City in St. Clair County.
Bond County.....	Bond County.
Boone County.....	Boone County.
Brown County.....	Brown County.
Burbank City.....	Burbank City in Cook County.
Bureau County.....	Bureau County.
Calhoun County.....	Calhoun County.
Carroll County.....	Carroll County.
Cass County.....	Cass County.
Chicago City.....	Chicago City in Cook County.
Christian County.....	Christian County.
Cicero City.....	Cicero City in Cook County.
Clark County.....	Clark County.
Clay County.....	Clay County.
Clinton County.....	Clinton County.
Crawford County.....	Crawford County.
Cumberland County.....	Cumberland County.
Danville City.....	Danville City in Vermilion County.
De Witt County.....	De Witt County.
Decatur City.....	Decatur City in Macon County.
East St. Louis City.....	East St. Louis City in St. Clair County.
Edgar County.....	Edgar County.
Edwards County.....	Edwards County.
Effingham County.....	Effingham County.
Fayette County.....	Fayette County.
Franklin County.....	Franklin County.
Freeport City.....	Freeport City in Stephenson County.
Fulton County.....	Fulton County.
Galesburg City.....	Galesburg City in Knox County.
Gallatin County.....	Gallatin County.
Granite City.....	Granite City in Madison County.
Greene County.....	Greene County.
Grundy County.....	Grundy County.
Hamilton County.....	Hamilton County.
Hancock County.....	Hancock County.
Hardin County.....	Hardin County.
Harvey City.....	Harvey City in Cook County.
Henderson County.....	Henderson County.
Henry County.....	Henry County.
Iroquois County.....	Iroquois County.
Balance of Jackson County.....	Jackson County less Carbondale City.
Jasper County.....	Jasper County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Jefferson County.....	Jefferson County.
Jersey County.....	Jersey County.
Johnson County.....	Johnson County.
Joliet City.....	Joliet City in Will County.
Kankakee City.....	Kankakee City in Kankakee County.
Balance of Kankakee County.....	Kankakee County less Kankakee City.
Balance of Knox County.....	Knox County less Galesburg City.
La Salle County.....	La Salle County.
Lawrence County.....	Lawrence County.
Lee County.....	Lee County.
Macoupin County.....	Macoupin County.
Balance of Madison County.....	Madison County less Alton City, Granite City.
Marion County.....	Marion County.
Mason County.....	Mason County.
Massac County.....	Massac County.
Maywood Village.....	Maywood Village in Cook County.
Mercer County.....	Mercer County.
Moline County.....	Moline City in Rock Island County.
Monroe County.....	Monroe County.
Montgomery County.....	Montgomery County.
North Chicago City.....	North Chicago City in Lake County.
Ogle County.....	Ogle County.
Pekin City.....	Pekin City in Tazewell County.
Peoria City.....	Peoria City in Peoria County.
Perry County.....	Perry County.
Piatt County.....	Piatt County.
Pike County.....	Pike County.
Pope County.....	Pope County.
Pulaski County.....	Pulaski County.
Putnam County.....	Putnam County.
Quincy City.....	Quincy City in Adams County.
Randolph County.....	Randolph County.
Richland County.....	Richland County.
Rock Island City.....	Rock Island City in Rock Island County.
Balance of Rock Island County.....	Rock Island County less Moline City.
Rockford City.....	Rockford City in Winnebago County.
Saline County.....	Saline County.
Schuyler County.....	Schuyler County.
Scott County.....	Scott County.
Shelby County.....	Shelby County.
Balance of St. Clair County.....	St. Clair County less Belleville City.
Stark County.....	East St. Louis City.
Balance of Tazewell County.....	Tazewell County less Pekin City.
Union County.....	Union County.
Balance of Vermilion County.....	Vermilion County less Danville City.
Wabash County.....	Wabash County.
Warren County.....	Warren County.
Washington County.....	Washington County.
Wayne County.....	Wayne County.
White County.....	White County.
Whiteside County.....	Whiteside County.
Williamson County.....	Williamson County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Indiana	
Anderson City.....	Anderson City in Madison County.
Blackford County.....	Blackford County.
Crawford County.....	Crawford County.
East Chicago City.....	East Chicago City in Lake County.
Fayette County.....	Fayette County.
Fountain County.....	Fountain County.
Gary City.....	Gary City in Lake County.
Greene County.....	Greene County.
Hammond City.....	Hammond City in Lake County.
Henry County.....	Henry County.
Jackson County.....	Jackson County.
Jasper County.....	Jasper County.
Jay County.....	Jay County.
Jefferson County.....	Jefferson County.
Kokomo County.....	Kokomo City in Howard County.
Balance of Lake County.....	Lake County less East Chicago City.
	Gary City.
	Hammond City.
	Merrillville Town.
Lawrence County.....	Lawrence County.
Marion City.....	Marion City in Grant County.
Martin County.....	Martin County.
Michigan City.....	Michigan City in La Porte County.
Muncie County.....	Muncie City in Delaware County.
Ohio County.....	Ohio County.
Orange County.....	Orange County.
Perry County.....	Perry County.
Pike County.....	Pike County.
Portage City.....	Portage City in Porter County.
Randolph County.....	Randolph County.
Richmond City.....	Richmond City in Wayne County.
Rush County.....	Rush County.
Scott County.....	Scott County.
Starke County.....	Starke County.
Sullivan County.....	Sullivan County.
Switzerland County.....	Switzerland County.
Vermilion County.....	Vermilion County.
Balance of Wayne County.....	Wayne County less Richmond City.
White County.....	White County.

Iowa

Appanoose County.....	Appanoose County.
Balance of Black Hawk County.....	Black Hawk County less Cedar Falls City.
Bremer County.....	Bremer County.
Buchanan County.....	Buchanan County.
Butler County.....	Butler County.
Chickasaw County.....	Chickasaw County.
Clinton City.....	Clinton City in Clinton County.
Davis County.....	Davis County.
Emmet County.....	Emmet County.
Floyd County.....	Floyd County.
Jackson County.....	Jackson County.
Lee County.....	Lee County.
Monroe County.....	Monroe County.
Ottumwa City.....	Ottumwa City in Wapello County.
Van Buren County.....	Van Buren County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Balance of Wapello County.....	Wapello County less Ottumwa City.
Waterloo City.....	Waterloo City in Black Hawk County.
Kansas	
Allen County.....	Allen County.
Barton County.....	Barton County.
Cherokee County.....	Cherokee County.
Hutchinson City.....	Hutchinson City in Reno County.
Linn County.....	Linn County.
Neosho County.....	Neosho County.
Kentucky	
Adair County.....	Adair County.
Allen County.....	Allen County.
Ashland City.....	Ashland City in Boyd County.
Ballard County.....	Ballard County.
Barren County.....	Barren County.
Bath County.....	Bath County.
Bell County.....	Bell County.
Balance of Boyd County.....	Boyd County less Ashland City.
Boyle County.....	Boyle County.
Bracken County.....	Bracken County.
Breathitt County.....	Breathitt County.
Breckinridge County.....	Breckinridge County.
Butler County.....	Butler County.
Caldwell County.....	Caldwell County.
Carlisle County.....	Carlisle County.
Carter County.....	Carter County.
Casey County.....	Casey County.
Balance of Christian County.....	Christian County less Hopkinsville City.
Clark County.....	Clark County.
Clay County.....	Clay County.
Clinton County.....	Clinton County.
Covington City.....	Covington City in Kenton County.
Crittenden County.....	Crittenden County.
Cumberland County.....	Cumberland County.
Balance of Daviess County.....	Daviess County less Owensboro City.
Edmonson County.....	Edmonson County.
Elliott County.....	Elliott County.
Estill County.....	Estill County.
Fleming County.....	Fleming County.
Floyd County.....	Floyd County.
Fulton County.....	Fulton County.
Gallatin County.....	Gallatin County.
Garrard County.....	Garrard County.
Grant County.....	Grant County.
Graves County.....	Graves County.
Grayson County.....	Grayson County.
Green County.....	Green County.
Greenup County.....	Greenup County.
Hancock County.....	Hancock County.
Harlan County.....	Harlan County.
Harrison County.....	Harrison County.
Hart County.....	Hart County.
Henderson City.....	Henderson City in Henderson County.
Balance of Henderson County.....	Henderson County less Henderson City.
Hickman County.....	Hickman County.
Hopkins County.....	Hopkins County.
Hopkinsville City.....	Hopkinsville City in Christian County.
Jackson County.....	Jackson County.
Johnson County.....	Johnson County.
Knott County.....	Knott County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Knox County.....	Knox County.
Larue County.....	Larue County.
Laurel County.....	Laurel County.
Lawrence County.....	Lawrence County.
Lee County.....	Lee County.
Leslie County.....	Leslie County.
Letcher County.....	Letcher County.
Lewis County.....	Lewis County.
Lincoln County.....	Lincoln County.
Livingston County.....	Livingston County.
Logan County.....	Logan County.
Lyon County.....	Lyon County.
Magoffin County.....	Magoffin County.
Marion County.....	Marion County.
Marshall County.....	Marshall County.
Martin County.....	Martin County.
Mason County.....	Mason County.
Balance of McCracken County.....	McCracken County less Paducah City.
McCreary County.....	McCreary County.
McLean County.....	McLean County.
Meade County.....	Meade County.
Menifee County.....	Menifee County.
Mercer County.....	Mercer County.
Metcalfe County.....	Metcalfe County.
Monroe County.....	Monroe County.
Montgomery County.....	Montgomery County.
Morgan County.....	Morgan County.
Muhlenberg County.....	Muhlenberg County.
Nelson County.....	Nelson County.
Nicholas County.....	Nicholas County.
Ohio County.....	Ohio County.
Owensboro City.....	Owensboro City.
Owsley County.....	Owsley County.
Pendleton County.....	Pendleton County.
Perry County.....	Perry County.
Pike County.....	Pike County.
Powell County.....	Powell County.
Pulaski County.....	Pulaski County.
Robertson County.....	Robertson County.
Rockcastle County.....	Rockcastle County.
Rowan County.....	Rowan County.
Russell County.....	Russell County.
Simpson County.....	Simpson County.
Todd County.....	Todd County.
Trigg County.....	Trigg County.
Union County.....	Union County.
Balance of Warren County.....	Warren County less Bowling Green City.
Washington County.....	Washington County.
Wayne County.....	Wayne County.
Webster County.....	Webster County.
Whitley County.....	Whitley County.
Wolfe County.....	Wolfe County.

Louisiana

Acadia Parish.....	Acadia Parish.
Alexandria City.....	Alexandria City in Rapides Parish.
Allen Parish.....	Allen Parish.
Ascension Parish.....	Ascension Parish.
Assumption Parish.....	Assumption Parish.
Avoyelles Parish.....	Avoyelles Parish.
Baton Rouge City.....	Baton Rouge City in East Baton Rouge Parish.
Beauregard Parish.....	Beauregard Parish.
Bienville Parish.....	Bienville Parish.
Bossier City.....	Bossier City in Bossier Parish.
Balance of Bossier Parish.....	Bossier Parish less Bossier City.
Balance of Caddo Parish.....	Caddo Parish less Shreveport City.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Balance of Calcasieu Parish.....	Calcasieu Parish less Lake Charles City.
Caldwell Parish.....	Caldwell Parish.
Cameron Parish.....	Cameron Parish.
Catahoula Parish.....	Catahoula Parish.
Claiborne Parish.....	Claiborne Parish.
Concordia Parish.....	Concordia Parish.
De Soto Parish.....	De Soto Parish.
East Carroll Parish.....	East Carroll Parish.
East Feliciana Parish.....	East Feliciana Parish.
Evangeline Parish.....	Evangeline Parish.
Franklin Parish.....	Franklin Parish.
Grant Parish.....	Grant Parish.
Balance of Iberia Parish.....	Iberia Parish less New Iberia City.
Iberville Parish.....	Iberville Parish.
Jackson Parish.....	Jackson Parish.
Jefferson Davis Parish.....	Jefferson Davis Parish.
Balance of Jefferson Parish.....	Jefferson Parish less Kenner City.
Kenner City.....	Kenner City in Jefferson Parish.
La Salle Parish.....	La Salle Parish.
Lafayette City.....	Lafayette City in Lafayette Parish.
Balance of Lafayette Parish.....	Lafayette Parish less Lafayette City.
LaFourche Parish.....	LaFourche Parish.
Lake Charles City.....	Lake Charles City in Calcasieu Parish.
Livingston Parish.....	Livingston Parish.
Madison Parish.....	Madison Parish.
Monroe City.....	Monroe City in Ouachita Parish.
Morehouse Parish.....	Morehouse Parish.
Natchitoches Parish.....	Natchitoches Parish.
New Iberia City.....	New Iberia City in Iberia Parish.
New Orleans City.....	New Orleans City in Orleans Parish.
Balance of Ouachita Parish.....	Ouachita Parish less Monroe City.
Plaquemines Parish.....	Plaquemines Parish.
Pointe Coupee Parish.....	Pointe Coupee Parish.
Balance of Rapides Parish.....	Rapides Parish less Alexandria City.
Red River Parish.....	Red River Parish.
Richland Parish.....	Richland Parish.
Sabine Parish.....	Sabine Parish.
Shreveport City.....	Shreveport City in Bossier Parish.
Slidell City.....	Caddo Parish.
St. Bernard Parish.....	Slidell City in St. Tammany Parish.
St. Charles Parish.....	St. Bernard Parish.
St. Helena Parish.....	St. Charles Parish.
St. James Parish.....	St. Helena Parish.
St. John Baptist Parish.....	St. James Parish.
St. Landry Parish.....	St. John Baptist Parish.
St. Martin Parish.....	St. Landry Parish.
St. Mary Parish.....	St. Martin Parish.
Balance of St. Tammany Parish.....	St. Mary Parish.
Tangipahoa Parish.....	St. Tammany Parish less Slidell City.
Tensas Parish.....	Tangipahoa Parish.
Terrebonne Parish.....	Tensas Parish.
Union Parish.....	Terrebonne Parish.
Vermilion Parish.....	Union Parish.
Vernon Parish.....	Vermilion Parish.
Washington Parish.....	Vernon Parish.
Webster Parish.....	Washington Parish.
West Baton Rouge Parish.....	Webster Parish.
West Carroll Parish.....	West Baton Rouge Parish.
	West Carroll Parish.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
West Feliciana Parish.....	West Feliciana Parish.
Winn Parish.....	Winn Parish.
Maine	
Aroostock County.....	Aroostock County.
Washington County.....	Washington County.
Maryland	
Allegany County.....	Allegany County.
Dorchester County.....	Dorchester County.
Garrett County.....	Garrett County.
Hagerstown City.....	Hagerstown City in Washington County.
Somerset County.....	Somerset County.
Massachusetts	
Gosnold Town.....	Gosnold Town in Dukes County.
Monroe Town.....	Monroe Town in Franklin County.
Provincetown Town.....	Provincetown Town in Barnstable County.
Savoy Town.....	Savoy Town in Berkshire County.
Truro Town.....	Truro Town in Barnstable County.
Michigan	
Alcona County.....	Alcona County.
Alger County.....	Alger County.
Alpena County.....	Alpena County.
Antrim County.....	Antrim County.
Arenac County.....	Arenac County.
Baraga County.....	Baraga County.
Barry County.....	Barry County.
Battle Creek City.....	Battle Creek City in Calhoun County.
Bay City.....	Bay City in Bay County.
Balance of Bay County.....	Bay County less Bay City.
Benzie County.....	Midland City.
Berrien County.....	Benzie County.
Branch County.....	Berrien County.
Burton City.....	Branch County.
Balance of Calhoun County.....	Burton City in Genesee County.
Charlevoix County.....	Calhoun County less Battle Creek City.
Cheboygan County.....	Charlevoix County.
Chippewa County.....	Cheboygan County.
Clare County.....	Chippewa County.
Clinton Township.....	Clare County.
Crawford County.....	Clinton Township in Macomb County.
Delta County.....	Crawford County.
Detroit City.....	Delta County.
Dickinson County.....	Detroit City in Wayne County.
East Detroit City.....	Dickinson County.
Emmet County.....	East Detroit City in Macomb County.
Ferndale City.....	Emmet County.
Flint City.....	Ferndale City in Oakland County.
Flint Township.....	Flint City in Genesee County.
	Flint Township in Genesee County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Balance of Genesee County.....	Genesee County Less Burton City.
	Flint City.
	Flint Township.
	Mount Morris Township.
Gladwin County.....	Gladwin County.
Gogebic County.....	Gogebic County.
Grand Rapids City.....	Grand Rapids City in Kent County.
Grand Traverse County.....	Grand Traverse County.
Gratiot County.....	Gratiot County.
Highland Park City.....	Highland Park City in Wayne County.
Hillsdale County.....	Hillsdale County.
Houghton County.....	Houghton County.
Huron County.....	Huron County.
Inkster City.....	Inkster City in Wayne County.
Ionia County.....	Ionia County.
Iosco County.....	Iosco County.
Iron County.....	Iron County.
Jackson County.....	Jackson City in Jackson County.
Balance of Jackson County.....	Jackson County Less Jackson City.
Kalkaska County.....	Kalkaska County.
Keweenaw County.....	Keweenaw County.
Lake County.....	Lake County.
Lansing City.....	Lansing City in Eaton County.
	Ingham County.
Lapeer County.....	Lapeer County.
Leelanau County.....	Leelanau County.
Lenawee County.....	Lenawee County.
Lincoln Park City.....	Lincoln Park City in Wayne County.
Luce County.....	Luce County.
Mackinac County.....	Mackinac County.
Balance of Macomb County.....	Macomb County Less Clinton Township.
	East Detroit City.
	Roseville City.
	Shelby Township.
	St. Clair Shores City.
	Sterling Heights City.
	Warren City.
Manistee County.....	Manistee County.
Marquette County.....	Marquette County.
Mason County.....	Mason County.
Mecosta County.....	Mecosta County.
Menominee County.....	Menominee County.
Balance of Midland County.....	Midland County Less Midland City.
Missaukee County.....	Missaukee County.
Monroe County.....	Monroe County.
Montcalm County.....	Montcalm County.
Montmorency County.....	Montmorency County.
Mount Morris Township.....	Mount Morris Township in Genesee County.
Muskegon City.....	Muskegon City in Muskegon County.
Balance of Muskegon County.....	Muskegon County Less Muskegon City.
Newaygo County.....	Newaygo County.
Oceana County.....	Oceana County.
Ogemaw County.....	Ogemaw County.
Ontonagon County.....	Ontonagon County.
Osceola County.....	Osceola County.
Oscoda County.....	Oscoda County.
Otsego County.....	Otsego County.
Pontiac City.....	Pontiac City in Oakland County.
Port Huron City.....	Port Huron City in St. Clair County.
Presque Isle County.....	Presque Isle County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Roscommon County.....	Roscommon County.
Roseville City.....	Roseville City in Macomb County.
Saginaw City.....	Saginaw City in Saginaw County.
Balance of Saginaw County.....	Saginaw County Less Saginaw City, Saginaw Township.
Sanilac County.....	Sanilac County.
Schoolcraft County.....	Schoolcraft County.
Shiawassee County.....	Shiawassee County.
Balance of St. Clair County.....	St. Clair County Less Port Huron City.
St. Joseph County.....	St. Joseph County.
Taylor City.....	Taylor City in Wayne County.
Tuscola County.....	Tuscola County.
Van Buren County.....	Van Buren County.
Warren City.....	Warren City in Macomb County.
Wexford County.....	Wexford County.
Ypsilanti Township.....	Ypsilanti Township in Washtenaw County.

Minnesota

Aitkin County.....	Aitkin County.
Becker County.....	Becker County.
Carlton County.....	Carlton County.
Cass County.....	Cass County.
Clearwater County.....	Clearwater County.
Hubbard County.....	Hubbard County.
Itasca County.....	Itasca County.
Jackson County.....	Jackson County.
Kanabec County.....	Kanabec County.
Kittson County.....	Kittson County.
Koochiching County.....	Koochiching County.
Lake County.....	Lake County.
Le Sueur County.....	Le Sueur County.
Mahnomen County.....	Mahnomen County.
Marshall County.....	Marshall County.
Meeker County.....	Meeker County.
Morrison County.....	Morrison County.
Pennington County.....	Pennington County.
Pine County.....	Pine County.
Polk County.....	Polk County.
Red Lake County.....	Red Lake County.
Balance of St. Louis County.....	St. Louis County Less Duluth City.
Swift County.....	Swift County.
Wadena County.....	Wadena County.

Mississippi

Adams County.....	Adams County.
Alcorn County.....	Alcorn County.
Amite County.....	Amite County.
Attala County.....	Attala County.
Benton County.....	Benton County.
Biloxi City.....	Biloxi City in Harrison County.
Bolivar County.....	Bolivar County.
Calhoun County.....	Calhoun County.
Carroll County.....	Carroll County.
Chickasaw County.....	Chickasaw County.
Choctaw County.....	Choctaw County.
Claiborne County.....	Claiborne County.
Clarke County.....	Clarke County.
Clay County.....	Clay County.
Coahoma County.....	Coahoma County.
Columbus City.....	Columbus City in Lowndes County.
Copiah County.....	Copiah County.
Covington County.....	Covington County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Balance of Forrest County.....	Forrest County Less Hattiesburg City.
Franklin County.....	Franklin County.
George County.....	George County.
Greene County.....	Greene County.
Greenville City.....	Greenville City in Washington County.
Grenada County.....	Grenada County.
Gulfport City.....	Gulfport City in Harrison County.
Hancock County.....	Hancock County.
Hattiesburg City.....	Hattiesburg City in Forrest County.
Balance of Hinds County.....	Hinds County Less Jackson City.
Holmes County.....	Holmes County.
Humphreys County.....	Humphreys County.
Issaquena County.....	Issaquena County.
Itawamba County.....	Itawamba County.
Balance of Jackson County.....	Jackson County less Pascagoula City.
Jasper County.....	Jasper County.
Jefferson County.....	Jefferson County.
Jefferson Davis County.....	Jefferson Davis County.
Jones County.....	Jones County.
Kemper County.....	Kemper County.
Balance of Lauderdale County.....	Lauderdale County less Meridian City.
Lawrence County.....	Lawrence County.
Leake County.....	Leake County.
Balance of Lee County.....	Lee County less Tupelo City.
Leflore County.....	Leflore County.
Lincoln County.....	Lincoln County.
Balance of Lowndes County.....	Lowndes County less Columbus City.
Madison County.....	Madison County.
Marion County.....	Marion County.
Marshall County.....	Marshall County.
Monroe County.....	Monroe County.
Montgomery County.....	Montgomery County.
Neshoba County.....	Neshoba County.
Newton County.....	Newton County.
Noxubee County.....	Noxubee County.
Panola County.....	Panola County.
Pascagoula City.....	Pascagoula City in Jackson County.
Pearl River County.....	Pearl River County.
Perry County.....	Perry County.
Pike County.....	Pike County.
Prentiss County.....	Prentiss County.
Quitman County.....	Quitman County.
Scott County.....	Scott County.
Sharkey County.....	Sharkey County.
Simpson County.....	Simpson County.
Smith County.....	Smith County.
Stone County.....	Stone County.
Sunflower County.....	Sunflower County.
Tallahatchie County.....	Tallahatchie County.
Tate County.....	Tate County.
Tippah County.....	Tippah County.
Tishomingo County.....	Tishomingo County.
Tunica County.....	Tunica County.
Tupelo City.....	Tupelo City in Lee County.
Union County.....	Union County.
Vicksburg City.....	Vicksburg City in Warren County.
Walsh County.....	Walsh County.
Balance of Warren County.....	Warren County less Vicksburg City.
Balance of Washington County.....	Washington County Less Greenville City.
Wayne County.....	Wayne County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Webster County.....	Webster County.
Wilkinson County.....	Wilkinson County.
Winston County.....	Winston County.
Yalobusha County.....	Yalobusha County.
Yazoo County.....	Yazoo County.

Missouri

Benton County.....	Benton County.
Bollinger County.....	Bollinger County.
Butler County.....	Butler County.
Carroll County.....	Carroll County.
Carter County.....	Carter County.
Cawford County.....	Cawford County.
Dallas County.....	Dallas County.
Dent County.....	Dent County.
Douglas County.....	Douglas County.
Dunklin County.....	Dunklin County.
Franklin County.....	Franklin County.
Henry County.....	Henry County.
Howell County.....	Howell County.
Iron County.....	Iron County.
Lewis County.....	Lewis County.
Lincoln County.....	Lincoln County.
Madison County.....	Madison County.
Maries County.....	Maries County.
Miller County.....	Miller County.
Mississippi County.....	Mississippi County.
New Madrid County.....	New Madrid County.
Oregon County.....	Oregon County.
Pemiscot County.....	Pemiscot County.
Pike County.....	Pike County.
Reynolds County.....	Reynolds County.
Ripley County.....	Ripley County.
Shannon County.....	Shannon County.
St. Louis City.....	St. Louis City.
St. Francois County.....	St. Francois County.
Stoddard County.....	Stoddard County.
Stone County.....	Stone County.
Taney County.....	Taney County.
Texas County.....	Texas County.
Washington County.....	Washington County.
Wayne County.....	Wayne County.
Webster County.....	Webster County.
Wright County.....	Wright County.

Montana

Big Horn County.....	Big Horn County.
Blaine County.....	Blaine County.
Broadwater County.....	Broadwater County.
Butte—Silver Bow City.....	Butte—Silver Bow City in Silver Bow County.
Balance of Cascade County.....	Cascade County less Great Falls City.
Deer Lodge County.....	Deer Lodge County.
Fallon County.....	Fallon County.
Fergus County.....	Fergus County.
Flathead County.....	Flathead County.
Glacier County.....	Glacier County.
Golden Valley County.....	Golden Valley County.
Granite County.....	Granite County.
Lake County.....	Lake County.
Lincoln County.....	Lincoln County.
Meagher County.....	Meagher County.
Mineral County.....	Mineral County.
Musselshell County.....	Musselshell County.
Park County.....	Park County.
Ravalli County.....	Ravalli County.
Richland County.....	Richland County.
Roosevelt County.....	Roosevelt County.
Rosebud County.....	Rosebud County.
Sanders County.....	Sanders County.
Balance of Silver Bow County.....	Silver Bow County less Butte—Silver Bow City.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Toole County.....	Toole County.
Wheatland County.....	Wheatland County.
Nebraska	
Johnson County.....	Johnson County.
Loup County.....	Loup County.
Scotts Bluff County.....	Scotts Bluff County.
Sherman County.....	Sherman County.
Thurston County.....	Thurston County.
Nevada	
North Las Vegas City.....	North Las Vegas City in Clark County.
White Pine County.....	White Pine County.
New Jersey	
Atlantic City.....	Atlantic City in Atlantic County.
Camden City.....	Camden City in Camden County.
Balance of Cumberland County.....	Cumberland County less Milville City.
Hoboken City.....	Hoboken City in Hudson County.
Jersey City.....	Jersey City in Hudson County.
Newark City.....	Newark, city in Essex County.
Passaic City.....	Passaic City in Passaic County.
New Mexico	
Alamogordo City.....	Alamogordo City in Otero County.
Balance of Bernalillo County.....	Bernalillo County less Albuquerque City.
Carlsbad City.....	Carlsbad City in Eddy County.
Catron County.....	Catron County.
Balance of Chaves County.....	Chaves County less Roswell City.
Cibola County.....	Cibola County.
Clovis City.....	Clovis City in Curry County.
Colfax County.....	Colfax County.
De Baca County.....	De Baca County.
Balance of Eddy County.....	Eddy County less Carlsbad City.
Farmington City.....	Farmington City in San Juan County.
Grant County.....	Grant County.
Guadalupe County.....	Guadalupe County.
Harding County.....	Harding County.
Hobbs City.....	Hobbs City in Lea County.
Balance of Lea County.....	Lea County less Hobbs City.
Luna County.....	Luna County.
McKinley County.....	McKinley County.
Mora County.....	Mora County.
Quay County.....	Quay County.
Rio Arriba County.....	Rio Arriba County.
Roswell City.....	Roswell City in Chaves County.
Balance of San Juan County.....	San Juan County less Farmington City.
San Miguel County.....	San Miguel County.
Sandoval County.....	Sandoval County.
Socorro County.....	Socorro County.
Taos County.....	Taos County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Torrance County.....	Torrance County.
Union County.....	Union County.
Valencia County.....	Valencia County.
New York	
Auburn City.....	Auburn City in Cayuga County.
Buffalo City.....	Buffalo City in Erie County.
Essex County.....	Essex County.
Franklin County.....	Franklin County.
Fulton County.....	Fulton County.
Hamilton County.....	Hamilton County.
Herkimer County.....	Herkimer County.
Balance of Jefferson County.....	Jefferson County less Watertown City.
Lewis County.....	Lewis County.
Montgomery County.....	Montgomery County.
Niagara Falls City.....	Niagara Falls City in Niagara County.
Orleans County.....	Orelans County.
Oswego County.....	Oswego County.
St. Lawrence County.....	St. Lawrence County.
Watertown City.....	Watertown City in Jefferson County.
North Carolina	
Beaufort County.....	Beaufort County.
Bladen County.....	Bladen County.
Brunswick County.....	Brunswick County.
Graham County.....	Graham County.
Hyde County.....	Hyde County.
Person County.....	Person County.
Robeson County.....	Robeson County.
Sampson County.....	Sampson County.
Swain County.....	Swain County.
Tyrrell County.....	Tyrrel County.
Wilson City.....	Wilson City in Wilson County.
North Dakota	
Benson County.....	Benson County.
Burke County.....	Burke County.
Dunn County.....	Dunn County.
Eddy County.....	Eddy County.
Kidder County.....	Kidder County.
McHenry County.....	McHenry County.
Mercer County.....	Mercer County.
Mountrail County.....	Mountrail County.
Pembina County.....	Pembina County.
Rolette County.....	Rolette County.
Sioux County.....	Sioux County.
Slope County.....	Slope County.
Stark County.....	Stark County.
Williams County.....	Williams County.
Ohio	
Adams County.....	Adams County.
Akron City.....	Akron City in Summit County.
Ashtabula County.....	Ashtabula County.
Barberton City.....	Barberton City in Summit County.
Belmont County.....	Belmont County.
Brown County.....	Brown County.
Canton City.....	Canton City in Stark County.
Carroll County.....	Carroll County.
Cleveland City.....	Cleveland City in Cuyahoga County.
Columbiana County.....	Columbiana County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Coshocton County.....	Coshocton County.
Crawford County.....	Crawford County.
Darke County.....	Darke County.
Dayton City.....	Dayton City in Montgomery County.
Defiance County.....	Defiance County.
East Cleveland City.....	East Cleveland City in Cuyahoga County.
Elyria City.....	Elyria City in Lorain County.
Fayette County.....	Falette County.
Fulton County.....	Fulton County.
Gallia County.....	Gallia County.
Guernsey County.....	Guernsey County.
Hamilton City.....	Hamilton City in Butler County.
Hardin County.....	Hardin County.
Harrison County.....	Harrison County.
Henry County.....	Henry County.
Highland County.....	Highland County.
Hocking County.....	Hocking County.
Huron County.....	Huron County.
Jackson County.....	Jackson County.
Jefferson County.....	Jefferson County.
Knox County.....	Knox County.
Balance of Lake County.....	Lake County less Mentor City.
Lancaster City.....	Lancaster City in Fairfield County.
Lawrence County.....	Lawrence County.
Lima City.....	Lima City in Allen County.
Logan County.....	Logan County.
Lorain City.....	Lorain, city in Lorain County.
Balance of Lorain County.....	Lorain County less Elyria City.
Mansfield City.....	Mansfield City in Richland County.
Marion City.....	Marion City in Marion County.
Massillon City.....	Massillon City in Stark County.
Meigs County.....	Meigs County.
Middletown City.....	Middletown City in Butler County.
Monroe County.....	Monroe County.
Morgan County.....	Morgan County.
Morrow County.....	Morrow County.
Balance of Muskingum County.....	Muskingum County less Zanesville City.
Newark City.....	Newark City in Licking County.
Noble County.....	Noble County.
Ottawa County.....	Ottawa County.
Perry County.....	Perry County.
Pike County.....	Pike County.
Balance of Portage County.....	Portage County less Kent City.
Putnam County.....	Putnam County.
Ross County.....	Ross County.
Sandusky County.....	Sandusky County.
Scioto County.....	Scioto County.
Seneca County.....	Seneca County.
Toledo City.....	Toledo City in Lucas County.
Balance of Trumbull County.....	Trumbull County less Warren City.
Tuscarawas County.....	Tuscarawas County.
Vinton County.....	Vinton County.
Warren City.....	Warren City in Trumbull County.
Washington County.....	Washington County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Youngstown City	Youngstown City in Mahoning County.
Zanesville City	Zanesville City in Muskingum County.
Oklahoma	
Adair County	Adair County.
Atoka County	Atoka County.
Beckham County	Beckham County.
Caddo County	Caddo County.
Carter County	Carter County.
Cherokee County	Cherokee County.
Choctaw County	Choctaw County.
Coal County	Coal County.
Craig County	Craig County.
Creek County	Creek County.
Delaware County	Delaware County.
Garvin County	Garvin County.
Grady County	Grady County.
Haskell County	Haskell County.
Hughes County	Hughes County.
Jefferson County	Jefferson County.
Latimer County	Latimer County.
Le Flore County	Le Flore County.
Lincoln County	Lincoln County.
Major County	Major County.
Mayes County	Mayes County.
Mc Curtain County	Mc Curtain County.
Murray County	Murray County.
Muskogee City	Muskogee City in Muskogee County.
Balance of Muskogee County	Muskogee County less Muskogee City.
Nowata County	Nowata County.
Okfuskee County	Okfuskee County.
Okmulgee County	Okmulgee County.
Ottawa County	Ottawa County.
Pawnee County	Pawnee County.
Pittsburg County	Pittsburg County.
Pushmataha County	Pushmataha County.
Roger Mills County	Roger Mills County.
Rogers County	Rogers County.
Seminole County	Seminole County.
Shawnee City	Shawnee City in Pottawatomie County.
Stephens County	Stephens County.
Balance of Tulsa County	Tulsa County less Broken Arrow City.
Washita County	Washita County.
Woodward County	Woodward County.

Oregon

Albany City	Albany City in Linn County.
Baker County	Baker County.
Columbia County	Columbia County.
Coos County	Coos County.
Crook County	Crook County.
Deschutes County	Deschutes County.
Douglas County	Douglas County.
Grant County	Grant County.
Harney County	Harney County.
Hood River County	Hood River County.
Josephine County	Josephine County.
Klamath County	Klamath County.
Lake County	Lake County.
Balance of Linn County	Linn County less Albany City.
Malheur County	Malheur County.
Morrow County	Morrow County.
Sherman County	Sherman County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Springfield City	Springfield City in Lane County.
Tillamook County	Tillamook County.
Umatilla County	Umatilla County.
Union County	Union County.
Wallowa County	Wallowa County.
Wasco County	Wasco County.
Wheeler County	Wheeler County.

Pennsylvania

Armstrong County	Armstrong County.
Beaver County	Beaver County.
Bedford County	Bedford County.
Balance of Cambria County	Cambria County less Johnstown City.
Carbon County	Carbon County.
Clarion County	Clarion County.
Clearfield County	Clearfield County.
Clinton County	Clinton County.
Crawford County	Crawford County.
Elk County	Elk County.
Balance of Erie County	Erie County less Erie City.
Fayette County	Millcreek Township in Fayette County.
Forest County	Forest County.
Fulton County	Fulton County.
Greene County	Green County.
Hazleton City	Hazleton City in Luzerne County.
Huntingdon County	Huntingdon County.
Indiana County	Indiana County.
Jefferson County	Jefferson County.
Johnstown City	Johnstown City in Cambria County.
Juniata County	Juniata County.
Balance of Luzerne County	Luzerne County less Hazleton City.
Mc Kean County	Wilkes-Barre City.
McKeesport City	Mc Kean County.
Mifflin County	McKeesport City in Allegheny County.
North Huntingdon Township	Mifflin County.
Northumberland County	North Huntingdon Township in Westmoreland County.
Reading City	Northumberland County.
Schuylkill County	Reading City in Berks County.
Somerset County	Schuylkill County.
Venango County	Somerset County.
Washington County	Venango County.
West Mifflin Borough	Washington County.
Balance of Westmoreland County	West Mifflin Borough in Allegheny County.
Wilkes-Barre City	Westmoreland County less Hempfield Township.
	North Huntingdon Township.
	Wilkes-Barre City in Luzerne County.

Puerto Rico

Adjuntas Municipio	Adjuntas Municipio.
Aguada Municipio	Aguada Municipio.
Aguadilla Municipio	Aguadilla Municipio.
Agua Buenas Municipio	Agua Buenas Municipio.
Aibonito Municipio	Aibonito Municipio.
Anasco Municipio	Anasco Municipio.
Arecibo Municipio	Arecibo Municipio.
Arroyo Municipio	Arroyo Municipio.
Barceloneta Municipio	Barceloneta Municipio.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Barranquitas Municipio	Barranquitas Municipio.
Bayamon Municipio	Bayamon Municipio.
Cabo Rojo Municipio	Cabo Rojo Municipio.
Caguas Municipio	Caguas Municipio.
Camuy Municipio	Camuy Municipio.
Canovanas Municipio	Canovanas Municipio.
Carolina Municipio	Carolina Municipio.
Catano Municipio	Catano Municipio.
Cayey Municipio	Cayey Municipio.
Ceiba Municipio	Ceiba Municipio.
Ciales Municipio	Ciales Municipio.
Cidra Municipio	Cidra Municipio.
Coamo Municipio	Coamo Municipio.
Comerio Municipio	Comerio Municipio.
Corozal Municipio	Corozal Municipio.
Culebra Municipio	Culebra Municipio.
Dorado Municipio	Dorado Municipio.
Fajardo Municipio	Fajardo Municipio.
Florida Municipio	Florida Municipio.
Guanica Municipio	Guanica Municipio.
Guayama Municipio	Guayama Municipio.
Guayanilla Municipio	Guayanilla Municipio.
Gurabo Municipio	Gurabo Municipio.
Hatillo Municipio	Hatillo Municipio.
Hormigueros Municipio	Hormigueros Municipio.
Humacao Municipio	Humacao Municipio.
Isabela Municipio	Isabela Municipio.
Jayuya Municipio	Jayuya Municipio.
Juana Diaz Municipio	Juana Diaz Municipio.
Juncos Municipio	Juncos Municipio.
Lajas Municipio	Lajas Municipio.
Lares Municipio	Lares Municipio.
Las Marias Municipio	Las Marias Municipio.
Las Piedras Municipio	Las Piedras Municipio.
Loiza Municipio	Loiza Municipio.
Luquillo Municipio	Luquillo Municipio.
Manati Municipio	Manati Municipio.
Maricao Municipio	Maricao Municipio.
Maunabo Municipio	Maunabo Municipio.
Mayaguez Municipio	Mayaguez Municipio.
Moca Municipio	Moca Municipio.
Morovis Municipio	Morovis Municipio.
Naguabo Municipio	Naguabo Municipio.
Naranjo Municipio	Naranjo Municipio.
Orocovis Municipio	Orocovis Municipio.
Patillas Municipio	Patillas Municipio.
Penuelas Municipio	Penuelas Municipio.
Ponce Municipio	Ponce Municipio.
Quebradillas Municipio	Quebradillas Municipio.
Rincon Municipio	Rincon Municipio.
Rio Grande Municipio	Rio Grande Municipio.
Sabana Municipio	Sabana Municipio.
Salinas Municipio	Salinas Municipio.
San German Municipio	San German Municipio.
San Juan Municipio	San Juan Municipio.
San Lorenzo Municipio	San Lorenzo Municipio.
San Sebastian Municipio	San Sebastian Municipio.
Santa Isabel Municipio	Santa Isabel Municipio.
Toa Alta Municipio	Toa Alta Municipio.
Toa Baja Municipio	Toa Baja Municipio.
Trujillo Municipio	Trujillo Municipio.
Utua Municipio	Utua Municipio.
Vega Alta Municipio	Vega Alta Municipio.
Vega Baja Municipio	Vega Baja Municipio.
Vieques Municipio	Vieques Municipio.
Villalba Municipio	Villalba Municipio.
Yabucoa Municipio	Yabucoa Municipio.
Yauco Municipio	Yauco Municipio.

Rhode Island

New Shoreham Town	New Shoreham Town.
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**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
South Carolina	
Abbeville County	Abbeville County.
Allendale County	Allendale County.
Anderson City	Anderson City in Anderson County.
Bamberg County	Bamberg County.
Barnwell County	Barnwell County.
Chester County	Chester County.
Clarendon County	Clarendon County.
Darlington County	Darlington County.
Fairfield County	Fairfield County.
Georgetown County	Georgetown County.
Hampton County	Hampton County.
Balance of Horry County	Horry County less Myrtle Beach City.
Marion County	Marion County.
Marlboro County	Marlboro County.
Mc Cormick County	Mc Cormick County.
Orangeburg County	Orangeburg County.
Sumter City	Sumter City in Sumter County.
Union County	Union County.
Williamsburg County	Williamsburg County.
South Dakota	
Buffalo County	Buffalo County.
Dewey County	Dewey County.
Shannon County	Shannon County.

Tennessee	
Bedford County	Bedford County.
Benton County	Benton County.
Campbell County	Campbell County.
Cannon County	Cannon County.
Carroll County	Carroll County.
Balance of Carter County	Carter County less Johnson City.
Chester County	Chester County.
Claiborne County	Claiborne County.
Clarks County	Clarks County in Montgomery County.
Cocke County	Cocke County.
Coffee County	Coffee County.
Columbia City	Columbia City in Maury County.
Crockett County	Crockett County.
Cumberland County	Cumberland County.
De Kalb County	De Kalb County.
Decatur County	Decatur County.
Dyer County	Dyer County.
Fayette County	Fayette County.
Fentress County	Fentress County.
Gibson County	Gibson County.
Giles County	Giles County.
Grainger County	Grainger County.
Greene County	Greene County.
Grundy County	Grundy County.
Hamblen County	Hamblen County.
Hancock County	Hancock County.
Hardeman County	Hardeman County.
Hardin County	Hardin County.
Haywood County	Haywood County.
Henderson County	Henderson County.
Henry County	Henry County.
Hickman County	Hickman County.
Houston County	Houston County.
Humphreys County	Humphreys County.
Jackson City	Jackson City in Madison County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Johnson County	Johnson County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Lake County	Lake County.
Lauderdale County	Lauderdale County.
Lawrence County	Lawrence County.
Lewis County	Lewis County.
Loudon County	Loudon County.
Macon County	Macon County.
Marion County	Marion County.
Marshall County	Marshall County.
Balance of Maury County	Maury County less Columbia City.
Mc Minn County	Mc Minn County.
Mc Nairy County	Mc Nairy County.
Meigs County	Meigs County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Overton County	Overton County.
Perry County	Perry County.
Pickett County	Pickett County.
Polk County	Polk County.
Rhea County	Rhea County.
Scott County	Scott County.
Sequatchie County	Sequatchie County.
Sevier County	Sevier County.
Stewart County	Stewart County.
Union County	Union County.
Union County	Union County.
Van Buren County	Van Buren County.
Warren County	Warren County.
Wayne County	Wayne County.
White County	White County.

Texas	
Abilene City	Abilene City in Jones County.
Anderson County	Anderson County.
Andrews County	Andrews County.
Balance of Angelina County	Angelina County less Lufkin City.
Aransas County	Aransas County.
Atascosa County	Atascosa County.
Austin County	Austin County.
Baytown City	Baytown City in Harris County.
Beaumont City	Beaumont City in Jefferson County.
Bee County	Bee County.
Big Spring City	Big Spring City in Howard County.
Borden County	Borden County.
Balance of Bowie County	Bowie County less Texarkana City Tex.
Brazoria County	Brazoria County.
Brooks County	Brooks County.
Brown County	Brown County.
Brownsville City	Brownsville City in Cameron County.
Burleson County	Burleson County.
Calhoun County	Calhoun County.
Balance of Cameron County	Cameron County less Brownsville City.
Camp County	Harlingen City.
Cass County	Camp County.
Chambers County	Cass County.
Cherokee County	Chambers County.
Childress County	Cherokee County.
Coleman County	Childress County.
Colorado County	Coleman County.
Corpus Christi City	Colorado County.
Coryell County	Corpus Christi City in Nueces County.
Crane County	Coryell County.
Crockett County	Crane County.
	Crockett County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Crosby County	Crosby County.
Culberson County	Culberson County.
Dawson County	Dawson County.
De Witt County	De Witt County.
Deaf Smith County	Deaf Smith County.
Del Rio City	Del Rio City in Val Verde County.
Delta County	Delta County.
Dickens County	Dickens County.
Dimmit County	Dimmit County.
Duval County	Duval County.
Eastland County	Eastland County.
Balance of Ector County	Ector County less Odessa City.
Edinburg City	Edinburg City in Hidalgo County.
El Paso City	El Paso City in El Paso County.
Balance of El Paso County	El Paso County less El Paso City.
Ellis County	Ellis County.
Fannin County	Fannin County.
Balance of Fort Bend County	Fort Bend County less Houston City.
Franklin County	Franklin County.
Freestone County	Freestone County.
Frio County	Frio County.
Ft. Worth City	Ft. Worth City in Tarrant County.
Gaines County	Gaines County.
Galveston City	Galveston City in Galveston County.
Balance of Galveston County	Galveston County less Galveston City.
Garza County	Texas City.
Goliad County	Garza County.
Gonzales County	Goliad County.
Gray County	Gonzales County.
Balance of Grayson County	Gray County.
Balance of Gregg County	Grayson County less Sherman City.
Grimes County	Gregg County less Longview City.
Balance of Guadalupe County	Grimes County.
Hale County	Guadalupe County less New Braunfels City.
Hall County	Hale County.
Hardin County	Hall County.
Harlingen County	Hardin County.
Balance of Harrison County	Harlingen City in Cameron County.
Henderson County	Harrison County less Longview City.
Balance of Hidalgo County	Henderson County.
Hill County	Hidalgo County less Edinburg City.
Hockley County	Mc Allen City.
Hopkins County	Mission City.
Houston City	Hill County.
Jack County	Hockley County.
Jackson County	Hopkins County.
Jasper County	Houston City in Fort Bend County.
Balance of Jefferson County	Harris County.
Jim Hogg County	Jack County.
Jim Wells County	Jackson County.
Balance of Jones County	Jasper County.
Karnes County	Jefferson County less Beaumont City.
	Port Arthur City.
	Jim Hogg County.
	Jim Wells County.
	Jones County less Abilene City.
	Karnes County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Killeen City.....	Killeen City in Bell County.
Kingsville City.....	Kingsville City in Kleberg County.
La Salle County.....	La Salle County.
Laredo City.....	Laredo City in Webb County.
Leon County.....	Leon County.
Liberty County.....	Liberty County.
Live Oak County.....	Live Oak County.
Longview City.....	Longview City in Gregg County.
Loving County.....	Harrison County.
Lufkin City.....	Loving County.
Marion County.....	Lufkin City in Angelina County.
Matagorda County.....	Marion County.
Maverick County.....	Matagorda County.
McAllen City.....	Maverick County.
McCulloch County.....	McAllen City in Hidalgo County.
Midland City.....	McCulloch County.
Balance of Midland County.....	Midland City in Midland County.
Milam County.....	Midland County less Midland City.
Mission City.....	Milam County.
Mitchell County.....	Mission City in Hidalgo County.
Montague County.....	Mitchell County.
Montgomery County.....	Montague County.
Morris County.....	Montgomery County.
Nacogdoches City.....	Morris County.
Navarro County.....	Nacogdoches City in Nacogdoches County.
Newton County.....	Navarro County.
Nolan County.....	Newton County.
Balance of Nueces County.....	Nolan County.
Odessa City.....	Nueces County less Corpus Christi City.
Orange City.....	Odessa City in Ector County.
Balance of Orange County.....	Orange City in Orange County.
Palo Pinto County.....	Orange County less Orange City.
Paris City.....	Palo Pinto County.
Pasadena City.....	Paris City in Lamar County.
Pecos County.....	Pasadena City in Harris County.
Polk County.....	Pecos County.
Port Arthur City.....	Polk County.
Presidio County.....	Port Arthur, city in Jefferson County.
Reagan County.....	Presidio County.
Red River County.....	Reagan County.
Reeves County.....	Red River County.
Refugio County.....	Reeves County.
Robertson County.....	Refugio County.
Rusk County.....	Robertson County.
Sabine County.....	Rusk County.
San Antonio City.....	Sabine County.
San Jacinto County.....	San Antonio, city in Bexar County.
San Marcos City.....	San Jacinto County.
San Patricio County.....	San Marcos, city in Hays County.
Schleicher County.....	San Patricio County.
Scurry County.....	Schleicher County.
Shelby County.....	Scurry County.
Balance of Smith County.....	Shelby County.
Starr County.....	Smith County less Tyler City.
	Starr County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Stephens County.....	Stephens County.
Sutton County.....	Sutton County.
Terry County.....	Terry County.
Texarkana City, Tex.....	Texarkana City, Tex., in Bowie County.
Texas City.....	Texas City in Galveston County.
Titus County.....	Titus County.
Trinity County.....	Trinity County.
Tyler City.....	Tyler City in Smith County.
Tyler County.....	Tyler County.
Upshur County.....	Upshur County.
Upton County.....	Upton County.
Uvalde County.....	Uvalde County.
Victoria City.....	Victoria, city in Victoria County.
Balance of Victoria County.....	Victoria County less Victoria City.
Waco City.....	Waco, city in McLennan County.
Waller County.....	Waller County.
Ward County.....	Ward County.
Wharton County.....	Wharton County.
Wichita Falls City.....	Wichita Falls, city in Wichita County.
Willacy County.....	Willacy County.
Winkler County.....	Winkler County.
Young County.....	Young County.
Zapata County.....	Zapata County.
Zavala County.....	Zavala County.

Utah

Carbon County.....	Carbon County.
Duchesne County.....	Duchesne County.
Emery County.....	Emery County.
Garfield County.....	Garfield County.
Grand County.....	Grand County.
Juab County.....	Juab County.
Ogden City.....	Ogden, city in Weber County.
Piute County.....	Piute County.
Sanpete County.....	Sanpete County.
Summit County.....	Summit County.
Uintah County.....	Uintah County.
Wasatch County.....	Wasatch County.
Wayne County.....	Wayne County.

Virginia

Alleghany County.....	Alleghany County.
Bath County.....	Bath County.
Bristol City.....	Bristol City.
Brunswick County.....	Brunswick County.
Buchanan County.....	Buchanan County.
Buena Vista City.....	Buena Vista City.
Charlotte County.....	Charlotte County.
Clifton Forge City.....	Clifton Forge City.
Covington City.....	Covington City.
Danville City.....	Danville City.
Dickenson County.....	Dickenson County.
Dimwiddie County.....	Dimwiddie County.
Franklin City.....	Franklin City.
Giles County.....	Giles County.
Grayson County.....	Grayson County.
Halifax County.....	Halifax County.
Highland County.....	Highland County.
Lancaster County.....	Lancaster County.
Lee County.....	Lee County.
Lunenburg County.....	Lunenburg County.
Northumberland County.....	Northumberland County.
Norton City.....	Norton City.
Petersburg City.....	Petersburg City.
Pittsylvania County.....	Pittsylvania County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Prince Edward County.....	Prince Edward County.
Pulaski County.....	Pulaski County.
Russell County.....	Russell County.
Smyth County.....	Smyth County.
Tazewell County.....	Tazewell County.
Westmoreland County.....	Westmoreland County.
Wise County.....	Wise County.

Washington

Adams County.....	Adams County.
Asotin County.....	Asotin County.
Bellingham City.....	Bellingham City in Whatcom County.
Balance of Benton County.....	Benton County less Kennewick City.
Chelan County.....	Richland City.
Cllallam County.....	Chelan County.
Columbia County.....	Cllallam County.
Balance of Cowlitz County.....	Columbia County.
Douglas County.....	Cowlitz County less Longview City.
Everett City.....	Douglas County.
Ferry County.....	Everett City in Snohomish County.
Franklin County.....	Ferry County.
Garfield County.....	Franklin County.
Grant County.....	Garfield County.
Grays Harbor County.....	Grant County.
Jefferson County.....	Grays Harbor County.
Kennewick City.....	Jefferson County.
Kittitas County.....	Kennewick City in Benton County.
Klickitat County.....	Kittitas County.
Lewis County.....	Klickitat County.
Longview City.....	Lewis County.
Mason County.....	Longview City in Cowlitz County.
Okanogan County.....	Mason County.
Pacific County.....	Okanogan County.
Pend Oreille County.....	Pacific County.
Skagit County.....	Pend Oreille County.
Skamania County.....	Skagit County.
Spokane City.....	Skamania County.
Stevens County.....	Spokane City in Spokane County.
Tacoma City.....	Stevens County.
Vancouver City.....	Tacoma City in Pierce County.
Wahkiakum County.....	Vancouver City in Clark County.
Walla Walla City.....	Wahkiakum County.
Balance of Walla Walla County.....	Walla Walla City in Walla Walla County.
Balance of Whatcom County.....	Walla Walla County less Walla Walla City.
Yakima City.....	Whatcom County less Bellingham City.
Balance of Yakima County.....	Yakima City in Yakima County.
	Yakima County less Yakima City.

West Virginia

Barbour County.....	Barbour County.
Boone County.....	Boone County.
Braxton County.....	Braxton County.
Brooke County.....	Brooke County.
Balance of Cabell County.....	Cabell County less Huntington City.
Calhoun County.....	Calhoun County.
Clay County.....	Clay County.
Doddridge County.....	Doddridge County.
Fayette County.....	Fayette County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Gilmer County.....	Gilmer County.
Grant County.....	Grant County.
Greenbrier County.....	Greenbrier County.
Hampshire County.....	Hampshire County.
Harrison County.....	Harrison County.
Jackson County.....	Jackson County.
Balance of Kanawha County.....	Kanawha County less Charleston City.
Lewis County.....	Lewis County.
Lincoln County.....	Lincoln County.
Logan County.....	Logan County.
Marion County.....	Marion County.
Balance of Marshall County.....	Marshall County less Wheeling City.
Mason County.....	Mason County.
McDowell County.....	McDowell County.
Mercer County.....	Mercer County.
Mineral County.....	Mineral County.
Mingo County.....	Mingo County.
Monroe County.....	Monroe County.
Morgan County.....	Morgan County.
Nicholas County.....	Nicholas County.
Balance of Ohio County.....	Ohio County less Wheeling City.
Parkersburg City.....	Parkersburg City in Wood County.
Pleasants County.....	Pleasants County.
Pocahontas County.....	Pocahontas County.
Preston County.....	Preston County.
Putnam County.....	Putnam County.
Raleigh County.....	Raleigh County.
Randolph County.....	Randolph County.
Ritchie County.....	Ritchie County.
Roane County.....	Roane County.
Summers County.....	Summers County.
Taylor County.....	Taylor County.
Tucker County.....	Tucker County.
Tyler County.....	Tyler County.
Upshur County.....	Upshur County.
Balance of Wayne County.....	Wayne County less Huntington City.
Webster County.....	Webster County.
Wetzel County.....	Wetzel County.
Wirt County.....	Wirt County.
Balance of Wood County.....	Wood County less Parkersburg City.
Wyoming County.....	Wyoming County.

Wisconsin

Ashland County.....	Ashland County.
Bayfield County.....	Bayfield County.
Buffalo County.....	Buffalo County.
Burnett County.....	Burnett County.
Clark County.....	Clark County.
Columbia County.....	Columbia County.
Crawford County.....	Crawford County.
Door County.....	Door County.
Balance of Douglas County.....	Douglas County less Superior City.
Fond Du Lac City.....	Fond Du Lac City in Fond Du Lac County.
Forest County.....	Forest County.
Green Bay City.....	Green Bay City in Brown County.
Green Lake County.....	Green Lake County.
Iron County.....	Iron County.
Jackson County.....	Jackson County.
Janesville City.....	Janesville City in Rock County.
Juneau County.....	Juneau County.
Kenosha City.....	Kenosha City in Kenosha County.
Lincoln County.....	Lincoln County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFERENCE,
OCTOBER 1, 1988 THROUGH SEPTEMBER
30, 1989—Continued**

Eligible Labor Surplus Areas	Civil Jurisdictions Included
Manitowoc City.....	Manitowoc city in Manitowoc County.
Marquette County.....	Marquette County.
Marquette County.....	Marquette County.
Menominee County.....	Menominee County.
Oconto County.....	Oconto County.
Polk County.....	Polk County.
Racine City.....	Racine City in Racine County.
Rusk County.....	Rusk County.
Sauk County.....	Sauk County.
Sawyer County.....	Sawyer County.
Superior City.....	Superior City in Douglas County.
Taylor County.....	Taylor County.
Trempealeau County.....	Trempealeau County.
Vernon County.....	Vernon County.
Vilas County.....	Vilas County.
Washburn County.....	Washburn County.
Waushara County.....	Waushara County.

Wyoming

Big Horn County.....	Big Horn County.
Campbell County.....	Campbell County.
Carbon County.....	Carbon County.
Casper City.....	Casper City in Natrona County.
Converse County.....	Converse County.
Fremont County.....	Fremont County.
Hot Springs County.....	Hot Springs County.
Johnson County.....	Johnson County.
Lincoln County.....	Lincoln County.
Balance of Natrona County.....	Natrona County less Casper City.
Niobrara County.....	Niobrara County.
Park County.....	Park County.
Platte County.....	Platte County.
Sublette County.....	Sublette County.
Sweetwater County.....	Sweetwater County.
Uinta County.....	Uinta County.
Washakie County.....	Washakie County.
Weston County.....	Weston County.

[FR Doc. 88-23069 Filed 10-5-88; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-88-181-C]

**A&G Mining, Inc.; Petition for
Modification of Application of
Mandatory Safety Standard**

A&G Mining, Inc., No. 3 Redden Village, Bluefield, West Virginia 24701 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 22-B (I.D. No. 46-06530) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that the roof in the return entries has fallen or deteriorated to the point that they are impassable.

3. As an alternate method, in lieu of traveling the airways, petitioner proposes to conduct the following examinations:

(a) Monitoring stations would be established and examinations would be made weekly.

(b) The air readings and examinations would be made by a certified person.

(c) A record of the air readings and examinations would be maintained in an approved record book.

(d) The area unsafe to travel would be dangerous off and breaker posts would be set to prevent travel in fall area.

4. In support of this request, petitioner states that the mine is located above the water table and does not liberate methane.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 7, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: September 28, 1988.

[FR Doc. 88-23070 Filed 10-5-88; 8:45 am]

BILLING CODE 4510-43-M

**MERIT SYSTEMS PROTECTION
BOARD**

**Appointment of Member to the
Performance Review Board**

AGENCY: Office of the Special Counsel, Merit Systems Protection Board.

ACTION: Notice of Appointment of Member to the Performance Review Board.

SUMMARY: This notice publishes the name of one Performance Review Board member as required by 5 U.S.C. 4314(c)(4).

The following person has been appointed to and will serve on the Performance Review Board for Senior Executives in the Office of the Special Counsel: Morris B. Silverstein, Assistant Inspector General for Criminal Investigations Policy and Oversight, Department of Defense. He will replace Bert C. Truxell.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: M. Marie Glover, Personnel Officer, Management Division, Office of the Special Counsel, 1120 Vermont Avenue, NW., Washington, DC 20005, (202) or FTS 653-8964.

Dated: September 28, 1988.

Mary F. Wieseman,
Special Counsel.

[FR Doc. 88-23051 Filed 10-5-88; 8:45 am]

BILLING CODE 7400-02-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chorus Section) to the National Council on the Arts will be held on October 25, 1988, from 9:15 a.m.-7:00 p.m.; on October 26, 1988, from 8:00 a.m.-7:00 p.m.; and on October 27, 1988, from 8:00 a.m.-6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on October 27, from 3:30-6:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on October 25, from 9:15 a.m.-7:00 p.m.; on October 26, from 8:00 a.m.-7:00 p.m. and on October 27, from 8:00 a.m.-3:30 p.m., are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the

Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202-682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations,
National Endowment for the Arts.

September 30, 1988.

[FR Doc. 88-23110 Filed 10-5-88; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater New American Works Prescreening Section) to the National Council on the Arts will be held on October 25-27, 1988, from 9:00 a.m.-5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations,
National Endowment for the Arts.

September 30, 1988.

[FR Doc. 88-23111 Filed 10-5-88; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Division of Teacher Preparation & Enhancement; "Private Sector Partnerships To Improve Science and Mathematics Education"; Deadline: November 14, 1988

Solicitation

Because science, mathematics, and technology play such a large role in modern business and industry, the people and organizations involved with this segment of our society constitute a major resource on which educators should be drawing for input into the teaching of science and mathematics. Two thirds of the nation's natural scientists, mathematicians, and engineers work in the private sector, where they carry out three quarters of the nation's research and development as well as much of the marketing and manufacturing activity inherently involved in making scientific advances useful to society. This solicitation is intended to encourage the formation of partnerships between educators and scientists, mathematicians, and engineers who can make this industrial technical knowledge and experience available to schools in an educationally useful way.

Proposals are invited for partial NSF funding of partnership programs that will demonstrate effective ways to use technical inputs from the industrial world and other private sector environments to improve the teaching of the technical and mathematical subjects. Partnerships can involve formal and informal educational institutions—schools, colleges, universities, museums—and such private organizations as professional and scientific societies, industrial firms, business organizations, and non-profit research institutions.

The key objective of projects proposed under this solicitation must be to blend technical skills and knowledge from the noneducational world with the pedagogical expertise of educators in a way that will improve science and mathematics education.

Thus full involvement of private sector people and organizations in both planning and executing the proposed project will be required.

Proposals may be directed toward any aspect of science and mathematics education in the primary and secondary grades, but some of particular interest are:

- Science/mathematics motivation of groups underrepresented in technically based jobs, e.g. females, minorities, and persons with disabilities;

- Improving the science knowledge and pedagogical skills of elementary teachers;
- Technological literacy for good citizenship;
- Preparation of non-baccalaureate-bound students for technically based jobs;

- Encouragement of interdisciplinary science teaching;
- Integration of current applications of science and mathematics into course content;
- Enhancement of the "hands on" or laboratory components of science education.

Additionally, proposals are solicited for a limited set of activities in post-secondary science and mathematics education. Proposals at this level should be specifically targeted at one of the following objectives:

- Preparation of non-baccalaureate-bound students for technical careers;
- Science or mathematics "literacy" courses for students in non-technical majors;
- Adult education for the "scientific literacy" needed for responsible citizenship in today's world.

To insure maximum benefit from the inputs of industry-knowledgeable scientists, mathematicians, and engineers, they should be involved from the initial planning stage. Where the project director/principal investigator is from an educational institution, it may therefore be desirable to have an additional project director/principal investigator be such an individual. Similarly, to insure that partnership activities are integrated as appropriate into pre-college institutions, school teachers and administrators should play key roles, including either that of principal or additional project director/principal investigator. Project directors/principal investigators might also be from colleges or universities, museums, scientific societies, or government laboratories.

Funding request may cover from one to four years. The probability of continuation of the proposed project after cessation of NSF funding is an important consideration in evaluating proposals, since federal funding is appropriate and feasible only at the initial development stage. Therefore preference will be given to proposals where NSF support can be particularly helpful in the early stages, with an increasing proportion of the support coming from the private sector and other partners as the project progresses. Funding of any project for more than a total of \$500,000 is unlikely, with the average award perhaps half that figure. All partners are expected to contribute

financially to the program; the total of their contributions normally should be at least equal to the NSF contribution. The partner's contribution can be either in cash or of a realistic in-kind nature and must be documented in the proposal.

Careful attention to definition of project objectives is crucial. Objectives must be sufficiently clear and concrete to allow determination of the success of the project in meeting them. An evaluation plan for measuring success must be included.

To insure maximum effectiveness for NSF funds, projects should have the potential for a broad impact. Thus the number of teachers and students affected directly by the project itself is an important consideration.

Additionally, the project can serve as a demonstration of effective procedures suitable for replication in other locations. Dissemination plans for project findings and conclusions should be included in the proposal. Such plans should include private sector as well as educational channels.

Because many good science and mathematics teaching materials exist which have not been widely utilized, any proposal which includes a substantial segment devoted to development of teaching materials should show why existing materials are not suitable. If new materials are to be developed, they must be sound both pedagogically and in technical content; the steps planned to insure these results should be described. To insure effective utilization of new materials when completed, the proposal should document the involvement and commitment by the teachers who will be expected to use them and by the administrators who must support their use.

Who May Submit

Project directors/principal investigators may be from and submitting organizations may be colleges, universities, state, regional, or local educational agencies (including school systems), professional societies, science museums, zoological parks, research laboratories, private foundations, private industry, and other for-profit or non-profit private or public organizations engaged in technical activities and concerned about science, mathematics or technology education.

The Foundation strongly encourages women, minorities, and persons with disabilities to participate in developing proposals for this program. In accordance with Federal statutes and regulations and NSF policies, no person shall be excluded on grounds of race,

color, age, gender, national origin, or disability from participation under any program or activities receiving financial assistance from the National Science Foundation.

Preliminary Proposals

Proposers are strongly urged to submit a preliminary proposal for comment and discussion prior to preparing a formal proposal in response to this solicitation. However, if the written preliminary proposal deadline cannot be met, telephone discussion with the program officer can usually serve the purpose.

The preliminary proposal may be in the form of a comparatively brief informal letter-of-inquiry outlining the concept and general structure of the contemplated project, specifying the activities to be supported, describing the organizations constituting the partnership and their commitments to it, indicating the principal personnel to be involved (with mention of their backgrounds), and estimating the level of support to be requested from the Foundation.

The preliminary proposal should not exceed six single-spaced pages in length. The NSF staff will respond with comments on the concept and an opinion of the general competitive strength of such a project. No information concerning a preliminary proposal is made available to the merit reviewers; hence submission of a preliminary proposal will not in any way affect the review of a related formal proposal put forward at a later date. A preliminary proposal can be of great help to proposers in deciding whether to undertake the cost and effort of a formal submission.

Formal Proposal Preparation And Submission

Formal proposals must be prepared and submitted in accordance with established NSF procedures described in the following brochures, which can be obtained by writing the Forms and Publication Unit, National Science Foundation, Washington, DC 20550. Because the Private Sector Partnership program is an activity of the Division of Teacher Preparation and Enhancement the brochure "Program Announcement and Guide, Teacher Preparation and Enhancement", (NSF 87-10), should be used for general guidance in project development and as a source of the forms needed for proposal preparation. Also useful for guidance in certain aspects of project development will be "Program Announcement, Materials Development, Research and Informal Science Education", (NSF 88-29).

Further information on NSF grant procedures is available in "Grants for Research and Education in Science and Engineering" (NSF 83-57, revised 11/87) which is available from the same address.

Summarized briefly, the requirements call for submission of the following:

A. 15 copies of the proposal, which must include the following items:

1. "Cover Sheet For Proposals To The National Science Foundation" NSF Form 1207 (1-87)

(Note: In upper left hand block put "Private Sector Partnerships".)

2. Table of Contents (no required form)

3. "Project Summary"—Use form in brochure NSF 87-10 (Describe the partnership and give concise summary of activities proposed)

4. "Data Sheet, Division of Teacher Preparation and Enhancement"—Use form in brochure NSF 87-10

5. "Proposal Budget" sheet(s), NSF Form 1030 (1-87) (Cumulative budget sheet for entire project and separate sheet for each year; attach explanation sheets as required)

6. "Statement of Current and Pending Support"—Use form in brochure NSF 87-10

7. Results from prior NSF support if applicable

8. Project Description—No required format, but should give clear, concise description of activities proposed, timetable, needs and objectives, evaluation and dissemination plans, in that order; maximum 15 single- or 30 double-spaced pages)

9. Bibliography

10. Appendices (1-3 page resume for each project director/principal investigator plus maximum of 15 pages of support letters, institutional information, etc.)

B. Three extra copies each of items 1, 3, and 4

C. Statement on intergovernmental review if applicable

D. One copy of "Information About Principal Investigators/Project Directors", NSF Form 1225 (1-87).

When to Submit

Preliminary proposals may be submitted at any time up to September 28, 1988. Comments will be returned within 3 weeks.

Formal proposals sent by regular mail and postmarked by November 7, 1988, will be accepted and considered regardless of arrival date. If sent by an expedited delivery service, including that of the U.S. Postal Service, they must be delivered to the NSF by the close of

business on November 15, 1988, to be considered.

Proposal Review

All proposals will be reviewed by a balanced group of outside experts from schools, colleges and universities, and the private sector, and evaluated according to the general evaluation standards listed on pages 15-17 of "Program Announcement and Guide, Teacher Preparation and Enhancement", (NSF 87-10). Key elements of particular importance in this program can be capsulized as follows:

Project Design: Clarity of plan; practicality; potential for national impact

Private Sector Input: Significance; uniqueness; suitability to project goals

Technical Content: Relevancy to modern technology

Project Personnel: Qualifications; commitment

Need: Importance; clarity of definition

Budget: Conformity to NSF guidelines; cost-sharing by partners

Evaluation Procedure: Definability and measureability of success; appropriateness of methods

Continuity: Partner commitments after NSF funding termination

Dissemination: Plans to extend beyond project partners Notification of final action on these proposals will normally be mailed within seven months; prior to the written notification no information on the status of proposals can be given. To allow time for proposal processing, projects should not be planned to begin before July 1, 1989.

Where To Submit

Preliminary proposals should be sent to: Program Officer, Private Sector Partnerships, Room 635, Directorate for Science and Engineering Education, National Science Foundation, Washington, DC 20550.

Formal Proposals should be sent to: Data Support Services Section, Room 223, National Science Foundation, Washington, DC 20550.

Further Information

For further information on the Private Sector Partnerships Program, call Alan L. McClelland, (202) 357-7073 or write to the address listed under Preliminary Proposals.

Private Sector Participation in Other NSF Programs

While this program is specifically designed to highlight the opportunities for private sector participation in educational activities, numerous other

NSF programs can appropriately involve such participation. Examples include: *Undergraduate Faculty Enhancement Program*; Grants for Undergraduate

Faculty Seminars and Conferences to provide opportunities for groups to learn about new techniques and new developments in their fields. For further information contact the Office of Undergraduate Science, Engineering, and Mathematics Education, Room 639, NSF, Washington, DC 20550 (202/357-7051).

Young Scholars Program: Supports projects offering science, mathematics, and/or engineering enrichment activities, including research experiences and career exploratory activities for precollege students. Participation by proposers and students from underrepresented groups (minorities, women and the disabled) is encouraged. Further information is available from the Division of Research Career Development, Room 630, NSF, Washington, DC 20550 (202/357-7536).

The National Science Foundation provides awards for education and research in the sciences, mathematics and engineering. The Foundation welcomes proposals from all qualified educators, scientists, mathematicians and engineers, and strongly encourages women, minorities and persons with disabilities to compete fully in the programs described in this document.

In accordance with Federal statutes and regulations on NSF policies, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of, or be subject to discrimination under any program or activity receiving financial assistance from the National Science Foundation.

Facilitation Awards for Handicapped Scientists and Engineers (FAH) provides funding for special assistance or equipment to enable persons with disabilities (investigators and other staff, including student research assistants) to work on an NSF project. See the FAH announcement (NSF 84-62, or contact the FAH Coordinator (202/357-7456).

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairments to communicate with the Division of Personnel Management for information relating to NSF programs, employment, or general information. This telephone number is (202) 357-7492.

The grantee is wholly responsible for the conduct of supported research and education activities and preparation of results for publication. The Foundation, therefore, does not assume

responsibility for such findings or their interpretation.

(Catalog of Federal Domestic Assistance Number 47.066, Teacher Preparation and Enhancement.)

Alan L. McClelland,

Program Director, Private Sector Partnerships To Improve Science and Mathematics Education.

[FR Doc. 88-23119 Filed 10-5-88; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences.

Date and Time: October 23, 1988—1:00 p.m.—5:00 p.m.; October 24 and 25, 1988—9:00 a.m.—5:00 p.m.

Place: National Science Foundation, Room 543.

Type of Meeting: October 23, 24, and 25, 1988, Open.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357-9488).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda

Sunday, October 23

1:00 p.m.—5:00 p.m.—FY 1989 Budget Status and Impact; NSF Radio Astronomy Facilities.

Monday, October 24

9:00 a.m.—5:00 p.m.—Continuation of discussions from previous day; Report of Workshop on Undergraduate Education in Physics; Long-Range Planning.

Tuesday, October 25

9:00 a.m.—5:00 p.m.—Continuation of discussion from previous days; Joint session with Advisory Committee for Physics.

October 3, 1988.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 88-23048 Filed 10-5-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-327]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a temporary exemption from the requirements of § 50.46(a)(1) to 10 CFR Part 50 of the Tennessee Valley Authority (the licensee) for the Sequoyah Nuclear Plant, Unit 1. The unit is located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee in its letter dated September 19, 1988.

Environmental Assessment

Identification of Proposed Action

The exemption would allow the licensee a temporary relief from the provisions of § 50.46(a)(1) with respect to the requirement that the Emergency Core Cooling System (ECCS) cooling performance be calculated on a plant specific basis using an approved ECCS evaluation model. The current calculated ECCS performance including the approved Upper Head Injection (UHI) Calculation Model for the facility, as referenced in section 15.4 of the Sequoyah Final Safety Analysis Report (FSAR), is not based on the actual operating conditions for the facility and there are corrections needed to the UHI calculation model. The temporary relief would allow continued operation of Sequoyah Unit 1 until a revised calculated ECCS cooling performance has been completed using an approved ECCS model and actual facility operating conditions, but not later than May 31, 1989. During the duration of the temporary relief granted by the exemption the heat flux hot channel factor, F_Q , will be limited to a value of 2.15 as compared to the value of 2.237 in the Sequoyah Unit 1 Technical Specifications.

The Need for the Proposed Action

The proposed exemption is required to permit the licensee to continue operation of the facility.

Environmental Impacts of the Proposed Action

With respect to the requested exemption, the temporary relief from the above requirement of 10 CFR 50.46(a)(1) would permit the licensee to use evaluations based on sensitivity studies to demonstrate that the calculated peak cladding temperatures (PCTs) remain

below the acceptance criterion (2,200°F) of 10 CFR 50.46. Provisions of 10 CFR 50.46(a)(1) require that ECCS performance be calculated with an acceptable calculation model. An Appendix K evaluation using an approved UHI calculation model will not be completed by Westinghouse to support the current Unit 1 restart schedule in October 1988. Therefore, a temporary exemption is needed by the licensee from 10 CFR 50.46(a)(1) until the UHI calculation model analysis can be completed. The licensee states that this will be submitted to NRC not later than May 31, 1989.

The intent of the requirement is to ensure that the PCTs during a postulated accident do not exceed 2,200°F. TVA has submitted the results on calculations with PCT penalties that demonstrate that the limiting PCT resulting from the reduced minimum delivered UHI water volume is below the regulatory limit. Also, the licensee has accepted operating restrictions to provide an additional PCT margin of greater than 100°F. This margin offsets any uncertainties of the licensee's sensitivity studies and ensures compliance with the 10 CFR 50.46 PCT acceptance criterion. Consequently, neither the probability of accidents nor the radiological releases from accidents will be increased. With regard to other potential radiological environmental impacts, the proposed exemption does not increase the radiological effluents from the facility and does not increase the occupational exposure at the facility. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to other potential nonradiological environmental impacts, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Therefore, the proposed exemption does not significantly change the conclusions in the "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant Units 1 and 2," (FES) dated July 1974.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this

exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Sequoyah Nuclear Plant, Units 1 and 2," dated July 1974.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's request for an exemption dated September 19, 1988, which is available for public inspection at the Commission's Public Document Room, Gleman Building, 2120 L Street, NW., Washington, DC., and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 30th day of September 1988.

For the Nuclear Regulatory Commission:

Suzanne Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-23059 Filed 10-5-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on October 26-27, 1988, Room P-114, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, October 26, 1988—8:30 a.m. Until the Conclusion of Business

Thursday, October 27, 1988—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss recent work related to valve reliability, including: isolating high energy line tests at Wyle Labs., compressed air systems and valves, seismic tests on an aged Shippingport valve, etc.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 29, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88-23050 Filed 10-5-88; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series. This series has

been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, MS 804-4 (which should be mentioned in all correspondence concerning this draft guide), is the second proposed Revision 1 to Regulatory Guide 7.8, "Load Combinations for the Structural Analysis of Shipping Casks for Radioactive Material." This guide is being developed to present the initial conditions that are considered acceptable by the NRC staff for use in the structural analysis of Type B packages used to transport radioactive material within the United States.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide, including any implementation schedule. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by November 25, 1988.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are

not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23rd day of September 1988.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 88-23060 Filed 10-5-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., (Crystal River Unit 3); Exemption

I.

Florida Power Corporation (the licensee), is the holder of Facility Operating License No. DPR-72 which authorizes operation of the Crystal River Unit 3 plant. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Citrus County, Florida.

II.

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the

implementation date specified in 10 CFR 50.54(w)(5)(i), but not later April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * *

Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(12) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Florida Power Corporation is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38120).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 29th day of September, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-23053 Filed 10-5-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co. (Turkey Point Plant, Units 3 and 4); Exemption

I.

Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-31 and DPR-41 which authorize operation of the Turkey Point Plant, Units 3 and 4. The licenses provide, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of pressurized water reactors at the licensee's site located in Dade County, Florida.

II.

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance

proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of (10 CFR Part 50), which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurer have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and

decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III, is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

The Florida Power and Light Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38122).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 29th day of September, 1988.

For the Nuclear Regulatory Commission,
Steven A. Varga,

Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 88-23054 Filed 10-5-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-335 and 50-389]

Florida Power and Light Co., (St. Lucie Plant, Units 1 and 2); Exemption

I.

Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-67 and NPF-16, which authorize operation of the St. Lucie Plant, Units 1 and 2. The licenses provide, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of pressurized water reactors at the licensee's site located in St. Lucie County, Florida.

II.

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III.

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the

requirements of the regulations of (10 CFR Part 50), which are * * *.

Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that (1) a temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special

circumstances are present as described in section III. Therefore, the Commission hereby grants the following exemption:

The Florida Power and Light Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38121).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 29th day of September, 1988.

For the Nuclear Regulatory Commission,
Steven A. Varga,

Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.
[FR Doc. 23055 Filed 10-5-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Company et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 121 to Facility Operating License No. NPF-3, issued to The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensee), which revised the Technical Specifications for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 (the facility) located in Ottawa County, Ohio. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications by reducing the number of pressure switches used to initiate the Steam and Feedwater Rupture Control System from 16 to 8.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on

May 24, 1988 (53 FR 18630). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action see: (1) The application for amendment dated January 28, 1988, (2) Amendment No. 121 to License No. NPF-3, (3) the Commission's related Safety Evaluation dated September 27, 1988 and (4) the Environmental Assessment dated July 19, 1988 (53 FR 28082). All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 27th day of September 1988.

For the Nuclear Regulatory Commission,
Albert W. De Agazio, Sr.,
Project Manager, Project Directorate III-3,
Division of Reactor Projects—III, IV, V and
Special Projects.

[FR Doc. 88-23056 Filed 10-5-88; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2); Exemption

I

Virginia Electric and Power Company (the licensee), is the holder of Facility Operating License Nos. NPF-4 and NPF-7, which authorize operation of the North Anna Power Station, Units 1 and 2. The licenses provide, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of a pressurized water reactors at the licensee's site located in Louisa County, Virginia.

II

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and

decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present wherever * * * (v). The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulations and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and

decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that: (1) A temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described in Section III. Therefore, the Commission hereby grants the following exemption:

Virginia Electric and Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38128).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 29th day of September 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 88-23057 Filed 10-5-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co., (Surry Power Station, Units 1 and 2); Exemption

I

Virginia Electric and Power Company (the licensee), is the holder of Facility Operating License Nos. DPR-32 and DPR-37, which authorize operation of the Surry Power Station, Units 1 and 2. The licenses provide, among other things, that it is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of a pressurized water reactors at the licensee's site located in Surry, Virginia.

II

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988 insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the rule, the NRC has been informed by insurers who offer nuclear property insurance that, despite a good faith effort to obtain trustees required by the rule, the decontamination priority and trusteeship provisions will not be able to be incorporated into policies by the time required in the rule. In response to these comments and related petitions for rulemaking, the Commission has proposed a revision of 10 CFR 50.54(w)(5)(i) extending the implementation schedule for 18 months (53 FR 36338, September 19, 1988). However, because it is unlikely that this rulemaking action will be completed by October 4, 1988, the Commission is issuing a temporary exemption from the requirements of 10 CFR 50.54(w)(5)(i) until completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking, the licensee shall comply with the provisions of such rule.

III

Pursuant to 10 CFR 50.12, "The Commission may, upon application by any interested person or upon its own

initiative, grant exemptions from the requirements of the regulations of [10 CFR Part 50], which are * * * Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security." Further, § 50.12(a)(2) provides *inter alia*, "The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever * * * (v) The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation."

Despite a good faith effort to comply with the provisions of the rule, insurers providing property damage insurance for nuclear power facilities and licensees insured by such insurers have not been able to comply with the regulation and the exemption provides only temporary relief from the applicable regulation.

As noted by the Commission in the Supplementary Information accompanying the proposed rule, there are several reasons for concluding that delaying for a reasonable time the implementation of the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) will not adversely affect protection of public health and safety. First, during the period of delay, the licensee will still be required to carry \$1.06 billion insurance. This is a substantial amount of coverage that provides a significant financial cushion to licensees to decontaminate and clean up after an accident even without the prioritization and trusteeship provisions. Second, nearly 75% of the required coverage is already prioritized under the decontamination liability and excess property insurance language of the Nuclear Electric Insurance Limited-II policies. Finally, there is only an extremely small probability of a serious accident occurring during the exemption period. Even if a serious accident giving rise to substantial insurance claims were to occur, NRC would be able to take appropriate enforcement action to assure adequate cleanup to protect public health and safety and the environment.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that: (1) A temporary exemption as described in Section III. is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security and (2) in this case, special circumstances are present as described

in Section III. Therefore, the Commission hereby grants the following exemption:

Virginia Electric and Power Company is exempt from the requirements of 10 CFR 50.54(w)(5)(i) until the completion of the pending rulemaking extending the implementation date specified in 10 CFR 50.54(w)(5)(i), but not later than April 1, 1989. Upon completion of such rulemaking the licensee shall comply with the provisions of such rule.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant environmental impact (53 FR 38129).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September, 1988.

For the Nuclear Regulatory Commission,
Steven A. Varga,

Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.

[FR Doc. 88-23058 Filed 10-5-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Rule 2a19-1 [17 CFR 270.2a19-1]

[File No. 270-294]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 2a19-1 under the Investment Company Act of 1940, certain investment company directors not considered interested persons.

There are approximately 2800 registrants governed by Rule 2a19-1, with an estimated compliance time of one hour per registrant. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of the SEC rules and forms.

Direct general comments to Robert Neal at the address below. Direct any

comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004, and Robert Neal, Clearance Officer, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

September 30, 1988.

[FR Doc. 88-23031 Filed 10-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26127; File No. SR-Amex-88-20]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change Relating to Additional Periods for Delivery of Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 26, 1988, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On September 23, 1987, the Amex filed with the Commission SR-Amex-87-23 regarding a proposal to expand the period in which expiring warrants may be traded and including a proposed amendment to Amex Rule 124(b) relating to "next day" delivery procedures.¹ The Commission has not yet acted upon this proposal. The Amex now proposes to amend Exchange Rule 124 to provide for additional periods for delivery of securities following trade date, including delivery on the first, second, third and fourth days after trade date. The Exchange requests that the earlier amendment to Rule 124(b) be deleted from SR-Amex-87-23, as this new proposal supersedes the earlier proposed amendment.

The text of the proposed rule change is available at the Office of the

¹ See Securities Exchange Act Release No. 25069 (October 29, 1987), 52 FR 42391.

Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to amend Exchange Rule 124 to provide additional periods for delivery of securities following trade date ("T"), including delivery on the first, second, third and fourth days after trade date. The proposed rule would permit "next day" delivery whenever parties to the transaction agree to such delivery, and, in addition, provide for additional settlement periods as the Exchange may from time to time determine. Initially, such additional settlement periods would include T+2, T+3 and T+4 delivery periods.

Additional delivery periods afford greater flexibility in structuring investment strategies and advancing the investment objectives of members' customers. Moreover, the Commission already has approved next day delivery or delivery on the second, third and fourth days after trade date for trades on the New York Stock Exchange ("NYSE"), the Midwest Stock Exchange ("MSE") and the Boston Stock Exchange ("BSE").² Permitting additional settlement periods for transactions effected on the Exchange will reduce the disparity that exists among exchanges with respect to securities delivery requirements.

It is not anticipated that additional settlement periods will impose significant additional burdens on member firm clearance and settlement procedures. However, the Exchange will monitor the operation of the proposed alternate delivery periods, and the Exchange proposes to implement T+2,

T+3, and T+4 delivery periods on a pilot basis in order to permit the Exchange to assess any effects of such time frames on member firm settlement procedures.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. In fact, the proposed rule change will enhance competition by affording the Exchange the same flexibility which exists on other exchanges with respect to expedited delivery periods.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act with respect to that portion of the proposal relating to T+1 delivery. The Commission finds that this portion of the proposed rule change is consistent with the requirements of the Act. Allowing T+1 delivery will provide market facilities for investors who wish to execute transactions for settlement on time frames that differ from traditional time frames. In addition, such procedures appear to be invoked by member firms relatively infrequently, and the exchanges and the Commission have identified no problems associated with next-day delivery procedures. Therefore, the Commission believes that the Exchange's "next day" delivery procedures are consistent with the Act, and in particular section 6(b)(5) of the Act, in that they are designed to protect the public interest.

The Commission finds good cause for approving this portion of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that implementation of

the proposed "next day" delivery procedures, which would expand application of T+1 delivery procedures currently in place, will permit Amex member firms to accommodate the needs of their customers with respect to transactions on the Amex in the same way they can be accommodated on the NYSE and those regional exchanges. (See Securities Exchange Act Release No. 24161, March 2, 1987, approving proposed rule changes of the NYSE, the MSE, and the BSE.) The proposed Amex procedures, therefore, will reduce the competitive disparity that currently exists with respect to delivery and settlement procedures among the exchanges. As discussed in Securities Exchange Act Release No. 24161, the NYSE, MSE and the BSE agreed to provide the Commission, on a quarterly basis, with the number and types of trades settling on an expedited basis. Similarly, the Amex has agreed to provide similar reports on a quarterly basis with respect to "next day" delivery.³ These quarterly reports will facilitate the Commission's continued monitoring of expedited settlement features.

With respect to that portion of the Exchange's proposed rule change proposing an initial pilot program for T+2, T+3 and T+4 delivery periods, leading to the eventual permanent approval of the Exchange's proposal to provide additional settlement periods as the Exchange may from time to time determine, the date of effectiveness and timing for Commission action will be within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

³ See letter from Michael Cavalier, Assistant General Counsel, Amex, to Sharon Itkin, Attorney, Division of Market Regulation, SEC, dated September 28, 1988.

² See Securities Exchange Act Release No. 34-24161 (March 2, 1987).

Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-88-20 and should be submitted by October 27, 1988.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁴ that the proposed rule change represented above be, and hereby is, approved, as it relates to delivery of securities on the first day after trade date.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Dated: September 29, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-23032 Filed 10-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26126; File No. SR-GSCC-88-01]

**Self-Regulatory Organizations;
Government Securities Clearing Corp.;
Order Granting Accelerated Approval
of a Proposed Rule Change That
Amends the Shareholder's Agreement
and the Certificate of Incorporation**

On August 11, 1988, the Government Securities Clearing Corporation ("GSCC") filed a proposed rule change (File No. SR-GSCC-88-01) with the Commission pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ The proposal would authorize GSCC to make certain amendments to the shareholders' agreement concerning its Board of Directors, the allocation of residual losses and the annual cap for brokers and to amend the shareholders' agreement and the Certificate of Incorporation to set forth requirements needed to change GSCC's business from that of a registered clearing agency to that of a broker or to perform brokered transactions. On August 31, 1988, the Commission published notice of this

proposed rule change in the **Federal Register** to solicit comments from interested persons.² To date, no comments have been received. As discussed below, this order grants accelerated approval of the proposal.

I. Description

The proposed rule change, among other things, would amend GSCC's shareholders' agreement regarding the composition and selection of the Board of Directors. The proposed amendment would establish three categories of participant directors: Broker participant Directors, clearing agent bank participant Directors, and dealer participant Directors and three correlative categories of participants: broker participants, clearing agent bank participants and any other participants, respectively.³ The Board of Directors would consist of six dealer participant Directors, three broker participant Directors, three clearing agent bank participant Directors, two NSCC appointed Directors and one management Director (GSCC's President). The proposal also specifies the percentage allocable to each category of participant Directors (*i.e.*, 20% each for the broker participant Director and the clearing agent bank participant Director categories and 40% for the dealer participant Director category). To change the percentage allocable to each participant director category, prior to the 1991 annual meeting would require unanimous approval by the Board of Directors. After the 1991 annual meeting, the Board of Directors could change the allocation of participant Directors by a vote of at least 70% of the Board of Directors.⁴

² GSCC originally filed the proposed rule change under section 19(b)(3)(A) of the Act. See Securities Exchange Act Release No. 26030 (August 25, 1988), 53 FR 33567 (August 31, 1988). Subsequently, GSCC amended its filing under section 19(b)(2) of the Act.

³ The other participant category would include primary dealers, aspiring primary dealers, non-primary dealers and any other participants that are not brokers, or clearing agent banks. Also, if a non-dealer participant, which is not a broker or a clearing agent bank, joins GSCC, that participant would be categorized as an other participant and would be eligible for election as a dealer participant Director.

⁴ The permanent nature of the allocation of participant directors among participant categories and the requirement that participants may only nominate and vote for nominees to the Board of Directors that correspond to its particular category represents a significant change from GSCC's draft shareholders' agreement submitted as part of its clearing agency application. The draft shareholders' agreement eliminated the participant category for all elections subsequent to 1991 and allowed participants to vote for all director positions regardless of their category.

The proposal would amend the nomination and election process for the Board of Directors. The proposed amendment would restrict nominations to the Board by participant categories. A participant also would be required to cast its votes only for nominees for the Board of Directors that correspond to its particular category. A participant could not nominate or cast a vote for a nominee that was not in its participant category. For example, broker participants only could vote for those nominated for positions in the broker participant director category, clearing agent bank participants only could vote for those nominated for positions in the clearing agent bank participant director category and all other participants, including dealer participants, could only vote for those nominated for positions in the dealer participant director category. The Board of Directors, however, may fill a vacancy with a participant outside a category if no qualified participant in that category was available to serve.⁵

The proposed rule change would determine the allocation of residual losses among GSCC participants in the event of a GSCC participant default or insolvency. The proposal defines "residual losses" as any liability of a failed participant to GSCC which remains after that participant's clearing fund deposits and other collateral have been applied to that participant's losses. Residual losses would be allocated according to whether they were the result of direct transactions or brokered transactions,⁶ according to the participants' use of GSCC's comparison and netting services, and according to whether the failed participant was a broker participant or a dealer participant.⁷ Residual losses arising in

⁵ The proposal also would require a unanimous vote of the Board of Directors prior to the 1991 annual meeting and 70% approval of the entire Board on or after the 1991 annual meeting to make certain changes regarding the categories of directors, the selection of the Board of Directors, and the allocation of residual losses among participant categories.

⁶ A brokered transaction is any transaction with respect to which a broker participant has disclosed to NSCC (through data submitted for comparison) both a "buy" side involving a qualified dealer (defined as any dealer participant or any other person, other than a broker participant, that the Board of Directors designates as a qualified dealer) and a "sell" side involving a qualified dealer, whether or not such qualified dealer has submitted data that compares with the data submitted by the broker participant. A direct transaction is any transaction submitted to GSCC for settlement which is not a brokered transaction. The term direct transaction would include dealer to dealer transactions and transactions by a broker participant acting as a dealer or acting on behalf of a customer who is not a dealer.

⁷ The Commission notes that the proposed loss allocation provisions primarily concern potential

Continued

⁴ 15 U.S.C. 78s(b)(2).

⁵ 17 CFR 200.30-3(a)(12) (1986).

⁶ 15 U.S.C. 78(b)(1).

connection with direct transactions would be allocated among dealers based on their activity. Residual losses arising in connection with brokered transactions would be allocated as follows: 90% among dealers based on their activity level, and 10% to brokered participants as a group. In any calendar year, however, each broker participant's liability for such losses will be capped at \$1.6 million.⁸ Under the proposed agreement, GSCC would be authorized to require broker participants to collateralize fully their obligation to pay such potential losses. Under the proposal, GSCC would accept irrevocable stand-by letters of credit issued in favor of GSCC by a financial institution acceptable to GSCC.

The proposal would require a super majority vote of its Board of Directors before certain changes could be made to GSCC's Certificate of Incorporation or before the shareholders' agreement could be terminated. The proposal would bar GSCC from changing its business from that of a registered clearing agency and would restrict GSCC from entering the business of being a broker or performing brokered transactions unless at least 80% of the entire Board of Directors affirmatively votes for the change of business. Moreover the proposal would require an 80% affirmative vote of the outstanding GSCC Class A shares before the shareholders' agreement could be terminated.

II. GSCC's Rationale

GSCC believes that the proposed rule change is consistent with the requirements of the Act. By providing brokers, dealers, and clearing agent banks with Board representation, GSCC believes that the proposal meets the standards for fair representation of GSCC shareholders and participants in the selection of its Directors and in the administration of its affairs. GSCC has developed a proposal for allocating losses which reflects its judgment of the risks posed by brokered and direct transactions. GSCC believes that the proposed allocation of residual losses would enable GSCC to better safeguard

securities and funds in its custody or control or for which it is responsible. GSCC also requests accelerated effectiveness pursuant to section 19(b)(2) to allow GSCC to move forward in organizing the governance framework of GSCC.

III. Discussion

Section 17A(b)(3)(c) requires that a clearing agency's rules assure fair representation to its participants and shareholders in the selection of its directors and in the administration of its affairs. The Commission, in its Order granting GSCC temporary registration as a clearing agency, temporarily exempted GSCC from compliance with section 17A(b)(3)(c) of the Act.⁹ Nevertheless, the Commission believes that GSCC's initial Board should reasonably reflect GSCC's present membership.

The proposal provides participants with a mechanism for representation on the Board of Directors and provides each category of participants with actual representation on the board. The Commission, however, is concerned about the permanent nature of the allocation of participant directors among the participant categories. The Commission believes that participant director categories are appropriate for the initial Board election to facilitate GSCC's growth and expansion of its services and participant base. Nevertheless, the GSCC, believes that it is inappropriate to institute a scheme that would permanently allocate directors based on criteria that are unrelated to participant usage and to a participant category's total participant base in the clearing agency.¹⁰ Therefore, the Commission expects GSCC to re-evaluate the allocation of participant directors among participant categories in light of participant usage and changes in its participant mix and submit any appropriate changes for Commission review before the Commission grants GSCC permanent approval as a registered clearing agency.

The proposal provides each category of participants an opportunity to participate in the development of GSCC as a clearing agency and in the administration of its affairs. Therefore, the Commission believes that the proposal provides current participants with an opportunity to be represented in the selection of directors and the

administration of the clearing agency's affairs. Because of the Commission's concerns with the permanent nature of the allocation of participant directors among participant categories and because of the uncertainty in GSCC's final participant base, the Commission, as stated in the GSCC's temporary registration order, plans to re-evaluate the selection process for GSCC's Board of Directors to assure fair representation to its participants and shareholders before granting full registration as a clearing agency.

Sections 17(b)(3) (A) and (F) require, among other things, that a clearing agency be organized and that its rules be designed to safeguard funds and securities in its custody or control or for which it is responsible. In addition, the Commission has a statutory responsibility to facilitate the establishment of a safe, efficient, and equitable national clearance and settlement system.¹¹ For the Commission to adequately assess the proposed rule change regarding the allocation of losses among participants, it must assess GSCC's operations and the level of risk posed by its operations and must determine whether the proposal meets the statutory standards.

GSCC presently provides only a comparison service for transactions in U.S. government securities. While GSCC plans to offer other services including netting in the near future, GSCC does not currently interpose itself between the parties to the trade, perform trade accounting or netting functions, or provide payment and delivery facilities. GSCC also does not assume any liability for member settlement defaults or member losses associated with those defaults. GSCC's limited role as a central comparison facility minimizes the risk of a major financial loss to GSCC and its participants. The failure by GSCC to perform its comparison function accurately or in a timely manner, however, could affect adversely GSCC's members' ability to settle securities transactions. As stated in GSCC's temporary registration order, the Commission believes that GSCC's comparison system has sufficient capacity, facilities, and safeguards in place to minimize the risk of GSCC's inability to perform comparison accurately and in a timely manner.¹²

losses associated with GSCC's proposed trade netting service. As noted in the Commission's Order granting GSCC registration as a clearing agency, GSCC is still developing its trade netting service and GSCC must file with the Commission the terms of that service under section 19(b)(2) of the Act before GSCC can offer that service to its participants. See Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639 (May 31, 1988).

⁸ Any excess loss allocated to brokers above the cap imposed on broker liability will be assumed by qualified dealers that participate in brokered transactions.

⁹ See Securities Exchange Act Release No. 25740 (May 25, 1988), 53 FR 19639 (May 31, 1988) at 25.

¹⁰ GSCC informed the Commission that broker participants insisted on a 20% allocation of Director positions. On or after GSCC's 1991 annual meeting, the allocation of directors among participant categories could be changed by a 70% approval of the entire Board.

¹¹ See 15 U.S.C. 78q-1.

¹² See Securities Exchange Act Release No. 34-25740 (May 24, 1988), 53 FR 19639 (May 31, 1988) at 7. If for some reason, GSCC was unable to perform its comparison service, participants would be inconvenienced, but could physically compare tickets to settle trades as they did before GSCC was

Continued

Considering GSCC's limited role as a central comparison processor, the Commission believes that it is appropriate to approve the proposed loss allocation for its comparison system only.

The Commission agrees with GSCC that it is appropriate for participants to agree to allocate losses based upon the type of transactions and activity levels. The Commission also recognizes that brokered transactions involve qualified dealers on both sides of the trade.¹³ Therefore, the Commission recognizes that it is appropriate for dealers to assume a portion of the liability resulting from brokered transactions and to impose a cap on a broker participant's liability for losses resulting from brokered transactions. It should be noted, however, that the Commission can not fully assess GSCC's risk from netting because it has not submitted such a proposal to the Commission for its approval. When GSCC submits its netting proposal, the Commission will review GSCC's allocation of residual losses to determine if the allocation process, in light of the statutory requirements, is appropriate for netting.

IV. Conclusion

This Order approves only the allocation of losses stemming from GSCC's current comparison activities. The Commission plans to re-examine this issue when GSCC files its proposal to expand its system from comparison to netting. The risks of the present comparison system are different from the risks posed by a netting system, therefore, the Commission will re-examine the risks and GSCC's proposal to minimize them, and, at that time, will determine if the allocation of losses is reasonable and in accordance with the Act.

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A. The Commission finds good reason for approving the proposed rule change prior to the thirtieth day after publication in the *Federal Register* because this would allow GSCC to move forward in organizing the governance framework of GSCC, and, in particular, to allow a new Board of Directors to be selected and to meet as scheduled. Thus the Commission is approving the accelerated effectiveness of the proposal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the

proposed rule change (File No. SR-GSCC-88-01) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: September 29, 1988.

[FR Doc. 88-23033 Filed 10-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26118; File No. SR-NASD-88-41]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASD Assessments and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 22, 1988 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to section 1(b) of Schedule A to the Association's By-Laws imposes an assessment of .25% on the annual gross income from transactions in U.S. Government securities on NASD members whose books and records and financial operations regarding transactions in U.S. Government securities will be examined by the Association pursuant to the Government Securities Act of 1986.

The proposed rule change to section 1(d) of Schedule A establishes a special credit during fiscal year 1988-89 of 50% toward certain annual assessment fees for each member firm. The proposed rule changes to section 2(c) and 2(g)(i) of Schedule A increase from \$50.00 to \$65.00 the fee charged to members for each person required to take a registration examination pursuant to Schedule C of the Association's By-Laws, and from \$15.00 to \$25.00 the fee charged to members for each notice of

termination filed pursuant to section 3 of Article IV of the Association's By-Laws. The proposed rule changes to section 5 of Schedule A require that gross income from transactions in U.S. Government securities be included in the annual report of gross income to the Association. This affects only those members whose books and records and financial operations regarding transactions in U.S. Government securities are examined by the Association. The proposed rule change also includes two clarifications to the paragraph of section 5 that specifies exclusions from the amount to be reported as gross income: (1) the exclusion does not apply to municipal or U.S. Government securities, and (2) with respect to the definition of commercial paper, the reference to a one-year maturity applies only to bankers acceptances.

The proposed rule change to section 6 of Schedule A increases the fee charged in connection with the filing of documents with the Association pursuant to the requirements of the Interpretation with Respect to Corporate Financing at Article III, section 1 of the Association's Rules of Fair Practice. The filing fee is increased from \$100.00 plus .01% of the gross dollar amount of the offering up to a maximum dollar amount of \$50,000.00, to \$500.00 plus .01% of the gross dollar amount of the offering up to a maximum dollar amount of \$150,000.00. The effect of the rule change will be to raise the maximum fee from \$5,100 to \$15,500.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to section 1(b) of Schedule A to the Association's By-Laws imposes an assessment of .25% on the annual gross income from transactions in U.S. Government securities on NASD members whose

established. In addition, GSCC has \$10.5 million in capital which could be used if GSCC incurred a loss.

¹³ See *supra* note 4.

books and records and financial operations regarding transactions in U.S. Government securities will be examined by the Association pursuant to the Government Securities Act of 1986. The new assessment is identical to that imposed on gross income from over-the-counter securities transactions. Reflecting the expansion of the Association's regulatory responsibilities, the new assessment is designed to ensure that the Association's assessments on gross income are imposed fairly on all members and fairly reflect the costs of membership.

The proposed rule change to section 1(d) of Schedule A establishes a special credit during Fiscal Year 1989 of 50% toward certain annual assessment fees for each member firm. After preparing manpower projections to determine the number of persons required to perform the Association's regulatory functions during the coming fiscal year and forecasting required expenditures for operations and for new projects, the Board of Governors concluded that a fiscal year 1989 operating budget increase of approximately \$9.6 million and a capital budget of approximately \$7.3 million were required. This includes a budgeted personnel increase of 63 positions over Fiscal Year 1988. Since the current assessment rates would yield greater income than necessary to fund such a budget, the Board of Governors believes it appropriate to permit a temporary, proportionate reduction for Fiscal Year 1989 in the rate of certain assessments previously approved by the Commission as being fair and equitable.

The proposed rule change to section 2(c) and 2(g)(i) of Schedule A increase from \$50.00 to \$65.00 the fee charged to members for each person required to take a registration examination pursuant to Schedule C of the Association's By-Laws, and from \$15.00 to \$25.00 the fee charged to members for each notice of termination filed pursuant to section 3 of Article IV of the Association's By-Laws. The registration fee was established at \$50.00 in 1979; the termination notice fee was set at \$15.00 in 1986.

The proposed rule changes to section 5 of Schedule A require that gross income from transactions in U.S. Government securities be included in the annual report of gross income to the Association. This affects only those members whose books and records and financial operations regarding transactions in U.S. Government securities are examined by the Association. The proposed rule change also includes two clarifications to the paragraph of section 5 that specifies

exclusions from the amount to be reported as gross income: (1) The exclusion does not apply to municipal or U.S. Government securities, and (2) with respect to the definition of commercial paper, the reference to a one-year maturity applies only to bankers acceptances.

The proposed rule change to section 6 of Schedule A increases the fee charged in connection with the filing of documents with the Association pursuant to the requirements of the Interpretation with Respect to Corporate Financing at Article III, Section 1 of the Association's Rules of Fair Practice. The filing fee is increased from \$100.00 plus .01% of the gross dollar amount of the offering up to a maximum dollar amount of \$50,000.00, to \$500.00 plus .01% of the gross dollar amount of the offering up to a maximum dollar amount of \$150,000.00. The effect of the rule change will be to raise the maximum fee from \$5,100 to \$15,500. These fees have not been changed since they were established in 1970.

The proposed rule changes are consistent with the provisions of section 15A(b)(5) of the Securities Exchange Act of 1934, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule changes contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act in that it affects assessments and fees imposed by the Association exclusively upon its members. Imposition of the fees will, however, be delayed until the start of the Association's fiscal year on October 1, 1988.

At any time within 60 days of the filing of a proposed rule change pursuant to section 19(b)(3)(A) of the

Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 27, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: September 26, 1988.

[FR Doc. 88-23036 Filed 10-5-88; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-26115; File No. SR-NYSE-88-24]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Introduction of the Individual Investor Express Delivery Service ("IIEDS")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78b(1), notice is hereby given that on September 23, 1988, the New York Stock Exchange, Inc. ("NYSE") or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed rule change consists of (1) the introduction of a new feature, called the Individual Investor Express Delivery Service ("IIEDS"), which will provide priority delivery to the specialist's post, by means of the SuperDot system, of simple market orders of individual investors up to 2099 shares, and (ii) the introduction of new order identification codes to facilitate the implementation of the IIEDS, and to facilitate implementation of the limitations on trading during significant market declines prescribed in new rule 80A and filed in SR-NYSE-88-22.¹

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

(1) Purpose

(a) *IIEDS*. IIEDS will provide priority delivery, ahead of other orders, via the SuperDot system for simple market orders of 2099 shares or less for the account of an individual investor so identified by member firms pursuant to order instructions received directly from the individual investor. This service will be activated on any day when the Dow Jones Industrial Average moves 25 points up or down from the average as of the previous trading day's close, and will remain in effect for the balance of any trading day that it is activated.

Simple buy or sell round lot and market CTC ("good 'til cancelled") orders will be eligible for IIEDS. Market orders to buy minus, sell plus, sell short, to buy or sell stop, all or none orders, as well as all limit orders, will not be eligible for IIEDS. In addition, a limit order which is cancelled and replaced with a market order when entered as a single cancel/replacement order will not be eligible for IIEDS.

IIEDS simply provides for priority systematized delivery to the specialist's

post for those round-lot market orders which are eligible for this service. Once the order reaches the post, however, the specialist shall follow normal auction market procedures in actually executing the order. Odd-lot market orders will receive priority delivery to the Limit System for execution.

The term "account of an individual investor" means an account covered by section 11(a)(1)(E) of the Act, as interpreted by the Commission. IIEDS would not be available, however, for orders entered by and pursuant to the instructions of professional managers, including investment advisors and account executives having discretion over an individual's account.

The Exchange believes that IIEDS is a reasonable means of enhancing the confidence of individual investors that their orders will be efficiently and effectively processed in the NYSE marketplace. Systems impact for indicators has been reviewed and will cause no degradation in capacity.

(b) *Order Identification Codes*. In order to facilitate implementation of proposed Rule 80A² (see SR-NYSE-88-22) and IIEDS discussed herein, the Exchange is proposing to expand the P/A field indicator options to provide more precise identification of customer and trading strategies. New account categories will be introduced according to a new coding system. Codes associated with the new account categories will supplement the Principal/Agency indicators currently in use.

All orders are to contain an order identification according to the new coding system, set forth in Exhibit A attached hereto. For systems orders, as is currently done, the identifier will be carried in system records but will not print on the order and the identifier will not be available through a display book inquiry.

(2) Statutory Basis for the Proposed Rule Change

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors' and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that

is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the Commission accelerate the effectiveness of this proposed rule change. Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-24 and should be submitted by October 27, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-23034 Filed 10-5-88; 8:45 am]

BILLING CODE 8010-01-M

¹ The Commission noticed SR-NYSE-88-22 in Securities Exchange Act Release No. 26061, September 6, 1988, 53 FR 35396.

² See note 1, *supra*.

[Release No. 34-26125; File No. SR-NYSE-88-11]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

On April 20, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a rule change amending Exchange Rule 460.20 to make permanent the deletion of restrictions that had prohibited an approved person of a specialist member organization that is entitled to the exemptions from Rule 460(a) and Rule 460.10 provided by Rule 98 from acting as a managing underwriter for a distribution of (i) any security in which an associated specialist is registered, (ii) any security which is immediately exchangeable for or convertible into a security in which an associated specialist is registered; and (iii) any security which entitles the holder thereof immediately to acquire a security in which an associated specialist is registered. This restriction is hereinafter referred to as the "managing underwriter restriction."

In SR-NYSE-85-25, the Exchange submitted for Commission approval new Rule 98 and implementing Guidelines which provided, essentially, that an approved person of a specialist member organization which established a formal organizational separation between itself and the associated specialist member organizations in conformity with the Guidelines would be entitled to an exemption from the restrictions in Rules 104, 104.13, and 105, and would be entitled to an exemption from Rules 113.20 and 460 to the extent indicated in those Rules.

As submitted by the Exchange, and as approved by the Commission, Rule 460.20 permits an approved person, who is entitled to the exemptions provided by Rule 98, to act as an underwriter for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist is registered. When the approved person is acting as a syndicate or selling group member as permitted, the associated specialist member organization must "give up the book" to another specialist member organization, which is to act as a full-time relief specialist for the period during which Rule 10b-6 of the Act is applicable to the regular specialist member organization. The full-time

relief specialist member organization trades for its own account, not for the account of the regular specialist member organization, in meeting market making responsibilities under Exchange rules during the applicable Rule 10b-6 period. If the approved person acts as an underwriter for a distribution of nonconvertible debt securities of an insurer, an associated specialist is not required to "give up the book" in such instances.

In SR-NYSE-85-25 (at page 11), the Exchange expressed its view at that time that any possible public perception of a potential conflict of interest between an approved person, acting as an underwriter, and its associated specialist member organization, acting as marketmaker, was likely to focus most particularly on instances where the approved person was acting as a managing underwriter, and thus had a greater financial stake in the successful outcome of the distribution than other syndicate or selling group members. Thus, to minimize any possible concerns that might arise in this area, the Exchange proposed at that time the managing underwriter restriction.

In its Release approving the Exchange's Rule 98 exemptive program,³ the Commission noted that it was required "to balance the potential reduced risks of abuse resulting from the managing underwriter prohibition against the argument by integrated broker-dealers that the prohibition imposes an unnecessary competitive burden on their ability to enter the specialist business." The Commission concluded that the managing underwriter restriction was not "strictly necessary" under the Act, but stated that "[T]he Act allows an SRO sufficient flexibility to proceed cautiously in implementing potentially significant structural changes in the marketplace." In the same Release, the Commission approved a proposal by the American Stock Exchange to provide exemptive relief comparable to the NYSE's Rule 98 proposal, but which did not contain any managing underwriter restriction.

In light of the highly volatile nature of the markets in October 1987, the Exchange questioned at that time whether it was appropriate to maintain the managing underwriter restriction. From the date of the Commission's approval of Rule 98 in November 1986 until October 1987, little interest had been shown in the rule as it was originally written. It appeared that the managing underwriter restriction may

have acted as a significant barrier to the entry of diversified broker-dealers to the specialist business on the Exchange, with the result that the NYSE may have been denied the benefits it sought to achieve by virtue of the Rule 98 proposal. Specifically, in SR-NYSE-85-25, the Exchange noted that the Rule 98 proposal was intended to help strengthen the capital base of the specialist system. The Exchange pointed out that large diversified organizations have the capital to expand their business, and that if such organizations were to enter the specialist business, they could reasonably be expected to provide additional capital for marketmaking on the Exchange. The managing underwriter restriction may have dissuaded diversified firms from association with, and making a capital commitment to, a specialist unit.

The Exchange also noted in SR-NYSE-85-25 (from the perspective of the marketplace of 1985) that the increasing "institutionalization" of the market and the increasing volatility of trading would require specialists to commit greater capital and assume additional market risk in accommodating large-size orders and minimizing short-term price fluctuations. The Exchange observed in that filing that the specialist system would benefit significantly from the additional capital contributions of large diversified organizations which have the financial resources to devote to specializing and, because of their diversified nature, may have a greater ability to assume risk than an organization whose business consists exclusively of specializing.

On October 22, 1987, the Exchange's Board of Directors approved an amendment to Rule 460.20 to delete the managing underwriter restriction temporarily for a six-month period ending May 1, 1988. The NYSE proposed the deletion in light of the financial strain put on several specialist units by the October 1987 market break. The Commission approved this rule change on an accelerated basis. Following this action by the Exchange's Board of Directors and the Commission, two major diversified firms, Merrill Lynch, Pierce, Fenner & Smith and Drexel Burnham Lambert sought and obtained Rule 98 exemptive relief and are now associated with specialist member organizations. In addition, two diversified firms that had already been in the specialist business on the Exchange (and were subject to specialist regulations in their other business lines), Bear, Sterns & Co. and Smith New Court, restructured their operations and sought

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1986).

³ Securities Exchange Act Release No. 23768 (November 3, 1986).

and obtained exemptive relief under Rule 98.

In light of the foregoing events, the Exchange believed that it would be appropriate to make permanent the elimination of the managing underwriter restriction. The Exchange submitted SR-NYSE-88-11 requesting accelerated approval for the extension of the temporary deletion of the managing underwriter restriction. In Securities Exchange Act Release No. 25667, 53 FR 16824 (May 11, 1988) the Commission determined that it would be appropriate to grant accelerated approval to the exchange's proposal to extend the temporary deletion of the managing underwriter restriction until such time as the Commission makes a final determination regarding permanent approval of the proposal.

The Exchange contends that the permanent approval of the deletion of the managing underwriter restriction will promote the purposes of section 6(b)(5) of the Act in that it will enhance the ability of specialists to obtain capital in increasingly volatile markets. The Exchange also stated in its filing that, by permitting diversified member organizations to enter a business as to which they may currently be effectively excluded by regulation, the proposed rule change promotes the purposes of section 6(b)(5) in that it is not designed to permit unfair discrimination between brokers or dealers. The Exchange also noted that the proposed rule change promotes the purposes of section 6(b)(8) in that it removes a burden on competition as to specializing on the Exchange.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of section 6, ⁴ and the rules and regulations thereunder. The Commission notes that the removal of the restriction has facilitated the affiliation of specialist units with integrated firms. As the Commission staff study on the October 1987 market break found, the financial position of many specialist firms can become critically strained during a major market break.⁵ Although the staff study was not able to conclude that additional capital would have retarded to any great degree the market decline of October 16 and 19, the staff believed that additional capital

might ensure that in any future down market specialists do not reach the limit of their buying power or become in jeopardy of failing. The Commission believes that removal of the managing underwriter will help to strengthen the capital base of the specialist system, particularly in highly volatile markets which creates the increased need for additional capital for market making on the Exchange. In addition, the Commission agrees with the Exchange that permanent deletion of the managing underwriter restriction will promote the purposes of section 6 of the Act, in that it will "remove impediments to and perfect the mechanism of a free and open market * * * and is 'not designed to permit unfair discrimination between * * * brokers or dealers * * *' since it, in effect, will facilitate the entry into the specialist business by diversified organizations, thus enhancing competition in market making on the Exchange.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the NYSE rule proposal be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 28, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-23035 Filed 10-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26126; File Nos. SR-PCC-88-01 and SR-PSDTC-88-01]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by Pacific Clearing Corp. and Pacific Securities Depository Trust Co.

The Pacific Clearing Corporation ("PCC") and the Pacific Securities Depository Trust Company ("PSDTC") on April 23, 1988, submitted proposed rule changes to the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposals would reduce the size of the PCC and PSDTC boards of directors ("boards").¹ Notices of the proposals were published in the *Federal Register* on June 1, 1988, to solicit public comment.² No comments were received. This order approves both proposed rule changes.

¹ PCC and PSDTC are wholly-owned subsidiaries of the Pacific Stock Exchange, Inc.

² See Securities Exchange Act Release Nos. 25741 and 25742 (May 24, 1988), 53 FR 20056, 20057.

I. Description of the Proposals

The two proposals, in identical language, would amend: (1) Article II, section 2.2(a) of the PCC By-Laws, and (2) Article II, section 2.2(a) of the PSDTC By-Laws. The amendments would reduce to five to seven members the authorized sizes of the two boards, which currently are set at ten to thirteen members.³

II. Rationale of PCC and PSDTC for the Proposals

PCC and PSDTC state in their filings that they determined in early 1987 that their best interests would be served by curtailing their activities, specifically, by reducing: (1) Their customer bases, and (2) their breadth of services. PCC and PSDTC state that, since that time, they have substantially decreased the scope and volume of their operations.⁴ They state that their reductions in activities warrant commensurate reductions in the number of their directors.

III. Discussion of the Proposals

The Commission believes that these proposals are consistent with the Act, particularly section 17A of the Act. The Commission's staff has reviewed the board composition of PCC and PSDTC, and has met with the senior executives of PCC and PSDTC to discuss the size and composition of the boards as well as related matters affecting the

³ The boards of PCC and PSDTC each currently consist of five persons. PCC and PSDTC have provided the Commission with the names and affiliations of these board members. Each of the boards consists of four participant members and one management member. See letter from John C. Katovich, General Counsel, PCC and PSDTC, to Thomas C. Etter, Attorney, Securities and Exchange Commission, dated August 1, 1988. Dr. Maurice Mann, Chairman and Chief Executive Officer, PCC and PSDTC, advised the staff of the Commission's Division of Market Regulation at a meeting held on August 17, 1988, at the Commission's Washington, DC headquarters, that: (1) Over the past 12 months both boards have been reduced in size due to board members' voluntary resignations, and (2) the resignations have paralleled the implementation of planned reductions in the operations of PCC and PSDTC.

⁴ PCC and PSDTC state in their filings that they formerly provided clearing, depository, and related services to 175 banks and broker-dealers and to 78 PSE specialist posts. Since downsizing their operations, PCC and PSDTC state that they now provide clearing and depository services to only 74 PSE specialist posts; these are post-cashiering services that specialize in master limited partnerships and baby bonds (i.e., bonds denominated in amounts below \$1,000 face amount). PCC and PSDTC plan to transfer formally, in the near future, post-cashiering functions to the PSE. At that time, PCC/PSDTC will file appropriate changes with the Commission in accordance with section 19(b)(2) of the Act. Telephone conversation between Jonathan Kallman, Assistant Director, Securities and Exchange Commission, and John C. Katovich, General Counsel, PCC and PSDTC (September 23, 1988).

⁴ 15 U.S.C. 78f (1982).

⁵ The October 1987 Market Break, a report by the Division of Market Regulation, U.S. Securities and Exchange Commission, February 1988, at 4-66 to 4-68.

management and operations of these self-regulatory organizations ("SROs").⁵

The Commission believes that the reduction in size of the PCC and PSDTC boards is appropriate given the curtailment of PCC and PSDTC services. The Commission is satisfied, in particular, that, as required by section 17A(b)(3)(C) of the Act, these SROs are providing their participants with fair representation in the selection of their directors and in the administration of their affairs.⁶

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes (SR-PCC-88-01 and SR-PSDTC-88-01) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 29, 1988.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-23037 Filed 10-5-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24720]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 29, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through

⁵ See, *supra*, note 3.

⁶ The PCC and PSDTC By-Laws expressly govern the nomination and election of directors. See PCC By-Laws, Article II, section 2.2; PSDTC By-Laws, Article II, section 2.2. These rules provide that: (1) A director may be nominated either by a Nominating Committee, consisting of the Executive Committee of the PSE, or by a petition of 10 PCC or PSDTC members; and (2) a board nominee must be either an officer, director, or partner of a PCC or PSDTC member organization or an officer or director of PSE.

The Commission found these procedures consistent with the Act when it approved the registration statements of PCC and PSDTC. See, Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167.

the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 24, 1988, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, Southern Company Services, Inc.

[70-7532]

The Southern Company ("Southern"), a registered holding company, and its wholly owned subsidiary, Southern Company Services, Inc. ("Services"), both located at 64 Perimeter Center East, Atlanta, Georgia 30346, have filed a declaration pursuant to sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Services proposes, from time to time on or before December 31, 1990, to incur indebtedness in an aggregate amount up to \$75 million at any time outstanding pursuant to one or more of the following methods.

Services proposes to issue and sell new notes ("Proposed Notes") to a lender or lenders other than Southern. The Proposed Notes may have terms of up to thirty years, contain sinking funds and bear interest at a rate or rates not to exceed 3½ percentage points per annum over the rate for United States Treasury securities of corresponding maturity at the time the lender or lenders commit to purchase the particular issue. Services also proposes that it may effect borrowings through the issuance of notes to Southern ("Additional Notes").

Services has requested an exception from the competitive bidding requirements pursuant to Rule 50(a)(5) with respect to the issuance and sale of Proposed Notes and Additional Notes.

Services further proposes that it may effect short-term or term-loan borrowings under one or more revolving credit commitment agreements. Short-term borrowings would have a maximum maturity of one year; term

loans would have maturities up to ten years. The proposed borrowings would bear interest at rates not in excess of (a) the lender's prime rate ("Prime") plus 1%; (b) the lender's certificate of deposit rate ("CD") plus 1¼%; or (c) the lender's LIBOR plus 2%.

Services further proposes that it may effect short-term borrowings from other banks. It is anticipated that such borrowings, which will have maximum maturities of nine months, would be at rates per annum not in excess of the Prime rate, the CD rate plus ¼% and LIBOR plus 1%.

Southern proposes to guarantee the Proposed Notes and the notes issued in connection with all the short-term and term-loan borrowings.

New Orleans Public Service, Inc.

[70-7558]

New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, a subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, as filed a declaration pursuant to sections 6(a)(2), 7 and 12(c) of the Act and Rule 46 promulgated thereunder.

As a result of a March 1986 rate settlement ("1986 Rate Settlement") negotiated with the Council of the City of New Orleans ("Council"), NOPSI has been prohibited from recovering from its retail rate payers \$51.2 million of its allocable costs associated with Unit No. 1 of the Grand Gulf Nuclear Electric Generating Station ("Grand Gulf 1"). As a result of February 4, 1988 resolution ("Resolution") adopted by the Council, NOPSI was precluded from recovering from its retail rate payers an additional \$135 million of its Grand Gulf 1 related costs that had been deferred for future recovery pursuant to the 1986 Rate Agreement, and was required to write-off that amount. NOPSI is currently litigating the Resolution decision in the courts. The effect of the \$135 million write-off was to eliminate NOPSI's earned surplus and to create an accumulated deficit of approximately \$34 million at year end 1987 (\$27.9 million as of June 30, 1988). As a result, NOPSI has been precluded from declaring and paying dividends on its Preferred Stock, as defined below, for the April 1 and July 1 quarters (a total of approximately \$1.4 million) because of restrictions in its Charter and in Louisiana law on sources of funds for payment of dividends.

Middle South, the holder of NOPSI's common stock, presently has the exclusive right to elect the Board of Directors ("Board"). However, NOPSI's Articles of Incorporation ("Charter")

provides that, should NPSI be unable to declare and pay dividends for four quarters on NPSI's 4-3/4% Preferred Stock and its Serial Preferred Stock (cumulatively, "Preferred Stock"), holders of the 4-3/4% Preferred Stock shall thereafter be entitled, until such arrearages are paid, to elect a majority of NPSI's Board. Middle South would then be entitled to elect the remaining directors.

NPSI's last Preferred Stock dividend payment was made as of January 1, 1988. In order to avoid the accumulation of four unpaid quarterly Preferred Stock dividends, assuming the nonpayment of the regular quarterly dividend on October 1, 1988, and the consequent risk of a shareholder election, a payment would need to be made by no later than the January 1, 1989 dividend payment date.

Absent a reversal of the Resolution, NPSI presently estimates that it may be unable to declare any future quarterly dividends or pay the amount now in arrears for several more years, unless it is permitted to restructure its capital accounts to provide a legally available source of funds from which Preferred Stock dividends can be declared and paid. NPSI therefore proposes to eliminate the deficit and thereby facilitate the declaration of dividends and bring NPSI current in Preferred Stock dividends as of January 1, 1989, by: (1) Amending the Charter to reduce the par value of the Preferred Stock from \$10 to \$1.00 par value per share, subject to the consent of Middle South; (2) transferring a portion of the resulting excess over par value from NPSI's stated capital account to a paid-in capital account as capital surplus, in such amounts as necessary to eliminate the earned surplus deficit and to pay the four 1988 quarterly dividends on Preferred Stock; (3) using a portion of this capital surplus to eliminate the current deficit in the earned surplus account; and (4) thereafter declaring and paying some or all of the 1988 quarterly dividends on Preferred Stock out of capital surplus, in an amount that would not exceed an amount equal to the four quarterly dividend payments for 1988, or \$2.722 million.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88-23030 Filed 10-5-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 10/10-0174]

U.S. Bancorp Capital Corp.; Application for Transfer of Control of a Licensed Small Business Investment Company (Formerly Peoples Capital Corporation)

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to Regulations governing small business investment companies (13 CFR 107.601 (1988)) for the Transfer of Control of U.S. Bancorp Capital Corporation (the Licensee), FKA Peoples Capital Corporation (Peoples), 1415 Fifth Avenue, Seattle, Washington 98171, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act).

Upon the approval of the application for transfer of control, the Licensee's principal office will be located at 111 SW. Fifth Avenue, Suite 1570, Portland, Oregon 97204. The Licensee will maintain its percent office in Seattle, Washington as a branch office.

The SBIC was licensed on March 5, 1981, and presently has paid-in capital and paid-in surplus of \$1,730,000. The Licensee formerly under the name of Peoples was a subsidiary of Peoples Banc Corporation. The change of control resulted from the acquisition of Peoples Banc Corporation by U.S. Bancorp (Bancorp) on October 20, 1987, and the consolidation of Peoples National Bank of Washington (Peoples) and Old National Bank of Washington under the name of U.S. Bank of Washington, National Association (USBW), on January 28, 1988. As a result of these transactions, all of Capital Corporation's stock is owned by USBW, which in turn is a wholly owned subsidiary of Bancorp.

The management of the Licensee is as follows:

Name Address, and Title

Stephen D. Fekety, 111 SW. Fifth Avenue, Portland, OR 97204—President and Director
Donald W. Magnusen, 111 SW. Fifth Avenue, Portland, OR 97204—Executive Vice President, Treasurer, and Director
George D. Morgan, 111 SW. Fifth Avenue, Portland, OR 97204—Vice President and Assistant Treasurer
T. Dalrymple, 111 SW. Fifth Avenue, Portland, OR 97204—Secretary
Robert D. Geddes, 111 SW. Fifth Avenue, Portland, OR 97204—Assistant Secretary
Gerry B. Cameron 1415 SW. Fifth Avenue, Seattle, WA 98171—Director

Joshua Green, III, 1415 Fifth Avenue, Seattle, WA 98171—Director
Kevin R. Kelly, 111 SW. Fifth Avenue, Portland, OR 97204—Director

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed transferees and the probability of successfully operations of the Licensee under their control and management in accordance with the Act and Regulations.

Notice is further given that any interested person may, not later than November 7, 1988 submit written comments on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in newspapers of general circulation in the Seattle, Washington and Portland, Oregon area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: September 30, 1988.

[FR Doc. 88-23005 Filed 10-5-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(30) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the Federal Register.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya

Oman
 Qatar
 Saudi Arabia
 Syria
 United Arab Emirates
 Yemen, Arab Republic
 Yemen, Peoples Democratic Republic of

Date: September 29, 1988.

O. Donaldson Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 88-23039 Filed 10-5-88; 8:45 am]

BILLING CODE 4810-25-M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on November 1 and 2, 1988 of the following debt management advisory committee: Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on November 1 and the preparation of a written report to the Secretary of the Treasury on November 2, 1988.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c) (4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows: The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or

financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

William J. Bremner,

Acting Assistant Secretary, (Domestic Finance).

Date: September 30, 1988.

[FR Doc. 88-23018 Filed 10-5-88; 8:45 am]

BILLING CODE 4810-25-M

[Supplement to Department Circular; Public Debt Series No. 24-88]

Treasury Notes, Series AF-1990

Washington, September 28, 1988.

The Secretary announced on September 27, 1988, that the interest rate on the notes designated Series AF-1990, described in Department Circular—Public Debt Series—No. 24-88 dated September 22, 1988, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 88-23007 Filed 10-5-88; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series No. 25-88]

Treasury Notes; Series P-1992

Washington, September 29, 1988.

The Secretary on September 28, 1988, that the interest rate on the notes designated Series P-1992, described in Department Circular—Public Debt Series—No. 25-88 dated September 22, 1988, will be 8¼ percent. Interest on the

notes will be payable at the rate of 8¼ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 88-23006 Filed 10-5-88; 8:45 am]

BILLING CODE 4810-40-M

Internal Revenue Service

[Delegation Order No. 218 (Rev. 1)]

Delegation of Authority; Director, Austin Compliance Center

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The expiration date of the authorities delegated to the Director, Austin Compliance Center, is extended to March 31, 1990. The text of the delegation order appears below.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT:

Melva Scruggs, PFR: P-I, Room 3139, 1111 Constitution Avenue NW., Washington, DC 20224, Telephone: 202-566-4273. (not a toll-free telephone number).

Martha M. Seeman,

Chief, Information and Productivity Improvement Branch.

Order No. 218 (Rev. 1)

Effective Date: October 1, 1988

1. Pursuant to the authority vested in the Commissioner of Internal Revenue by TO 150-10, I hereby delegate to the Director, Austin Compliance Center, all authorities delegated to Directors, Service Centers, that are required and necessary to administer and enforce the internal revenue laws with respect to the Collection, Criminal Investigation and Examination programs and activities. This authority may be exercised and redelegated consistent with the authorities delegated to Directors, Service Centers. This authority shall expire on March 31, 1990.

2. As of the effective date of this Order, all personnel performing any previously delegated function prior to the effective date of this Order are hereby authorized to continue to perform such function until changed by appropriate authority.

3. Delegation Order No. 218, effective October 1, 1986, is superseded.

Dated: September 30, 1988.

Charles H. Brennan,

Deputy Commissioner (Operations).

[FR Doc. 88-23082 Filed 10-5-88; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION**Agency Information Collection Under OMB Review****AGENCY:** Veterans Administration.**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the form(s) must be filled out, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of

the total number of hours needed to fill out the form; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: September 29, 1988.

By direction of the Administrator,

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Reinstatement

1. Department of Veterans Benefits
2. Application for Dependency and Indemnity Compensation by Child
3. VA Form 21-4183
4. This form is used by a child under age 18 to claim Dependency and Indemnity Compensation where the surviving spouse was not entitled or is no longer entitled. The form is also used by a child age 18 or over regardless of the surviving spouse's entitlement.
5. On occasion
6. Individuals or households
7. 7,900 responses
8. 1,975 hours
9. Not applicable

[FR Doc. 88-23101 Filed 10-5-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 53, No. 194

Thursday, October 6, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATES AND TIMES: Meetings Will Be Held, As Necessary at 2:00 p.m. On The Following Days:

October 24, 1988, October 25, 1988, October 26, 1988, October 27, 1988, October 28, 1988, October 31, 1988, November 1, 1988, November 2, 1988, November 3, 1988, November 4, 1988, November 7, 1988 and November 8, 1988.

PLACE: 999 E Street, NW., Washington, DC

STATUS: These Meetings Will Be Closed To The Public.

ITEMS TO BE DISCUSSED:

Compliance matters covered under the Expedited Enforcement Procedures for the General Election, pursuant to 2 U.S.C. 437g.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88-23215 Filed 10-4-88; 3:27 pm]

BILLING CODE 6715-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, October 12, 1988, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 13, 1988, 10:00 a.m..

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.

Status of Presidential Audits.

Draft AO 1988-41:

Honorable Samuel S. Stratton.

Draft AO 1988-42:

Neil C. Taylor on behalf of Atlantic Marine, Inc., and Atlantic Dry Dock Corporation. Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 88-23216 Filed 10-4-88; 3:27 pm]

BILLING CODE 6715-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: October 27-28, 1988.

PLACE: Radisson Hotel Atlanta, Hermitage East/Center Room, Courtland and International Boulevard, Atlanta, Georgia 30303.

STATUS:

October 27, 1988, 1:30 p.m.-5:45 p.m.—Open

October 28, 1988, 9:00 a.m.-10:00 a.m.—Closed

Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, Part 1703
October 28, 1988, 12:00 noon-5:00 p.m.—Open

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of June 14-15, 1988 Minutes
Executive Director's Report
—FY 88 Fourth Quarter Program Report
—Administrative Report
Overview of the White House Preliminary Design Group Report and the 1979 White House Conference on Library and Information Services—Joseph Shubert, New York State Librarian
Chief Officers of State Library Agency Report, Joseph Shubert, New York State Librarian
Election of Vice Chair
NCLIS Committee Reports—
—Budget and Finance
—Information for Governance
—Legislative
—Program Review
—Public Affairs
—Recognition Award
—White House Conference II
Report on ASIS Programs and Activities—Martha Williams, President, ASIS and David Penniman, President-Elect, ASIS
School Media Symposium Report and Discussion
Information Age Task Force Status Report
FOIA
ACTION Model Program
Federal-State Cooperative System for Public Library Statistics

Special provisions will be made for handicapped individuals by calling Jane

McDuffie (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT:

Susan K. Martin, NCLIS Executive Director, 1111 18th Street, NW., Suite 310, Washington, DC 20036, (202) 254-3100.

Dated: October 3, 1988.

Jane McDuffie,
Staff Assistant.

[FR Doc. 88-23199 Filed 10-4-88; 3:14 pm]

BILLING CODE 7527-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:00 a.m., Thursday, October 13, 1988.

PLACE: The Hyatt Regency, 1 South Capitol Avenue, Indianapolis, Indiana 46204, (317) 632-1234.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Insurance Fund Report.
4. Regulatory Review: Final Amendments to Section 704, Corporate Credit Unions.
5. Regulatory Review, Requests for Comments:
 - a. Section 701.20, Surety Bond Coverage.
 - b. Section 701.22, Loan Participation, and Section 701.23, Purchase, Sales, and Pledge of Loans.
 - c. Section 701.31, Loan Nondiscrimination Requirements.
 - d. Section 701.37-1, Treasury Tax and Loan Accounts, and Section 701.37-2, FCU's Depositories and Fiscal Agents.
 - e. Section 711, Management Interlocks.
 - f. Section 790, NCUA Organization.
 - g. Section 701.21(f), Second Mortgage Loans.
 - h. Section 701.36, Fixed Assets.
6. Fiscal Year 1989 Overhead Transfer Rate.
7. Legislative Update.

TIME AND DATE: 3:00 p.m., Wednesday, October 12, 1988.

PLACE: The Hyatt Regency, 1 South Capitol Avenue, Indianapolis, Indiana 46204, (317) 632-1234.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Transfer of Assets and Assumption of Liabilities under section 205(b)(1)(c) of the Federal Credit Union Act. Closed pursuant to exemptions (4), (8), and (9)(A)(ii).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357-1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 88-23201 Filed 10-4-88; 3:07 p.m.]

BILLING CODE 7535-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 8:00 a.m., October 17, 1988.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301

Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:00 a.m. Meeting—Board of Regents.

- (1) Approval of Minutes—July 11, 1988; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—President, USUHS, (a) Reorganization; (6) Comments—Members, Board of Regents; (7) Comments—Chairman, Board of Regents

New Business

SCHEDULED MEETINGS: January 9, 1989.

CONTACT PERSON FOR MORE

INFORMATION: Donald L. Hagenruber, Executive Secretary of the Board of Regents, 202/295-3028.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 4, 1988.

[FR Doc. 88-23230; Filed 10-4-88; 3:56 pm]

BILLING CODE 3810-01-M

Corrections

Federal Register

Vol. 53, No. 194

Thursday, October 6, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-80-118]

Energy Conservation Program for Consumer Products; Notice of Proposed Rulemaking and Public Hearing Regarding Test Procedures for Refrigerators, Refrigerator-Freezers and Freezers

Correction

In proposed rule document 88-21860 beginning on page 37416 in the issue of Monday, September 26, 1988, make the following corrections:

1. On page 37421, in the first column, in Appendix A1 (Alternative) to Subpart B of Part 430, paragraph 3.3, the seventh line should read "opening occurring every 4th time, to obtain 24".

2. On the same page, in the third column, in the same Appendix, in paragraph 5.2.1.5., in the sixth and seventh lines, "EP₂" should read "EP₂".

3. On page 37422, in the first column, in Appendix B1 (Alternative) to Subpart B of Part 430, in paragraph 4.1.2.2., in the 10th line, "G" should read "F".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-62068; FRL-3435-8]

Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under The Asbestos Hazard Emergency Response Act (AHERA)

Correction

In notice document 88-19415 beginning on page 33574 in the issue of

Wednesday, August 31, 1988, make the following corrections:

1. On page 33584, in the second column, in paragraph (15)(a), in the seventh line, the phone number should read "(404) 292-0629".

2. On page 33598, in the second column, in paragraph (56), in the sixth line, the phone number should read "(704) 368-7880".

3. On page 33599, in the second column, in paragraph (88), in the first line, "Volz: Environmental" should read "Volz Environmental".

4. On page 33602, in the third column, in paragraph (7), in the fourth line, "Suite 4 Hillside" should read "Suite 4, Hillside".

5. On page 33606, in the second column, in paragraph (119), in the fourth line, "357 Hilliard" should read "357, Hilliard".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2810 and 9230

[AA-330-08-4211-02-NCPH]

Rights-of-Way, Trespass, and Law Enforcement—Criminal; Amendment To Provide Procedures for Action on Unauthorized Use, Occupancy, or Development, of the Public Lands for Transportation and Other Systems or Facilities Which Could Be Allowed by a Temporary Use Permit, or Right-of-Way

Correction

In proposed rule document 88-21884 beginning on page 37319 in the issue of Monday, September 26, 1988, make the following corrections:

§ 2812.1-3 [Corrected]

1. On page 37321, in the third column, in the heading of § 2812.1-3, "Authorized" should read "Unauthorized".

2. On the same page, in the same column, in § 2812.1-3, in the 12th and 15th lines, "trespass" was misspelled.

§ 9239.7-1 [Corrected]

3. On page 37322, in the first column, in § 9239.7-1, in paragraph (b), in the

first line, "trespass" should read "trespasser".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-08-4220-11; I-15326 et al.]

Proposed Continuation of Withdrawal; Idaho

Correction

In notice document 88-20475 beginning on page 35115 in the issue of Friday, September 9, 1988, make the following correction:

On page 35115, in the third column, under the legal description (I-14544), the third line should read "T. 4 S., 5 W.".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Prevention and Intervention for Illegal Drug Use and AIDS Among High Risk Youth; Program Announcement

Correction

In notice document 88-22698 beginning on page 38926 in the issue of Monday, October 3, 1988, make the following correction:

On page 38929, in the second column, in the second complete paragraph, in the 11th and 12th lines, "7 double-spaced pages" should read "70 double-spaced pages".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Ch. V

Worker Adjustment and Retraining Notification Act; Solicitation of Comments in Advance of Proposed Rulemaking

Correction

In proposed rule document 88-21281 beginning on page 36056 in the issue of

Friday, September 16, 1988, make the following correction:

On page 36057, in the first column, under "Development of Plant Closing Regulations", in paragraph (B), in the second line, "4,00" should read "4,000".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-461]

**Illinois Power Company, et al.;
Environmental Assessment and
Finding of No Significant Impact**

Correction

In notice document 88-22197 beginning on page 37885 in the issue of Wednesday, September 28, 1988, make the following corrections:

1. On page 37885, in the first column, under *Identification of Proposed Action*, in the fourth line, "stream" should read "steam".

2. On the same page, in the second column, each time the word "stream" appears it should read "steam".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 330

[Department of the Treasury Circular No. 888, Fifth Revision]

**Regulations Governing Payment Under
Special Endorsement of United States
Savings Bonds and United States
Savings Notes (Freedom Shares)**

Correction

In rule document 88-21985 beginning on page 37519 in the issue of Monday, September 26, 1988, make the following correction:

§ 330.7 [Corrected]

On page 37521, in the second column, under § 330.7, in the first paragraph, in

the first line, "Specifically" should read "Specially".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-18]

**Rules of Practice for FAA Civil Penalty
Actions**

Correction

In rule document 88-20184 beginning on page 34646 in the issue of Wednesday, September 7, 1988, make the following corrections:

§ 13.220 [Corrected]

On page 34661, in the third column, in § 13.220(i)(2), in the fifth line, "witness" should read "witness," and in the sixth line, "witness," should read "witness".

BILLING CODE 1505-01-D

Federal Register

Thursday
October 6, 1988

Part II

Department of Education

34 CFR Parts 785, 786 and 787
National Diffusion Network; Notice of
Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Parts 785, 786 and 787

National Diffusion Network

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the National Diffusion Network. These amendments are needed to implement this program as reauthorized in the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Amendments).

DATES: Comments must be received on or before December 5, 1988.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Lois N. Weinberg, U.S. Department of Education, Programs for the Improvement of Practice, 555 New Jersey Avenue NW., Room 510, Washington, DC 20208-1525.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Lois N. Weinberg, (202) 357-6147.

SUPPLEMENTARY INFORMATION: The National Diffusion Network (NDN) supports efforts to recognize and further excellence in education, including the nationwide dissemination of exemplary education programs. These programs have been developed at the local level by classroom teachers and other practitioners with funds provided by a variety of sources including school districts, private businesses and foundations, colleges and universities, State educational agencies and Federal programs. After field testing and evaluation, again at the local level, these programs have been validated by several different procedures established by the Department. Once programs have been validated, they are considered part of the NDN. The developers of validated programs may compete for funding by the NDN to operate as Developer Demonstrator projects to disseminate specific exemplary education programs nationwide, or as Dissemination Process projects for nationwide dissemination of information, instructional materials and services about content areas, bodies of research or fields of professional development.

Until August 1987 the Joint Dissemination Review Panel (JDRP) provided the review for validation of

programs. On August 14, 1987, final regulations were published in the *Federal Register* replacing JDRP review with a process called Dissemination Review Approval, consisting of review by both a Program Effectiveness Panel and a Program Significance Panel.

In accordance with the Hawkins-Stafford Amendments, the Secretary proposes to eliminate review by the Program Significance Panel. All references to the Program Significance Panel would be removed from the regulations. Only review and approval by the Program Effectiveness Panel would be required for entry into the NDN.

Pursuant to the Amendments, the Secretary proposes to require an applicant for a Developer Demonstrator or a Dissemination Process project to submit a representative sample of the instructional, curricular and classroom materials used by an exemplary education program. Each applicant will determine what constitutes a representative sample of its program to submit along with the application. For example, materials from different grade levels or various subject areas might be appropriate. Materials for inservice training of teachers as well as materials for teachers to use in the classroom might be included. Audio-visual materials and computer software materials might also be included, if they represent important elements of the training or instructional program. Criteria to determine whether an exemplary education program utilizes an innovative approach and whether the program materials are accurate and up-to-date would be added to the selection criteria for reviewing applications for funding. Reviewers will use the representative materials submitted by the applicant to determine the extent to which these criteria are met. The Secretary intends to include on the panels of peer reviewers to evaluate grant applications persons with experience and expertise in specific priority areas who would be knowledgeable about what is innovative, accurate and up-to-date in those fields.

Under the current regulations, scores given to an exemplary education program by both the Program Effectiveness Panel and the Program Significance Panel are used as considerations in making funding decisions. The Secretary proposes to eliminate these scores as factors in funding decisions.

The Secretary proposes to delete the reference to special history programs in conjunction with the bicentennial of the Constitution of the United States, since

activities in commemoration of that historic event will have ended before the next grant competition. However, programs addressing that topic would still be eligible for funding under the history priority.

No changes are proposed in 34 CFR Parts 788 or 789, which regulate the NDN's State Facilitator and Private School Facilitator projects.

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 proposed regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Sections 786.10, 786.11, 786.21, 786.22, 786.23, 786.24, 786.25, 786.26, 786.27, 786.28, 787.10, 787.11, 787.21, 787.22, 787.23, 787.24, 787.25, 787.26, 787.27, and 787.28 contain information collection requirements.

As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget for its review. (44 U.S.C. 3504(h))

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 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

This program 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 processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 510, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Education Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 785, 786 and 787

Dissemination, Education, Educational research, Grant programs—education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance number: 84.073—National Diffusion Network)
Dated: September 27, 1988.

Linus Wright,

Acting Secretary of Education.

The Secretary proposes to amend Parts 785, 786, and 787 of Title 34 of the Code of Federal Regulations as follows:

PART 785—NATIONAL DIFFUSION NETWORK: GENERAL PROVISIONS

1. The authority citation for Part 785 is revised to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

2. Section 785.5(b) is amended by removing the definitions of "Dissemination Review Approval" and "Program Significance Panel", adding, in alphabetical order, a definition of "Joint Dissemination Review Panel", and revising the definitions of "Exemplary education program" and "Program Effectiveness Panel" to read as follows:

§ 785.5 What definitions apply?

* * * * *

(b) * * *

"Exemplary education program" means a program, product, practice, or Dissemination Process that has Program Effectiveness Panel approval.

"Joint Dissemination Review Panel" or "JDRP" means the Panel that was

convened by the Secretary to approve exemplary education programs and that was the predecessor to the Program Effectiveness Panel.

* * * * *

"Program Effectiveness Panel" or "PEP" means a panel of experts in the evaluation of education programs and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in § 786.12 or 787.12.

* * * * *

PART 786—NATIONAL DIFFUSION NETWORK: DEVELOPER DEMONSTRATOR PROJECTS

3. The authority citation for Part 786 is revised to read as follows:

Authority: 20 U.S.C. 2962 unless otherwise noted.

4. The table of contents for Part 786 is amended by revising Subparts B, C and D to read as follows:

* * * * *

Subpart B—How Does One Apply for an Award?

Sec.

786.10 What materials must an applicant submit to apply for an award?

786.11 What must an applicant submit for review by the PEP?

786.12 How does the PEP review a program, product, or practice?

786.13 How is PEP approval granted?

786.14 How long does PEP approval last?

786.15 How long does JDRP approval last?

786.16 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How Does the Secretary Make an Award?

Sec.

786.20 How does the Secretary evaluate an application?

786.21 Selection criterion—innovative approach of exemplary education program. (15 points)

786.22 Selection criterion—accuracy of exemplary education program. (15 points)

786.23 Selection criterion—plan of operation. (25 points)

786.24 Selection criterion—quality of key personnel. (20 points)

786.25 Selection criterion—budget and cost-effectiveness. (5 points)

786.26 Selection criterion—evaluation plan. (10 points)

786.27 Selection criterion—adequacy of resources. (5 points)

786.28 Selection criterion—monitoring plan. (5 points)

786.29 What additional criteria exist for new awards?

786.30 What additional criteria exist for continuation awards?

Subpart D—What Conditions Must Be Met by the Recipient of an Award?

Sec.

786.31 What disclaimers are required on printed materials?

786.32 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

* * * * *

5. Section 786.2 is amended by revising paragraphs (a)(1) and (b) and the authority citation to read as follows:

§ 786.2 Who is eligible for an award?

(a) * * *

(1) Any public or nonprofit private agency, organization, or institution that has developed a program, product, or practice that has Program Effectiveness Panel approval or JDRP approval and that is in use in a site that can be visited may apply for a new Developer Demonstrator award.

* * * * *

(b) Any Developer Demonstrator grantee, otherwise eligible to apply for a continuation award, may apply for the continuation award even if either the PEP approval period or the JDRP approval period has expired.

(Authority: 20 U.S.C. 2962)

6. Section 786.3 is amended by revising paragraph (b)(3) to read as follows:

§ 786.3 What priorities may the Secretary establish?

* * * * *

(b) * * *

(3) History, geography, and civics.

* * * * *

7. Section 786.10 is revised to read as follows:

§ 786.10 What materials must an applicant submit to apply for an award?

An applicant shall submit a representative sample of the instructional, classroom, or curriculum materials of the exemplary education program that would be disseminated by the project.

(Authority: 20 U.S.C. 2962)

§ 786.12 [Removed]

§ 786.11 [Redesignated as § 786.12]

8. Section 786.12 is removed and § 786.11 is redesignated as § 786.12, and the section heading is amended by revising "Program Effectiveness Panel" to read "PEP".

9. A new § 786.11 is added to read as follows:

§ 786.11 What must an applicant submit for review by the PEP?

For PEP review of a program, product, or practice, an applicant shall submit to the Secretary qualitative or quantitative evidence of the effectiveness of the program, product, or practice.

(Authority: 20 U.S.C. 2962)

10. Section 786.13 is revised to read as follows:

§ 786.13 How is PEP approval granted?

PEP approval is granted if the PEP has given the program, product, or practice a score of at least 40 points for the criterion in § 786.12(d)(2) (*Results*) and a total score of at least 70 points.

(Authority: 20 U.S.C. 2962)

11. Section 786.14 is revised to read as follows:

§ 786.14 How long does PEP approval last?

PEP approval remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 2962)

§ 786.16 [Redesignated from § 786.15]

12. Section 786.15 is redesignated as § 786.16 and a new § 786.15 is added to read as follows:

§ 786.15 How long does JDRP approval last?

JDRP approval remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 2962)

13. Section 786.20 is revised to read as follows:

§ 786.20 How does the Secretary evaluate an application?

The Secretary evaluates an application, including a representative sample of the program materials, according to the criteria in §§ 786.21 through 786.29.

(Authority: 20 U.S.C. 3851)

§ 786.27 [Removed]**§§ 786.21 through 786.26 and §§ 786.28 through 786.31 [Redesignated as §§ 786.23 through 786.32]**

14. Section 786.27 is removed, §§ 786.21, 786.22, 786.23, 786.24, 786.25, 786.26, 786.28, 786.29, 786.30 and 786.31 are redesignated as §§ 786.23, 786.24, 786.25, 786.26, 786.27, 786.28, 786.29, 786.30, 786.31 and 786.32 respectively.

15. New §§ 786.21 and 786.22 are added to read as follows:

§ 786.21 Selection criterion—innovative approach of exemplary education program. (15 points)

The Secretary reviews a representative sample of the

instructional, classroom, and curriculum materials that are used by the exemplary education program to determine the extent to which the program's approach is innovative.

(Authority: 20 U.S.C. 2962)

§ 786.22 Selection criterion—accuracy of exemplary education program. (15 points)

The Secretary reviews a representative sample of the instructional, classroom, and curriculum materials that are used by the exemplary education program to determine the extent to which the program is accurate and up-to-date.

(Authority: 20 U.S.C. 2962)

16. Redesignated § 786.23 is amended by redesignating paragraph (f) as paragraph (g), by removing the word "and" at the end of paragraph (e), and by adding a new paragraph (f) to read as follows:

§ 786.23 Selection criterion—plan of operation. (25 points)

* * * * *

(f) The extent to which the applicant proposes dissemination strategies designed to meet specific characteristics of its program; and

* * * * *

§ 786.24 [Amended]

17. Redesignated § 786.24 is amended by removing "25" from the section heading, and replacing it with "20".

§ 786.26 [Amended]

18. Redesignated § 786.26 is amended by removing "20" from the section heading, and replacing it with "10".

§ 786.28 [Amended]

19. Redesignated § 786.28 is amended by removing "15" from the section heading, and replacing it with "5".

20. Redesignated § 786.29 is revised to read as follows:

§ 786.29 What additional criteria exist for new awards?

In determining the order of selection under EDGAR § 75.217(d) for new Developer Demonstrator awards, the Secretary seeks diversity of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 2962)

PART 787—NATIONAL DIFFUSION NETWORK: DISSEMINATION PROCESS PROJECTS

21. The authority citation for Part 787 is amended to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

22. The table of contents for Part 787 is amended by revising Subparts B, C and D to read as follows:

* * * * *

Subpart B—How Does One Apply for an Award?

Sec.

787.10 What materials must an applicant submit to apply for an award?

787.11 What must an applicant submit for review by the PEP?

787.12 How does the PEP review a Dissemination Process?

787.13 How is PEP approval granted?

787.14 How long does PEP approval last?

787.15 How long does JDRP approval last?

787.16 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How does the Secretary Make an Award?

Sec.

787.20 How does the Secretary evaluate an application?

787.21 Selection criterion—innovative approach of exemplary education program. (15 points)

787.22 Selection criterion—accuracy of exemplary education program. (15 points)

787.23 Selection criterion—plan of operation. (25 points)

787.24 Selection criterion—quality of key personnel. (10 points)

787.25 Selection criterion—budget and cost-effectiveness. (5 points)

787.26 Selection criterion—evaluation plan. (10 points)

787.27 Selection criterion—adequacy of resources. (5 points)

787.28 Selection criterion—monitoring plan. (5 points)

787.29 What additional criteria exist for new awards?

787.30 What additional criteria exist for continuation awards?

Subpart D—What Conditions Must be Met by the Recipient of an Award?

Sec.

787.31 What disclaimers are required on printed materials?

787.32 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

§ 787.2 [Amended]

23. Section 787.2 is amended by removing the words "Dissemination Review Approval" and replacing them with "Program Effectiveness Panel approval."

§ 787.12 [Removed]**§§ 787.10 and 787.11 [Redesignated as §§ 787.11 and 787.12 Respectively]**

24. Section 787.12 is removed, § 787.10 is redesignated as § 787.11, and § 787.11 is redesignated as § 787.12, and the section heading for § 787.12 is amended

by revising "Program Effectiveness Panel" to read "PEP".

25. A new § 787.10 is added to read as follows:

§ 787.10 What materials must an applicant submit to apply for an award?

An applicant shall submit a representative sample of the information and instructional materials that would be disseminated through the Dissemination Process.

(Authority: 20 U.S.C. 2962)

26. Redesignated § 787.11 is amended by removing the paragraph designation for paragraph (a), removing paragraph (b), redesignating paragraphs (a)(1), (a)(2), and (a)(3) as paragraphs (a), (b), and (c), respectively, and revising the section heading and the undesignated text preceding paragraph (a) to read as follows:

§ 787.11 What must an applicant submit for review by the PEP?

For PEP review of a dissemination process, an applicant shall submit to the Secretary—

* * *

27. Section 787.13 is revised to read as follows:

§ 787.13 How is PEP approval granted?

PEP approval is granted if the PEP has given the procedures and criteria a score of at least 20 points for the criterion in § 787.12(d)(2) (*Results*) and a total score of at least 70 points.

(Authority: 20 U.S.C. 2962)

28. Section 787.14 is revised to read as follows:

§ 787.14 How long does PEP approval last?

PEP approval remains in effect for six years from the date of approval.

§ 787.16 [Redesignated from § 787.15]

29. Section 787.15 is redesignated as § 787.16.

30. A new § 787.15 is added to read as follows:

§ 787.15 How long does JDRP approval last?

JDRP approval remains in effect for six years from the date of approval.

(Authority: 20 U.S.C. 2962)

§ 787.20 [Amended]

31. Section 787.20 is amended by adding the words "including a representative sample of the information and instructional materials to be disseminated" after the word "application".

§ 787.27 [Removed]

§§ 787.21 through 787.26 and §§ 787.28 through 787.31 [Redesignated as §§ 787.23 through 787.32 Respectively]

32. Section 787.27 is removed, §§ 787.21, 787.22, 787.23, 787.24, 787.25, 787.26, 787.28, 787.29, 787.30, and 787.31 are redesignated as §§ 787.23, 787.24, 787.25, 787.26, 787.27, 787.28, 787.29, 787.30, 787.31, and 787.32 respectively.

33. New §§ 787.21 and 787.22 are added to read as follows:

§ 787.21 Selection criterion—innovative approach of exemplary education program. (15 points)

The Secretary reviews a representative sample of the information and instructional materials to be disseminated to determine the extent to which the program's approach is innovative.

(Authority: 20 U.S.C. 2962)

§ 787.22 Selection criterion—accuracy of exemplary education program. (15 points)

The Secretary reviews a representative sample of the information and instructional materials to be

disseminated to determine the extent to which the program is accurate and up-to-date.

34. Redesignated § 787.23 is amended by removing "30" in the section heading and adding in its place, "25", removing the cross-reference "737.16 in paragraph (a) and adding, in its place, "787.16, redesignating paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

§ 787.23 Selection criterion—plan of operation. (25 points)

(g) The extent to which the applicant proposes dissemination strategies designed to meet specific characteristics of its program.

* * *

§ 787.25 [Amended]

35. Redesignated § 787.25 is amended by removing "10" in the section heading, and adding in its place, "5".

§ 787.26 [Amended]

36. Redesignated § 787.26 is amended by removing "15" in the section heading and adding in its place "10".

§ 787.27 [Amended]

37. Redesignated § 787.27 is amended by removing "10" in the section heading and adding in its place "5".

38. Redesignated § 787.29 is revised to read as follows:

§ 787.29 What additional criteria exist for new awards?

In determining the order of selection under EDGAR § 75.217(d) for new Dissemination Process awards, the Secretary seeks diversity of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 2962)

[FR Doc. 88-22594 Filed 10-5-88; 8:45 am]

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Test Report Federal Register

Thursday
October 6, 1988

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New
Stationary Sources; Sewage Treatment
Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60**

[AD-FRL-3222-2]

Standards of Performance for New Stationary Sources; Sewage Treatment Plants**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: The EPA proposed revisions to the testing, monitoring, recordkeeping, and reporting requirements associated with the standards of performance for sewage treatment plants on April 18, 1986 (51 FR 13424). These revisions being promulgated leave unchanged the emission limits established in 1974. The revisions require additional performance test measurements as well as monitoring, recording, and reporting of several operating parameters of the control device and the sewage sludge incinerator.

EFFECTIVE DATE: November 7, 1988.

Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated revisions may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Sewage Treatment Plant NSPS: Responses to Comments on April 1986 Proposed Revisions," EPA-450/3-84-010b. The BID contains (1) a summary of all the public comments made on the proposed revisions and the Administrator's response to the comments, and (2) a summary of the changes made to the proposed revisions.

Docket. A docket, number A-84-03, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. A

reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Mr. Ron Myers, Industrial Studies Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5407.

SUPPLEMENTARY INFORMATION:**Summary of Revisions**

The standard limits atmospheric emissions of particulate matter (PM) from sewage sludge incinerators that commenced construction or modification after June 11, 1973. After completion of this review of the existing new source performance standards (NSPS) for sewage treatment plants (40 CFR Part 60, Subpart O), the Agency decided to leave unchanged the emission limits established in 1974 and previously reviewed in 1978 for control of PM emissions and opacity from sewage sludge incinerators. The standard for particulate emissions is 0.65 kg/Mg of dry sludge input (1.3 lb/ton), with an opacity standard of 20 percent.

The most widely used control technology installed after 1978 is the combination venturi/impingement tray scrubber. This review of the standard did not include any technologies other than venturi/tray scrubbers. Two incinerators with fabric filter control devices are reportedly under construction in California, and several are used in Europe. Under another program, EPA is currently investigating the applicability and effectiveness of fabric filters and other types of control devices. This information will be considered during the next 4-year review of the standard. At the conclusion of that review, the Agency will again determine if this standard should be revised.

Requirements have been added for monitoring, recording, and, under special circumstances, reporting of the operating pressure drop of the scrubber control system and several incinerator operating parameters. A performance test is required with the specified monitoring devices in operation. Requirements have also been added for measurement of metals emissions during this performance test. These requirements apply to all existing and future incinerators subject to the NSPS, except that incinerators for which particulate emissions measured during the most recent performance test are less than or equal to 0.38 g/kg of dry sludge input (0.75 lb/ton) are exempt from certain of the monitoring,

recordkeeping, and reporting requirements.

Summary of Impacts of the Revisions

The revisions that impose monitoring, recordkeeping, and reporting requirements are intended to ensure that incinerators and associated control devices continue to be operated and maintained in a manner consistent with the method of operation at the time when compliance was initially established. The addition of continuous monitoring requirements will benefit the environment by assisting owners and operators in proper operation and maintenance of incinerators and emissions control devices. Further, by requiring operators to monitor incinerator operating parameters, the revised standards should aid in reducing consumption of auxiliary fuel. The requirement for plants to conduct a performance test after the required monitoring devices are installed and operating will establish incinerator and control device operating conditions that are consistent with minimizing particulate emissions. Requirements for measurement of metals in sludge and in particulate emissions will assist the Agency in determining whether metals are emitted from sewage sludge incinerators in sufficient quantities to warrant regulation. For facilities that have not implemented the required monitoring practices, the EPA estimates an annual cost of \$24,000 per incinerator to achieve compliance with these revisions. The corresponding capital cost for compliance with the revisions is \$27,000 per incinerator. These costs include costs for all monitoring and recording instruments, maintenance, recordkeeping, reporting, and laboratory analysis required by the revised regulation. Facilities which qualify for exemption from certain monitoring, recordkeeping, and reporting requirements would incur a maximum annual cost of about \$12,000 per incinerator. However, many facilities have already implemented monitoring practices consistent with most or all of the revised NSPS requirements. For these facilities, annual cost per incinerator will be about \$5,600 and capital cost per incinerator will be about \$8,700.

Public Participation

The revisions were proposed in the *Federal Register* on April 18, 1986 (51 FR 13424). The preamble to the proposed revisions discussed the availability of the review study document, "Second Review of Standards of Performance for Sewage Sludge Incinerators," EPA-450/

3-84-010. Public comments were solicited at the time of proposal, and copies of the review study were distributed to interested parties. There were no requests to speak at the proposed public hearing, and thus, no hearing was held. The initial public comment period was from April 18, 1986, to June 17, 1986. A 1-month extension ending July 17, 1986, was granted at the request of one commenter. A total of nine comment letters were received. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed revisions.

Significant Comments and Changes to the Proposed Revisions

Comments on the proposed revisions were received from five local sewer and sanitary districts, an engineering consulting firm, an environmental group, and a State environmental agency. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serves as the basis for the changes that have been made to the revised requirements between proposal and promulgation. The major comments and responses (i.e., the comments that resulted in changes to the proposed revisions) are summarized in this preamble. Most of the comment letters contained multiple comments. The comments were divided into the following areas: Monitoring requirements, reporting requirements, performance test requirements, and miscellaneous. Changes to the proposed revisions have been made in response to comments on monitoring and performance test requirements.

Changes to Proposed Monitoring Requirements

In response to the public comments, several changes and clarifications have been made to the proposed monitoring requirements. First, the proposed alternative requirement for plants to monitor incinerator exhaust gas flow rate in lieu of oxygen content of the incinerator exhaust, temperature profile of the incinerator, fuel use, and moisture and volatiles content of the sludge has been withdrawn. Second, the proposed monitoring, recordkeeping, and reporting requirements for incinerator temperature, fuel use, and sludge moisture and volatiles content have been modified to exempt incinerators for which the average particulate emission rate during the most recent performance test was less than or equal to 0.38 g/kg

of dry sludge input (0.75 lb/ton). Third, a requirement for incinerators to continuously monitor and record the sludge feed rate to the incinerator has been added; hourly averages of sludge feed rate are to be reported for days when a decrease in scrubber pressure drop or increase in exhaust gas oxygen content is reported. This requirement applies only to incinerators for which the average particulate emission rate during the most recent performance test was greater than 0.38 g/kg of dry sludge input (0.75 lb/ton). Fourth, the specific requirements for locating oxygen monitors have been replaced with a general requirement that monitors be placed upstream of sources of dilution air. Fifth, the number of thermocouples required in multiple hearth incinerators to measure the temperature profile of the incinerator has been reduced from three thermocouples per hearth to one thermocouple per hearth in the cooling and drying zones and at least two thermocouples per hearth in the combustion zone. For electric incinerators, one thermocouple in each of the cooling and drying zones and at least two thermocouples in the combustion zone are required. For fluidized bed incinerators, one thermocouple in the bed and one in the outlet of the incinerator are required.

Three commenters suggested the withdrawal of the alternative to monitor incinerator exhaust flow rate in lieu of exhaust oxygen content. Two of the commenters gave supporting evidence for their conclusion that the measurement of gas flow from the incinerator does not indicate how the incinerator has been operated or how well control equipment has functioned. The first of these commenters provided test data from his facility which showed no correlation between particulate emissions and incinerator exhaust gas flowrate. The second commenter described incinerator operating conditions which could result in elevated particulate emissions within normal incinerator exhaust rates. The third commenter noted that he knew of no accurate and reliable way to measure and continuously record the exhaust gas volumetric flowrate.

Based on review of these comments, EPA now believes that measurement of incinerator exhaust gas alone would be insufficient for detecting all periods of potential increased particulate emissions. To be effective, other incinerator operating parameters would have to be measured such as incinerator temperature, sludge feed rate, and sludge moisture and volatiles content. Requiring these additional monitoring

requirements along with the requirement for monitoring exhaust gas flow would negate the intent of providing plants with a less burdensome monitoring alternative. Further, information on incinerator exhaust gas flow alone would provide insufficient data for correlating emission rates with specific incinerator operating parameters. For these reasons, EPA has decided to delete the alternative requirement for measuring incinerator exhaust flow and, except as described below, to require all plants to monitor oxygen content of incinerator exhaust, temperature profile, fuel use, and sludge volatiles and moisture content.

Several commenters questioned the need and basis for the proposed monitoring requirements, stating that the correlation between the control device and incinerator operating parameters and particulate emissions has not been demonstrated. One commenter suggested that EPA require plants to monitor operations only after a site-specific study has been performed to establish such a correlation for each incinerator subject to the standard. Finally, two of the commenters suggested that EPA allow direct measurement of particulate emissions through more frequent performance tests in lieu of the proposed monitoring requirements.

The EPA has been unable to establish a direct quantitative correlation between particulate emissions and scrubber pressure drop that would apply to all incinerators. However, EPA has found that, for a given incinerator, proper operation and maintenance of wet scrubbing control devices is key in minimizing particulate emissions and, further, that the manner in which an incinerator is operated can also affect particulate emissions. For this reason, EPA believes it is reasonable to require monitoring, recordkeeping, and reporting of scrubber pressure drop and certain incinerator operating conditions despite the lack of a direct quantitative correlation between these parameters and particulate emissions. The EPA believes that such a requirement would be less burdensome than requiring all plants to individually conduct studies to establish an incinerator-specific correlation between control device and incinerator operating conditions and particulate emissions. In addition, the suggested alternative to allow more frequent performance tests in lieu of monitoring, recordkeeping, and reporting of control device and incinerator operating parameters is rejected because, although performance tests provide direct emissions measurements,

they represent average performance over a 4 to 5 day period only and may not be representative of the variations in control device and incinerator operating conditions that occur at other times.

After consideration of these comments, EPA continues to believe that monitoring of scrubber pressure drop and other incinerator operating parameters (including incinerator exhaust gas oxygen content, temperature profile, fuel use, and sludge moisture and volatiles content) are reasonable and will be useful to incinerator operators and compliance and enforcement personnel in detecting and analyzing periods of potential excess particulate emissions. However, EPA recognizes that compliance with some of these requirements may not be necessary for all facilities, particularly those from which particulate emissions have been demonstrated to be well below the NSPS limit. Accordingly, EPA has decided to exempt those incinerators with average particulate emissions measurements of less than or equal to 0.38 g/kg of dry sludge input (0.75 lb/ton) from all continuous monitoring, recordkeeping, and reporting requirements except those related to scrubber pressure drop and incinerator exhaust gas oxygen content. All sludge incinerators subject to the NSPS will be required to conduct a performance test following promulgation of these revisions during which all control device and incinerator parameters are monitored. Following the performance test, all facilities will be required to monitor, record, and report scrubber pressure drop and incinerator exhaust gas oxygen content as proposed. However, only those facilities with average particulate emissions measurements exceeding 0.38 g/kg of dry sludge input (0.75 lb/kg) will be required to continuously monitor, record, and report incinerator temperature profile and fuel use, and to perform daily sampling and analysis of sludge moisture and volatiles content. The EPA believes this exemption is reasonable because it will focus the more comprehensive information collection on those facilities which are operating relatively close to the NSPS emission limit. Variations in incinerator operation at these facilities are more likely to result in excess emissions than at facilities where compliance was demonstrated by a wider margin. This exemption is also expected to provide incentive to incinerator owners and operators to evaluate and identify those control device and incinerator operating conditions which ensure low particulate emissions prior to the performance test.

A requirement for continuous monitoring and recording of sludge feed rate was suggested by one commenter to aid in evaluating operation of sewage sludge incinerators. The EPA agrees that information on continuous sludge feed rates would be beneficial to the Agency in evaluating causes for potential periods of increased particulate emissions (as indicated by changes in either scrubber pressure drop or oxygen content). The cost of monitoring and recording sludge feed rates would be minimal since the measuring devices have already been installed in compliance with performance testing requirements of the existing standard. Therefore, EPA is including this requirement in the promulgated standard. The amount of hourly sludge feed, either by mass or volume, will be monitored and recorded on a continuous basis. Reporting of the amount of hourly sludge feed will be only for those periods that must be reported on because of either variations in scrubber pressure drop or changes in exhaust gas oxygen content. This requirement will apply only to incinerators from which particulate emissions are measured to be greater than 0.38 g/kg of dry sludge input (0.75 lb/ton).

Three commenters took issue with the proposed location requirements for oxygen monitors. All three commented that the proposed monitoring locations would present operational problems and described their successful experiences in placing oxygen analyzers at other locations.

The proposed revisions required the following specific locations for monitoring oxygen levels. In multiple-hearth incinerators, oxygen levels would be monitored at the uppermost hearth. For fluidized-bed and other incinerator types, oxygen levels would be measured at any point upstream of the inlet to the emissions control device. These locations were specified to avoid erroneous measurements due to in-leakage of air. As pointed out by one commenter, many multiple-hearth incinerators are designed with the center shaft cooling air by-pass injected downstream of the scrubber (not in the incinerator exhaust), so that effects of this in-leakage can be avoided even if the monitor is placed after the scrubber. Another commenter pointed out that existing oxygen monitors at other locations than the top hearth of multiple-hearth incinerations yield acceptable oxygen measurements since they are upstream of any significant source of air in-leakage. The commenters' facilities already have oxygen monitors which would have to

be relocated under the proposed revision.

To avoid unnecessary relocation of existing oxygen monitors, EPA is revising the requirement for oxygen monitors by removing the specific location requirements for multiple-hearth and fluidized-bed incinerators. In its place, a requirement has been added that oxygen monitors be located upstream of significant sources of air dilution including center shaft, cooling air by-pass inlets, fans, and ambient air recirculation dampers.

Four commenters addressed the proposed requirement for monitoring the incinerator operating temperature. Specifically, the commenters questioned the need for three thermocouples per hearth in multiple-hearth incinerators and requested clarification on the requirements for locating the thermocouples and recording the temperatures indicated by the thermocouples.

The EPA agrees with the commenters that only one operating thermocouple is adequate for providing information on incinerator temperature trends in the drying and cooling hearths of multiple-hearth incinerators. However, the practice reported by one commenter of operating redundant thermocouples is considered by EPA to be good operating practice in the event that one or more thermocouples become inoperable. In the combustion zone, multiple thermocouples may be necessary to determine representative hearth temperatures due to the larger fluctuation in hearth temperatures (i.e., from startups and shutdowns) and due to fluctuations in temperature within the hearth (i.e., depending on proximity to the burner(s), access hatches, drop holes, etc.). Further, EPA believes it is common industry practice to operate several thermocouples for control purposes in the combustion hearths of multiple-hearth incinerators. For these reasons, EPA is modifying the requirements for monitoring incinerator operating temperatures to require one thermocouple per hearth in the drying and cooling hearths of multiple-hearth incinerators and two or more thermocouples per hearth in the combustion hearths of multiple-hearth incinerators. Similarly, EPA is modifying the requirements for electric and fluidized bed incinerators to require one thermocouple in each of the drying and cooling zones and at least two thermocouples in the combustion zone of electric incinerators and one thermocouple in the bed and outlet of fluidized bed incinerators. However, it should be noted that EPA encourages

the use of redundant instrumentation (i.e., two or more thermocouples) in all incinerator types.

The location of the thermocouples within the incinerator is not specified by EPA. It is intended that facilities utilize currently installed thermocouples to the extent practicable. It is important that thermocouples remain in the same location during normal incineration operation and during the compliance test. This will help ensure against false readings of incinerator temperature trends from changing the location where temperature is monitored compared to changes in actual operating temperatures. The EPA believes it is good practice to locate the thermocouples away from incinerator features such as burners, access hatches, and drop holes to minimize fluctuations in temperature resulting from these features.

When temperature is monitored by more than one thermocouple in a hearth (or zone), facilities should report the average hearth temperature as part of the incinerator temperature profile. It is important that temperatures be reported on the same basis they were recorded during the compliance test.

Changes to Proposed Performance Test Requirements.

In response to public comments concerning the performance test requirements for metals analysis, the performance test requirements for metals analysis have been modified to allow plants to analyze for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc either by atomic absorption or neutron activation. In addition, the regulation has been modified to more clearly indicate that this analysis is a one-time requirement.

Four commenters addressed the proposed requirements for measuring metals during the performance test. One commenter questioned the proposal to test sludge emissions for metals in the absence of standards for metals. Another commenter stated that the testing of these metals during performance tests would be difficult and expensive. This commenter wanted the requirement to be deleted once a correlation between sludge metals concentration and metals emissions has been established. Two commenters addressed the specified test methods on the basis of accuracy, availability, and cost.

In response, EPA notes that the proposal preamble explained that it is EPA's intention to consolidate existing waste management authorities with the broad authorities provided under Section 405 of the Clean Water Act.

Section 405(d) of the Clean Water Act requires EPA to develop regulations for the use and disposal of sewage sludge. The measurement of metals will assist the Agency in establishing guidelines for State and local sludge management programs. Also, this will assist the Agency in determining if future regulatory action is warranted.

Additionally, EPA evaluated the expense and difficulty of performing the metals emissions analyses. Since no special emissions testing equipment and procedures would be needed, the added expense is limited to the analytical laboratory cost. Based on contacts with laboratories that perform metal analyses, both atomic absorption and neutron activation methods are comparable in cost. However, very few laboratories are equipped for neutron activation analysis. For this reason, EPA is modifying the requirements for using neutron activation analysis. Since there is not significant difference in the accuracy of the two methods, atomic absorption may be used in the place of neutron activation for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc. The estimated costs to facilities to perform metals analyses on sludge and particulate emission samples collected during performance tests is estimated at \$1,200 per test. This cost would only be incurred once per facility.

It is unclear whether the commenter who requested that the requirements for metals analysis be deleted, once a correlation between sludge metals concentrations and metals emissions has been established, was referring to the establishment of a universal correlation that could be applied to all incinerators or whether the commenter was referring to establishment of facility or plant-specific correlations. The emissions of metals are affected by a combination of factors beyond the metals content of the sludge, including the incinerator design, its operating condition, and the particulate emission control system applied. Consequently, it is doubtful whether a universal correlation could be established. However, for a particular system design and method of operation, it would seem reasonable that a facility or site-specific correlation could be established. Regardless, it is not EPA's intention to require each source to perform a metals analysis for every particulate performance test that may be conducted. As stated previously, the proposed regulation has been modified to indicate more clearly that this is a one-time analysis.

Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed again 4 years from the date of these revisions as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Information collection requirements associated with this regulation (those included in 40 CFR Part 60, Subpart A and Subpart O) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060-0035).

Public reporting burden for this collection of information is established to be 7,820 hours per year with an average of 120 hours per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Reporting burden per response ranges from 60 to 180 hours per response depending on whether a facility is exempt from certain recordkeeping and reporting requirements and whether the reporting trigger has been exceeded. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and

to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule" because it will not have an annual effect on the economy of \$100 million or more, result in a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, or innovations. The Agency has, therefore, concluded that this regulation is not a "major rule" under Executive Order 12291.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these revisions impose no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that these revisions will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Sewage treatment plants.

Date: September 26, 1988.

Lee M. Thomas,
Administrator.

For the reasons set forth in the preamble, 40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In § 60.153, paragraph (a)(1) is revised and paragraphs (b), (c), (d), and (e) are added to read as follows ((a) introductory text is republished):

§ 60.153 Monitoring of operations.

(a) The owner or operator of any sludge incinerator subject to the provisions of this subpart shall:

(1) Install, calibrate, maintain, and operate a flow measuring device which can be used to determine either the mass or volume of sludge charged to the incinerator. The flow measuring device shall be certified by the manufacturer to have an accuracy of ± 5 percent over its operating range. Except as provided in paragraph (d) of this section, the flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator.

(2) * * *

(3) * * *

(b) The owner or operator of any multiple hearth, fluidized bed, or electric sludge incinerator subject to the provisions of this subpart shall comply with the requirements of paragraph (a) of this section and:

(1) For incinerators equipped with a wet scrubbing device, install, calibrate, maintain and operate a monitoring device that continuously measures and records the pressure drop of the gas flow through the wet scrubbing device. Where a combination of wet scrubbers is used in series, the pressure drop of the gas flow through the combined system shall be continuously monitored. The device used to monitor scrubber pressure drop shall be certified by the manufacturer to be accurate within ± 250 pascals (± 1 inch water gauge) and shall be calibrated on an annual basis in accordance with the manufacturer's instructions.

(2) Install, calibrate, maintain and operate a monitoring device that continuously measures and records the oxygen content of the incinerator exhaust gas. The oxygen monitor shall be located upstream of any rabble shaft cooling air inlet into the incinerator exhaust gas stream, fan, ambient air recirculation damper, or any other source of dilution air. The oxygen monitoring device shall be certified by the manufacturer to have a relative accuracy of ± 5 percent over its operating range and shall be calibrated according to method(s) prescribed by the manufacturer at least once each 24-hour operating period.

(3) Install, calibrate, maintain and operate temperature measuring devices at every hearth in multiple hearth furnaces; in the bed and outlet of fluidized bed incinerators; and in the drying, combustion, and cooling zones of electric incinerators. For multiple hearth furnaces, a minimum of one thermocouple shall be installed in each

hearth in the cooling and drying zones, and a minimum of two thermocouples shall be installed in each hearth in the combustion zone. For electric incinerators, a minimum of one thermocouple shall be installed in the drying zone and one in the cooling zone, and a minimum of two thermocouples shall be installed in the combustion zone. Each temperature measuring device shall be certified by the manufacturer to have an accuracy of ± 5 percent over its operating range. Except as provided in paragraph (d) of this section, the temperature monitoring devices shall be operated continuously and data recorded during all periods of operation of the incinerator.

(4) Install, calibrate, maintain and operate a device for measuring the fuel flow to the incinerator. The flow measuring device shall be certified by the manufacturer to have an accuracy of ± 5 percent over its operating range. Except as provided in paragraph (d) of the section, the fuel flow measuring device shall be operated continuously and data recorded during all periods of operation of the incinerator.

(5) Except as provided in paragraph (d) of this section, collect and analyze a grab sample of the sludge fed to the incinerator once per day. The dry sludge content and the volatile solids content of the sample shall be determined in accordance with the method specified under § 60.154(c)(2), except that the determination of volatile solids, step (3)(b) of the method, may not be deleted.

(c) The owner or operator of any multiple hearth, fluidized bed, or electric sludge incinerator subject to the provisions of this subpart shall retain the following information and make it available for inspection by the Administrator for a minimum of 2 years:

(1) For incinerators equipped with a wet scrubbing device, a record of the measured pressure drop of the gas flow through the wet scrubbing device, as required by paragraph (b)(1) of this section.

(2) A record of the measured oxygen content of the incinerator exhaust gas, as required by paragraph (b)(2) of this section.

(3) A record of the rate of sludge charged to the incinerator, the measured temperatures of the incinerator, the fuel flow to the incinerator, and the total solids and volatile solids content of the sludge charged to the incinerator, as required by paragraphs (a)(1), (b)(3), (b)(4), and (b)(5) of this section.

(d) The owner or operator of any multiple hearth, fluidized bed, or electric sludge incinerator subject to the provisions of this subpart from which

the particulate matter emission rate measured during the performance test required under § 60.154(d) is less than or equal to 0.38 g/kg of dry sludge input (0.75 lb/ton) shall be required to comply with the requirements in paragraphs (a), (b), and (c) of this section during all periods of this incinerator following the performance test except that:

(1) Continuous operation of the monitoring devices and data recorders in paragraphs (a)(1), (b)(3), and (b)(4) of this section shall not be required.

(2) Daily sampling and analysis of sludge feed in paragraph (b)(5) of this section shall not be required.

(3) Recordkeeping specified in paragraph (c)(3) of this section shall not be required.

(e) The owner or operator of any sludge incinerator other than a multiple hearth, fluidized bed, or electric incinerator or any sludge incinerator equipped with a control device other than a wet scrubber shall submit to the Administrator for approval a plan for monitoring and recording incinerator and control device operation parameters. The plan shall be submitted to the Administrator:

(1) No later than 90 days after October 6, 1988, for sources which have provided notification of commencement of construction prior to October 6, 1988.

(2) No later than 90 days after the notification of commencement of construction, for sources which provide notification of commencement of construction on or after October 6, 1988.

(3) At least 90 days prior to the date on which the new control device becomes operative, for sources switching to a control device other than a wet scrubber.

3. In § 60.154, paragraph (d) is added to read as follows:

§ 60.154 Test methods and procedures.

(d) The owner or operator of any sludge incinerator subject to the provisions of this subpart shall conduct a performance test during which the monitoring and recording devices required under § 60.153 (a)(1), (b)(1), (b)(2), (b)(3), and (b)(4), are installed and operating and for which the sampling and analysis procedures required under § 60.153(b)(5) are performed. The owner or operator shall provide the Administrator at least 30 days prior notice of the performance test to afford the Administrator the opportunity to have an observer present.

(1) For incinerators that commenced construction or modification on or before April 18, 1986, the performance test shall be conducted within 360 days of the effective date of these regulations

unless the monitoring and recording devices required under § 60.153 (a)(1), (b)(1), (b)(2), (b)(3), and (b)(4) were installed and operating and the sampling and analysis procedures required under § 60.153 (b)(5) were performed during the most recent performance test and a record of the measurements taken during the performance test is available.

(2) For incinerators that commence construction or modification after April 18, 1986, the date of the performance test shall be determined by the requirements in § 60.8.

(3) For the initial performance test required by paragraph (d) of this section, the three samples collected by Test Method 5 shall be analyzed first for particulate mass and then in one of the following two ways:

(i) Two samples shall be analyzed by neutron activation for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc; and one sample shall be analyzed by atomic absorption for beryllium and lead. The sample analyzed for beryllium and lead shall be analyzed according to Method 104 and Method 12, respectively.

(ii) Three samples shall be analyzed by atomic absorption for arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, and zinc. The samples shall be analyzed for arsenic, beryllium, and lead according to Method 108, Method 104, and Method 12, respectively. The samples shall be analyzed for cadmium, chromium, copper, nickel, selenium, and zinc according to standard analytical procedures as recommended by atomic absorption equipment manufacturers.

(4) During the initial performance test required by paragraph (d) of this section, sludge samples shall be collected for the purpose of determining the metals content of the sludge. Samples shall be collected from the sludge charged to the incinerator at the beginning of each run and at approximately 30 minute intervals thereafter until the test run ends. The sludge samples collected during each test run shall be combined into a single composite sample. During the performance test, three composite samples shall be generated. The composite samples shall be analyzed in one of the following two ways:

(i) The composite samples shall be analyzed for arsenic, cadmium, chromium, copper, nickel, selenium, and zinc by neutron activation procedures, and for beryllium and lead by atomic absorption according to Method 104 and Method 12, respectively.

(ii) The composite samples shall be analyzed by atomic absorption for arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, and zinc.

The samples shall be analyzed for arsenic, beryllium, and lead according to Method 108, Method 104, and Method 12, respectively. The samples shall be analyzed for cadmium, chromium, copper, nickel, selenium, and zinc according to standard analytical procedures as recommended by atomic absorption equipment manufacturers.

(5) The requirements of paragraphs (d)(3) and (d)(4) of this section shall apply only during the first performance test required pursuant to these regulations.

4. Add § 60.155 as follows:

§ 60.155 Reporting.

(a) The owner or operator of any multiple hearth, fluidized bed, or electric sludge incinerator subject to the provisions of this subpart shall submit to the Administrator semi-annually a report in writing which contains the following:

(1) A record of average scrubber pressure drop measurements for each period of 15 minutes duration or more during which the pressure drop of the scrubber was less than, by a percentage specified below, the average scrubber pressure drop measured during the most recent performance test. The percent reduction in scrubber pressure drop for which a report is required shall be determined as follows:

(i) For incinerators that achieved an average particulate matter emission rate of 0.38 kg/Mg (0.75 lb/ton) dry sludge input or less during the most recent performance test, a scrubber pressure drop reduction of more than 30 percent from the average scrubber pressure drop recorded during the most recent performance test shall be reported.

(ii) For incinerators that achieved an average particulate matter emission rate of greater than 0.38 kg/Mg (0.75 lb/ton) dry sludge input during the most recent performance test, a percent reduction in pressure drop greater than that calculated according to the following equation shall be reported:

$$P = -111E + 72.15$$

where P = Percent reduction in pressure drop, and

E = Average particulate matter emissions (kg/megagram)

(2) A record of average oxygen content in the incinerator exhaust gas for each period of 1-hour duration or more that the oxygen content of the incinerator exhaust gas exceeds the average oxygen content measured during the most recent performance test by more than 3 percent.

(b) The owner or operator of any multiple hearth, fluidized bed, or electric sludge incinerator from which the

average particulate matter emission rate measured during the performance test required under § 60.154(d) exceeds 0.38 g/kg of dry sludge input (0.75 lb/ton of dry sludge input) shall include in the report for each calendar day that a decrease in scrubber pressure drop or increase in oxygen content of exhaust gas is reported a record of the following:

(1) Scrubber pressure drop averaged over each 1-hour incinerator operating period.

(2) Oxygen content in the incinerator exhaust averaged over each 1-hour incinerator operating period.

(3) Temperatures of every hearth in multiple hearth incinerators; of the bed and outlet of fluidized bed incinerators; and of the drying, combustion, and

cooling zones of electric incinerators averaged over each 1-hour incinerator operating period.

(4) Rate of sludge charged to the incinerator averaged over each 1-hour incinerator operating period.

(5) Incinerator fuel use averaged over each 8-hour incinerator operating period.

(6) Moisture and volatile solids content of the daily grab sample of sludge charged to the incinerator.

(c) The owner or operator of any sludge incinerator other than a multiple hearth, fluidized bed, or electric incinerator or any sludge incinerator equipped with a control device other than a wet scrubber shall include in the semi-annual report a record of control

device operation measurements, as specified in the plan approved under § 60.153(e).

5. Add § 60.156, Delegation of Authority, as follows:

§ 60.156 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: § 60.153(e).

[FR Doc. 88-22917 Filed 10-5-88; 8:45 am]

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Registered Trademark

Thursday
October 6, 1988

Part IV

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Deposit of Biological Materials for Patent Purposes; Notice of Proposed Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 70635-8153]

Deposit of Biological Materials for Patent Purposes

AGENCY: Patent and Trademark Office, Commerce.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This notice sets forth rules that the Patent and Trademark Office (Office) is proposing to govern the deposit of biological materials for patent purposes. The proposals are directed to the procedural requirements for making a deposit of a biological material for patent purposes in the United States when it is determined that a deposit is necessary. In addition to the examining procedures, the proposals address the conditions which are required for an acceptable deposit, replacement of a deposit, and conditions which may be placed on access to the deposit once the patent is granted. Interested parties are invited to comment on the proposed rules.

DATES: Comments must be received on or before January 9, 1989 to insure consideration. A public hearing will be held on January 11, 1989, beginning at 9:30 a.m. Requests to present oral testimony at the hearing should be received on or before January 9, 1989.

ADDRESS: Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231 marked to the attention of Charles E. Van Horn.

The hearing will be held in the Commissioner's Conference Room in Crystal Park 2, Room 912. Written comments and a transcript of the public hearing will be available for public inspection in Crystal Plaza Building 2-5C15.

FOR FURTHER INFORMATION CONTACT: Charles E. Van Horn or Harris A. Pitlick by telephone at (703) 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Every patent must contain a written description of the invention sufficient to enable a person skilled in the art to which the invention pertains to make and use the invention. Where the invention involves a biological material and words alone cannot sufficiently describe how to make and use the invention in a reproducible or

repeatable manner, the required biological material must either be known and readily available and likely to continue to be available or be deposited in a suitable depository to obtain a patent. Access to a deposit during the pendency of a patent application relying upon it will be governed by the same criteria used to consider access to the patent application. Samples of the deposited material must become publicly available upon issuance of the patent. The deposit will be considered part of the patent disclosure.

A draft policy statement on the deposit of biological materials for patent purposes was circulated among interested bar and industry groups and published in the BNA-Patent, Trademark and Copyright Journal on May 22, 1988. After reviewing written comments on the statement, an advance notice of proposed rulemaking setting forth rules being considered for deposits of biological materials for patent purposes was published on September 9, 1987 in the *Federal Register*, 52 FR 34080, and on September 29, 1987 in the official Gazette, 1082 O.G. 47. Numerous organizations and individuals filed comments in response to the advance notice.

The rules being proposed by the Office prescribe the conditions under which a deposit may be made, the kinds of materials that may be deposited, the type of depository which is acceptable to the Office, the time for making an original deposit, the procedures and obligations applicable to the making and maintaining of a deposit and its possible replacement, the term of a deposit and other matters relating to the deposit of a biological material for patent purposes. In general, the rules being proposed by the Office would continue and clarify both long-standing practices of the Office and judicially developed principles of patent law. The explanations associated with the rules that are ultimately adopted along with the substantive content of the comments and responses concerning the draft policy statement, the advance notice of proposed rulemaking and this notice of proposed rulemaking will be incorporated into a set of guidelines that will be published in the manual of Patent Examining Procedure.

Familiarity with the advance notice is assumed. Changes in the text of the rules proposed in this notice from the text of the rules published for comment in the advance notice are discussed.

The comments received in response to the advance notice are analyzed.

Changes in Text of Advance Notice

Several changes have been made in the text of the rules being proposed from the text of the rules which were published for comment in the advance notice. Those changes are discussed below.

Section 1.200 as published in the advance notice has been revised by replacing the term "after insertion in a host" in the first sentence with "indirectly." The former term was too narrow in scope. Indirect replication is meant to include those situations where the biological material is only capable of replication when another self-replicating biological material is present. Self-replication after insertion in a host is one example of indirect self-replication. Examples of indirect replicating biological materials include viruses, phages, plasmids, symbionts, and replication defective cells.

Section 1.200 has been further changed by modifying the list of representative examples in the second sentence to include at least one material listed in the third sentence to indicate the lists are not intended to be mutually exclusive.

Section 1.200 has been further changed by deleting the last sentence thereof so that no materials are explicitly excluded from the definition of biological material.

Section 1.201(a) as published in the advance notice has been completely rewritten so as not to refer to specific requirements of 35 U.S.C. 112. The rule as proposed states that where a claimed invention is or relies on a biological material which is not known and readily available to the public and which cannot be described in writing alone, the disclosure may include a deposit of a biological material deposited in a depository and under conditions complying with these regulations.

Section 1.201(b) as published in the advance notice has been revised by replacing the term "in a reproducible manner" with the term "without undue experimentation" to assure the same standard for enablement regardless of whether biological materials are involved.

Section 1.201(b) has been further changed by deleting the second sentence thereof. The definition of "known and readily available" is not intended to be limited by rule. In the third sentence thereof (now the second sentence thereof), the term "accessible" has been replaced with "readily available" for consistency in terminology.

Section 1.201(c) as published in the advance notice has been revised by

deleting the term "one or more requirements of" as redundant and to avoid any suggestion of limitation as to the number of requirements of 35 U.S.C. 112 which can be met with the filing of a deposit.

Sections 1.202 (a) and (b) as published in the advance notice have been changed to §§ 1.202(a)(i) and 1.202(a)(ii), respectively, and revised to indicate that a deposit "shall" be made in an acceptable depository under paragraph (a)(i) or (a)(ii). The Office will not accept for patent purposes any deposit not made in a depository under § 1.202(a).

Upon publication of final rules on the deposit of biological materials for patent purposes, the Office will publish a list of International Depository Authorities (IDAs). Any other depository seeking status under paragraph (a)(ii) of § 1.202 would be required to comply with the applicable rule as adopted.

Section 1.202(b) as published in the advance notice has been changed in proposed § 1.202(a)(ii) by including governmental agencies among the impartial consultants and by simplifying the language in subparagraph (3).

Section 1.202(c) as published in the advance notice has been changed to § 1.202(b). It has been revised to refer to a depository under paragraph (a) of this section and to indicate that the substitute deposit must be viable when the biological material is of a kind capable of self-replication.

Section 1.202(d) as published in the advance notice has been changed to § 1.202(c). It has been revised to refer to a depository seeking or acquiring status under paragraph (a)(ii) of this section. The word "said" in subparagraph (5) has been deleted and appropriate commas inserted in subparagraphs (4) and (5).

A new paragraph (d) is proposed to be added which would prescribe how an acceptable depository limited to certain kinds of biological material may extend the kinds of such material for which it wishes to be recognized by the Office.

Section 1.203(a) as published in the advance notice has been rearranged to clarify that a requirement for a deposit by the examiner will be made no later than the date the Notice of Allowance and Issue Fee Due is mailed.

Section 1.203(b) as published in the advance notice has been revised by deleting the terms "in a depository defined in §§ 1.202 (a) and (b)" and "in the depository defined in §§ 1.202 (a) or (b)." These terms are now redundant in view of the proposed change to §§ 1.202 (a) and (b) as published in the advance notice. Section 1.203(b) has been further revised by adding that the applicant shall promptly submit the verified statement but that when the person

corroborating the fact that the biological material which is deposited is the same as the biological material described in the application as filed is an attorney or agent registered to practice before the Office, the statement need not be verified. The language for the content of the statement has been rearranged to require that the biological material which is deposited is the same biological material described in the application as filed.

Section 1.204 as published in the advance notice has been changed to indicate changes in the conditions under which a replacement deposit may be made.

Section 1.204(a) has been changed to indicate that the rule prescribing the time for making a replacement deposit is subject to proposed paragraphs (e), (f) and (g) of the rule and that this time is extendable upon petition, only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action is due, but in no case will the mere filing of the request effect any extension. The word "new" has been replaced with "replacement" to provide antecedent basis for "replacement" later on in the paragraph.

Section 1.204(a) has been further changed to indicate that a replacement deposit shall be made in any acceptable depository under § 1.202(a). The Office believes that where a replacement is necessary, the depositor should be free to make a replacement in any acceptable depository even through a new depository may consider it to be a new deposit.

Section 1.204(b) has been changed by adding the term "if applicable" after "viability test." Where the biological material deposited is of a material not capable of self-replication, a viability test clearly would not apply. It is the current position of the Office that a material that cannot be replicated directly or indirectly cannot form a proper basis for a deposit of biological material, but that is an issue of substantive patent law not addressed by these proposed rules.

Section 1.204(b) has been further changed by rearranging the first sentence thereof to clarify that notification to the Office of a replacement deposit is to be made in each affected application or patent. The penultimate sentence of § 1.204(b) has been changed by replacing the term "the original deposit" with "that originally deposited" to make it clear that the replacement deposit is to be the same as the original deposit, as deposited.

Section 1.204(b) has been further changed to distinguish between the type

of statement which must be furnished in connection with a replacement deposit in a pending application vis-a-vis a patent. If in a pending application, the statement shall state that the biological material which is deposited as a replacement is the same biological material described in the application as filed. If in a patent, the statement shall state that the replacement deposit is identical to that originally deposited. The statement must be verified by a person in a position to corroborate the facts listed in the statement except where the person is an attorney or agent registered to practice before the Office, in which case the statement need not be verified.

Section 1.204(c) has been changed by replacing the term "three months after learning or after receiving written notice from a depository that a replacement deposit is needed" with "the time required in this section."

Section 1.204(d) has been clarified by changing "replaced sample" to "replacement deposit." Also, the term "application or" has been deleted since its continued presence would be inconsistent with other changes in § 1.204 as published in the advance notice.

A new paragraph (e) to § 1.204 as published in the advance notice is proposed to be added to indicate that in a pending application, the time for making a replacement deposit is the same as the time for making an original deposit, that the applicant shall promptly notify the Office after receiving notice that the depository possessing the original deposit cannot furnish samples for any reason, and that a replacement deposit can be made for any reason.

A new paragraph (f) to § 1.204 as published in the advance notice is proposed to be added to indicate that a replacement deposit is unnecessary where the biological material, in accordance with proposed § 1.201(b), need not be deposited.

A new paragraph (g) to § 1.204 as published in the advance notice is proposed to be added to indicate that no replacement deposit of the biological material is necessary where a viable deposit is in the depository but the depository, for national security, health or environmental safety reasons, is unable to provide samples to requesters outside of the jurisdiction where the depository is located.

A new paragraph (h) to § 1.204 as published in the advance notice is proposed to be added to indicate that a viable deposit may not be replaced in a patent where the depository can furnish

samples but that nothing in the regulations is intended to prohibit a patentee from making an additional deposit of a biological material where an earlier deposit, otherwise viable, has become contaminated or has lost its capability to function as described in the specification. A viable deposit, relied on for patent purposes, even though contaminated or no longer capable of functioning as described in the specification, would provide the best evidence of whatever it was that was originally deposited and should be preserved.

Section 1.206 as published in the advance notice has been changed to indicate that viability is only relevant to biological materials that are capable of self-replication either directly or indirectly.

Paragraph (a) of § 1.206 has been changed by inserting, after the term "biological material," the term "that is capable of self-replication either directly or indirectly." The term "relative to" in the last sentence of paragraph (a) has been changed to "regarding."

Paragraph (b) of § 1.206 has been changed by inserting, after the term "for each deposit," the term "of a biological material defined in paragraph (a) of this section." In both paragraphs (b)(1) and (b)(2), an editorial change has been made by changing "Name" to "The name."

Paragraph (c) of § 1.206 has been changed by replacing "§ 1.202(a) or (b)" with "§ 1.202(a)" to be consistent with proposed § 1.202.

Section 1.207 as published in the advance notice has been changed by indicating that certain requirements which a depositor may impose before samples of a deposited biological material shall be furnished by a depository are permissible under the rules.

Paragraphs (a) and (b) of § 1.207 as published in the advance notice, with modification, are now subparagraphs (1) and (2), respectively, under paragraph (a). Subparagraph (2) states that removal of restrictions on the availability of the deposited material upon the granting of the patent are subject to paragraphs (b) and (c). Paragraph (c) as it appeared in the advance notice is now new paragraph (d).

A new paragraph (b) to § 1.207 is proposed to be added which is patterned after Rules 11.4 (c), (e) and (g) of the Budapest Treaty. Paragraph (b) permits the depositor to contract with the depository to require that samples of a deposited biological material shall be furnished only if a request for a sample, made during the term of the patent, is in

writing, signed and dated; contains the name and address of the requesting party and the accession number of the deposit; and is communicated in writing by the depository to the depositor along with a copy of the request, the date on which the sample was furnished, and the name and address of the party to whom the sample was furnished.

A new paragraph (c) to § 1.207 is proposed to be added which permits the depositor to require that samples of a deposited biological material shall be furnished only if the requesting party has agreed in writing, not to make the deposited biological material or any biological material derived therefrom available during the term of the patent to any third party without the written permission of the depositor, and to assume the burden of proof concerning compliance with the agreement. With the exception of the Commissioner and an acceptable depository under § 1.202 in which the requesting party has made a new deposit for patent purposes of the deposited biological material or any biological material derived therefrom, any person or entity other than the requesting party and the depositor shall be deemed to be a third party under this paragraph. For the purposes of this paragraph, any biological material shall be deemed to be derived from the deposited biological material if it is replicated from, or would not have been produced but for access to, the deposited biological material, provided that the derived matter still exhibits the essential characteristics of the deposited biological material.

Both the Commissioner and an acceptable depository under § 1.202 in which the requester has made a deposit for patent purposes are excepted from the scope of the term "third party" in order not to discourage innovation. Without the exception, a requesting party could not obtain a patent on some inventions without either written permission of the depositor or violating the agreement under which the deposit was obtained.

The term "essential characteristics" in the proviso is intended to mean those characteristics of the deposited biological material which are necessary to the practical utility of the deposited materials for any purpose—not simply those that may be necessary to the utility of the invention defined in one or more patents relying on the deposit for patent purposes. This definition has been adopted to provide some measure of protection to the depositor beyond the specific structure, utilities, properties, or functions that are described in the patent(s), yet are nevertheless inherently characteristic of the

deposited material. The definition would include mutations and biological fragments that would be embraced by the doctrine of equivalents—performing substantially the same function in substantially the same way to produce substantially the same result. The definition would also include both obvious and nonobvious modifications of the deposited material so long as they possessed the essential characteristics of the deposited material, even if not known to the depositor. While the discovery of unrecognized functions and properties is to be encouraged, the discovery would not have taken place but for access to the deposited material. Nevertheless, without the proviso as part of the rule, the search for new discoveries based on the deposited material may be discouraged. The Office is seeking to maintain some balance between the interests of the patentee in monitoring the names of those who have gained access to the deposited material during the life of the patent, on the one hand, and the interest in promoting progress in the useful arts, on the other hand. It is recognized that this effort to define an appropriate scope for this undertaking may not meet with unanimous approval. Alternative approaches and suggestions for an appropriate definition are solicited and will be considered.

As an illustration of the scope of proposed § 1.207(c), consider the following hypothetical:

Gene A and gene B are genes located near to one another on the same chromosome in a eukaryote. Genes A and B do not overlap one another. Gene A is molecularly cloned and is the subject of a deposit for patent purposes as a DNA insert in vector V, a plasmid. The hybrid vector is designated as pVA. Vector V is a well-known and publicly available vector.

In each of the situations 1–3 (but not situation 4), it has been assumed that each of the derived materials will possess the essential characteristics of the deposited plasmid.

Situation 1: Requestor R receives from a depository the plasmid pVA. R must receive written permission from the patentee to distribute pVA to a third party.

Situation 2: Requestor R receives from a depository the plasmid pVA and modifies pVA in region A (the insert) in an obvious (within the meaning of 35 U.S.C. 103) manner to produce pVAO. R must receive written permission from the patentee to distribute pVAO to a third party.

Situation 3: Requestor R receives from a depository the plasmid pVA and modifies pVA in an unobvious (within

the meaning of 35 U.S.C. 103) manner to produce pVAU. R must receive written permission from the patentee to distribute the plasmid pVAU to a third party, except that R could file a patent application on pVAU and deposit pVAU in a depository for patent purposes without written permission from the patentee.

Situation 4: Requestor R receives from a depository the plasmid pVA and uses the insert A in pVA as a hybridization probe to isolate genomic DNA from the same eukaryotic species from which gene A was isolated. Insert A is the original probe used to "walk" down the chromosome on which gene B is discovered. Gene B is unrelated, except by chromosomal linkage, to gene A. Gene B when inserted into a vector is patentable. Gene B could not have been isolated any other way than that described here. Gene B is then inserted into vector V to create the patentable plasmid pVB. R need not receive written permission from patentee to distribute pVB to a third party, and R could file a patent application on pVB and deposit pVB in a depository for patent purposes without written permission from the patentee.

This proposed constraint on access to the deposited material after the patent issues does not restrict access to the material to any person to whom the patent disclosure is addressed, and provides an undertaking by one requesting access which is an appropriate aid, given the nature of biological material, to assist the patent owner in the protection of property rights under the patent grant. To comply with the provision as proposed, the requesting party could present a written request for a sample to the depository containing the information and agreement required by proposed paragraphs (b) and (c) of § 1.207.

The Office solicited comments in the advance notice of proposed rulemaking on the advisability of and rationale for seeking a provision in the law that would permit the type of restrictions on access to a deposit after the patent issues that were recommended in the April 8, 1987, World Intellectual Property Organization (WIPO) report on the Industrial Property Protection of Biotechnological Inventions. Most comments received were in favor of the recommended restrictions, but very few provided any thoughtful analysis of why such restrictions are advisable or appropriate. Accordingly, except as noted in proposed §§ 1.207 (b) and (c), the recommendations made in the WIPO report are not being incorporated into

the text of the rules proposed at this time.

The recommendations in the WIPO report which are not being incorporated at this time are those (1) to use the biological material only for experimental purposes concerning the invention, and (2) not to export the biological material except to a country for which a relevant patent has been granted. Although these recommendations are not being included in the proposed rules, the Office may include them in the final rules if the public response provides a justification and rationale for departing from present policy and practice.

It is not clear precisely what the scope of permissible use is of a patented invention during the term of the patent. Mere use of a patented product or process, even for purposes of personal convenience, ordinarily constitutes infringement. *Aro Mfg. Co. v. Convertible Top Co.*, 377 U.S. 476 (1964). There is a line of authority which indicates that a person who makes and uses a patented product does not infringe if the use is for purposes of research or experimentation and not for profit. *Chesterfield v. U.S.*, 159 F.Supp. 371, 116 USPQ 445 (Ct. Cl. 1958). The so-called experimental use exception is discussed in detail in *Roche Products, Inc. v. Bolar Pharmaceutical Co.*, 733 F.2d 858, 221 USPQ 937 (Fed. Cir. 1984). If the recommendation was intended to define the limits of permissible use which are consistent with the right to exclude others under the patent law (35 U.S.C. 154), then there would be no need for the requester to undertake not to do anything other than that which is permitted by law, for the requester would already be bound by the law. It can also be argued that under existing law a person could infringe and challenge the validity of the patent, but the sample could not be used if the person independently undertook not to use the deposited material for other than experimental purposes. If the recommendation was designed to regulate a broader scope of activity than is permitted by law, the Commissioner is without legal authority to propose such a regulation (35 U.S.C. 6). Moreover, it is not clear that the Commissioner has the legal authority to regulate a requester's own use of deposited biological material which is not patented. For example, it is not clear that the Commissioner could propose a rule regulating a requester's own use of an unpatented hybridoma which was deposited for patent purposes to comply with 35 U.S.C. 112 to support claims to a monoclonal antibody produced therefrom. Nor does

the Commissioner have the legal authority to regulate activity which may occur outside the territorial limits of the United States.

Further comment is solicited on the advisability of and necessity for adopting a regulation to limit a requester's use to experimental purposes. Specific suggestions are requested as to how to draft a regulation which both accomplishes the intended purpose and is not inconsistent with law.

The recommendation relating to the prohibition of exporting the biological material raises issues of international comity and requires consideration of a broader spectrum of international harmonization issues. The Budapest Treaty (Article 5) provides that restrictions on exports and imports of microorganisms should apply only where the restriction is necessary in view of national security or the dangers to health or the environment. A concern is what the over-all economic effect would be on the United States if other countries adopted regulations on prohibition of exports similar to the WIPO recommendation. The Office is well aware of the probability that samples of a deposited biological material could be exported from the United States to a country where the invention could be practiced without infringement or compensation to the patent owner, with the possibility of supplying a significant portion of the world market. While such an event would be manifestly unfair to the patent owner, the question remains as to the most effective way to prevent this inequity while preserving a role of the patent system in disseminating information on how to make and use an invention once the patent is granted.

Another issue that is raised by the export constraint is the authority of the Commissioner to implement such a change by regulation. A deposit is, after all, an integral part of the enabling disclosure of the patent grant with which it is associated yet there is no restriction placed on the sale or export of any other patent document or the enabling disclosure contained therein to countries foreign to the United States. While it is recognized that there may be much more technical know-how associated with a sample of a deposited biological material than with a typical patent disclosure, the amount of information required to practice any invention on a commercial scale is partly dependent on the technical simplicity of the invention. Further, if the United States now thinks that such a restriction is in its best interest, it would

provide encouragement to other countries to adopt similar restrictions and retain exclusions from patentable subject matter, for example, that the United States has been encouraging other countries to remove. To unilaterally adopt such a policy may not be in the long term interests of the United States.

Further comment is solicited, with particular consideration of international implications, on the advisability of adopting a regulation to limit a requester's ability to export the biological material and whether such a regulation could be promulgated under existing law. Specific suggestions are requested as to how to draft a regulation which both accomplishes the intended purpose and is not inconsistent with law.

Section 1.208(a) as published in the advance notice has been changed by inserting the term "pursuant to 37 CFR 1.104" after "determine" in the first sentence thereof to make it clear that the examiner's determination regarding any deposit issues is part of, and not separate from, the examination process. The second sentence of paragraph (a) has been changed to indicate that a deposit in any acceptable depository under § 1.202(a) shall be accepted for patent purposes if made under conditions complying with § 1.207(a). The sentence as published in the advance notice limited the applicable depositories to International Depositary Authorities (IDAs). The third sentence of paragraph (a) has been changed by inserting the term "or replaced" after the term "has not been made" to be consistent with the changes made in proposed § 1.204 on replacement deposits.

Section 1.208(b)(1) has been changed by inserting the term "original or replacement" after the first appearance of the term "acceptable" to be consistent with the changes made in proposed § 1.204 on replacement deposits.

Response to and Analysis of Comments

Written comments from twenty (20) sources were timely received in response to the advance notice. Some suggestions made in comments have been adopted as presented or in modified form and others have not been adopted. A detailed analysis of the comments follows.

Comment: Three comments questioned the wisdom of rules on deposit requirements at this time in view of the ongoing evolution in the biotechnology arts, changing ideas about deposit requirements, and a dearth of case law on the subject.

Suggestions were made that the proposed rules instead be incorporated as guidelines in M.P.E.P. § 608.01(p)C.

Response: Issues surrounding deposits of biological materials vis-a-vis patent applications have existed for a long time. See, e.g., *Ex parte Kropp*, 143 USPQ 148 (Bd. Pat. App. 1959). The Office believes that a sufficient number of issues have been decided to warrant the promulgation of regulations at this time as that applicants for patent will have more certainty about what the Office will require in the area of deposits. The proposed rules are designed to address procedural requirements for the deposit of biological materials for patent purposes while preserving flexibility to accommodate changes in substantive law in relation to deposits.

Comment: The proposed rules would trap Americans into losing Paris Convention rights in Japan. The reforms incorporated by the rules should be introduced in the context of discussions on the Budapest Treaty or on a bilateral basis with Japan.

Response: The promulgation of rules to administer deposit practice in the United States will not have any necessary extraterritorial effect outside the United States. Applicants for patents in foreign countries seeking priority based on an earlier filed United States application need to be aware, however, that failure to make a deposit as of the U.S. filing date may preclude the sought after priority.

Comment: The deposit requirement should not be limited to biotechnological inventions but include other arts which require the use of materials which are not known and readily available.

Response: The suggestion is not being adopted. No other arts are known, nor were any suggested, where words alone may be incapable of describing an invention sufficiently to enable one skilled in the art to make and use it in a reproducible manner. Notwithstanding the proposed rules on deposits, 35 U.S.C. 114 provides that an applicant may be required to furnish a model to exhibit the invention or, in the case of a composition of matter, specimens or ingredients for the purpose of inspection or experiment.

Comment: More experience and judicial decisions are needed to determine what should be deposited. The limitation in § 1.200 to materials that are capable of self-replication is too narrow. It should include material that is essential for replication, such as sperm cells, eggs and pollen. It should also include other materials, such as monoclonal antibodies, so long as the material deposited results in satisfaction

of the "how to make" requirement of 35 U.S.C. 112. For example, suppose an inventor invents and claims a novel monoclonal antibody, places the source hybridoma at an accepted depository with the condition that the depository will make the monoclonal antibody readily available upon issuance of the patent but that the hybridoma will remain secret, except to both the Commissioner of Patents and Trademarks at any time and the public once the patent expires. This situation is analogous to *In re Metcalfe*, 410 F.2d 1378, 161 USPQ 789 (CCPA 1969). In the above example, the proposed enablement scheme should be sufficient to comply with the "how to make" requirement of 35 U.S.C. 112. Another comment suggested that proteins and enzymes, where their structures have not been characterized, should not be excluded from materials deposited by deposit of the "host cell capable of reproducing the non-living material."

Response: Biological material continues to be defined in proposed § 1.200 in terms of a non-exhaustive list of what it includes. The last sentence of § 1.200 has been deleted so that the definition of biological material for purposes of these regulations no longer explicitly excludes certain materials. 35 U.S.C. 112 requires that a person skilled in the art be enabled to make and use a claimed invention. The Office does not contemplate that there would be many situations where a material that is not capable of self-replication either directly or indirectly would be acceptable as a deposit under these regulations. An applicant is not precluded, however, in any given case from attempting to show why such a material should be acceptable. Although the Office is of the view that the deposit scheme outlined in the comment does not satisfy the "how to make" requirement of 35 U.S.C. 112, the proposed rules are flexible enough to accommodate either decision on this substantive issue. The proposed rules are intended to address procedural requirements rather than substantive issues relating to deposits.

Comment: Viruses should be included in the second sentence of § 1.200 as well as in the third sentence.

Response: This section has been modified. Viruses are now listed among representative examples of biological materials which may be deposited either directly or indirectly. This is being done to make it clear that the examples of biological materials listed in the second and third sentences of § 1.200 are not necessarily mutually exclusive.

Comment: In response to a solicitation for comments on the question of

whether the Office should consider requiring a deposit of plants in appropriate circumstances where it is clear that a deposit is possible and is necessary to complete the description of an invention under 35 U.S.C. 162, first paragraph, it was suggested that a deposit requirement not be extended to plant patents because it has not been shown that the absence of a requirement has been unsatisfactory. Others suggested such an extension is appropriate provided depositories existed for the particular plant material or depositories were available at a price which small breeders could afford.

Response: The Office does not intend to propose rules on deposits under the Plant Patent Act (35 U.S.C. 161-164) at this time, nor will the Office take the position that a deposit is required under the present provisions of 35 U.S.C. 162.

Comment: In response to a solicitation for comments on the setting of an appropriate minimum number of seeds to ensure availability of the seed through the enforceable life of the patent, it was suggested that the Office not try to set a minimum requirement for number of seeds because it will vary with the nature of the invention. The same comment went on to suggest that the Department of Agriculture participate in resolving questions concerning plant material and seed deposits.

Response: The Office does not intend to propose rules quantifying a minimum number of seeds. However, the Department of Agriculture requires a deposit of 2500 seeds for the grant of a Plant Variety Protection certificate. The Office will consider 2500 to be a minimum number in the normal case, but will provide an applicant an opportunity to provide justification why a lesser number would be suitable under the circumstances of a particular case. As the reproduction of seeds will often take a substantial period of time, the Office will require a number that is likely to satisfy a reasonable demand for samples.

Comment: The advance notice stated that if a hybrid variety is claimed, the Office will take a position that applicant must deposit the parent lines of the hybrid variety unless applicant is able to establish that propagation of the variety can be achieved by micropropagation or other techniques from the hybridized seed or plants grown from such seed, in which case, deposit of the hybrid seed itself would make an adequate deposit. In response, it was suggested that if the hybrid plant is claimed, deposit of the hybrid seed should be all that is required because it will produce a hybrid plant. The

comment goes on to suggest that if the hybrid seed is claimed, the "how to make" requirement is satisfied by depositing the parental or inbred seed under conditions that this seed will become available once the patent expires. The hybrid seed would be publicly available from the depository during the enforceable life of the patent under this arrangement.

Response: The proposed rules are intended to address procedural requirements rather than substantive issues relating to deposits. Whether conditions of deposit as suggested by the comment would be acceptable will have to be determined on a case-by-case basis.

Comment: A comment from Japan was concerned about delay due to quarantine and inspection procedures in depositing seeds in the United States because there are no Japanese depositories for seeds. It asked for publication of procedures governing the deposit of seeds in a U.S. depository by foreign depositors.

Response: The proposed regulations are intended to apply equally to all applicants regardless of country of origin. Where delay is a problem, the regulations provide for extensions of time under 37 CFR 1.136 in appropriate cases. Where a depository does not exist to accept a biological material that would need to be deposited before a patent was granted, the Office would take the position that the requirements of 35 U.S.C. 112 were not satisfied for such an invention.

Comment: Several comments suggest that the rules misinterpret the law, such as the *Lundak* decision (723 F.2d 1216, 227 USPQ 90 (Fed. Cir. 1985)), in stating that the written description requirement of 35 U.S.C. 112, not otherwise satisfied at the time of filing, may be satisfied by an appropriate deposit after the filing date. Nor may a post-filing deposit satisfy the best mode requirement under the principles of the *Gay* decision (309 F.2d 768, 135 USPQ 311 (CCPA 1962)). It is suggested that a post-filing deposit may only be used to satisfy the enablement requirement of 35 U.S.C. 112.

Response: Section 1.201(a) as published in the advance notice has been completely rewritten to indicate that where a claimed invention is, or relies on, a biological material which is not known and readily available to the public and which cannot be described in writing alone, the disclosure may include a deposit of a biological material deposited in a depository and under conditions complying with these regulations. The proposed rules are intended to address procedural

requirements rather than substantive issues relating to deposits. Thus, where a deposit may be capable of meeting some requirement of 35 U.S.C. 112, the rules are intended to prescribe conditions under which the deposit would be suitable. The rules are not intended to address which requirements of 35 U.S.C. 112 may be met by the making of deposits. If the substantive law is that, for example, the written description requirement of 35 U.S.C. 112, not otherwise satisfied at the time of filing, may not be satisfied by a post-filing date deposit of a biological material, such a deposit, even if made in accordance with these rules, would not satisfy the statute.

Comment: Several comments questioned the "known and readily available" exception to the requirement for a deposit. One comment would delete the "known" requirement since it is not clear how one would establish that a biological material is known. On the other hand, another comment suggested that the "readily available" requirement be deleted because it is not required by 35 U.S.C. 112 and the meaning of "readily" is uncertain and would be subject to litigation.

Response: The suggestion to change the term "known and readily available" is not being adopted. The meaning and intent behind the use of the term was discussed in the advance notice. The term has been a part of Office policy and practice since at least July 1971. See M.P.E.P. § 608.01(p)C (3rd ed., rev. 29). Whether a biological material is "known and readily available" will continue to be decided on a case-by-case basis.

Comment: The term "in a reproducible manner" in § 1.201(b) should be replaced with—without undue experimentation—to assure the same standard for enablement regardless of whether biological materials are involved.

Response: The suggestion is being adopted. If invention-dependent biological material cannot be made or isolated in a reproducible manner, then the invention necessarily cannot be practiced without undue experimentation.

Comment: The term "and test" in § 1.201(b) should be deleted since it contradicts the premise that the biological material be available without restriction.

Response: The suggestion has been rendered moot by the deletion of the second sentence of § 1.201(b) as published in the advance notice.

Comment: One comment suggested that if the Office intends that the applicant be independent of the depository, then the term "depositor" in

§ 1.202(b)(2) as published in the advance notice is unclear because it does not exclude the situation where depositor and depository are the same, such as a university in the case of an academic inventor. Another comment suggested a "rule of reason" approach with respect to suitability requirements for depositories under § 1.202. For example, in some cases, such as with universities, there may be no available depository other than one which is not independent of the applicant yet the depository may meet all the other suitability criteria. That comment suggests the use of the word "should" in place of "must" in § 1.202(b). The comment suggests, alternatively, to amend the rule to include a presumption of suitability.

Response: None of the suggestions are being adopted. The term "depositor" is intended to include the party on whose behalf the deposit is made. The rationale of the Office in requiring that a depository, if not an International Depository Authority (IDA), be independent of the depositor was adequately discussed in the advance notice. While the intent of the Office is that once the patent issues, the deposit be beyond the control of any party having rights in the patent, the Office believes that the term "depositor" in § 1.202(b)(2) as published in the advance notice does exclude the situation where depositor and depository are the same. Section 1.202(b)(2) as published in the advance notice is now proposed § 1.202(a)(ii)(2).

Comment: The meaning of "an expeditious and proper manner" in § 1.202(b)(6) is unclear.

Response: The quoted term is considered to be the international norm. Compare Rule 2.3 of the Budapest Treaty. Section 1.202(b)(6) as published in the advance notice is now proposed § 1.202(a)(ii)(6).

Comment: A procedure should be established for a recognized depository under § 1.202(b) to extend the list of kinds of biological materials accepted, analogous to Rule 3.3 of the Budapest Treaty.

Response: The suggestion has essentially been adopted in new proposed § 1.202(d).

Comment: One comment suggested that § 1.203(a) should be revised to permit depositing up until the time the Notice of Allowance and Issue Fee is paid. Another comment suggested that a sentence be added at the end of § 1.203(a) indicating that the mailing date of the Notice of Allowance and Issue Fee Due will be brought to the applicant's attention at the time the request for deposit is made.

Response: The comments appear to misconstrue § 1.203(a) as published in the advance notice, which stated that a requirement for a deposit by the examiner will be made no later than the date the Notice of Allowance and Issue Fee Due is mailed. The language in § 1.203(a) has been rearranged to clarify this statement. The due date for making a deposit is governed by § 1.208. Paragraph (c) thereof permits depositing up until the time the issue fee is paid and beyond if an appropriate extension of time is obtained. Notwithstanding the rules on time of making a deposit, the rules are not intended to supersede existing Office practice for withdrawing allowed applications from issue when warranted.

Comment: One comment questioned why an original post-filing deposit requires a verified statement under § 1.203(b) while a replacement deposit under § 1.204(b) requires only a statement.

Response: The rules as proposed require a verified statement when either an original or a replacement deposit is made, except if the person making the statement is an attorney or agent registered to practice before the Office, in which case the statement need not be verified.

Comment: A number of comments suggested that if a biological material subsequent to filing becomes known and readily available to the public, there should no longer be a requirement to make, maintain or replace a deposit of it.

Response: The suggestion has been adopted with respect to replacement deposits in new proposed § 1.204(f). The rules as published in the advance notice and as proposed do not require an original deposit when the biological material is known and readily available to the public.

Comment: Since even an original deposit may be made at any time up to the time specified in § 1.208(c), it can be made regardless of whether an earlier, same or different, deposit was made and became nonviable. The strict time conditions for replacement and the consequences that follow therefrom should thus not apply while the application is still pending.

Response: The suggestion has been essentially adopted in new proposed § 1.204(e). Paragraph (e) prescribes the time for making a replacement deposit while a patent application is still pending as the same time for making an original deposit. The applicant is required to promptly notify the Office after receiving notice that the depository cannot furnish samples of the deposit for any reason. A replacement deposit

may be made during this time for any reason, including where the original deposit has become contaminated or lost its disclosed function. Section 1.204(b) is proposed to be revised to require corroboration that the replacement deposit is the same as the biological material described in the specification.

Comment: The time for replacing a deposit under § 1.204 should be extendable depending upon the situation, such as where there is a need for a new growing season to replace plant material.

Response: The previous comment and response addressed the question of replacement deposits in pending applications. The suggestion has been essentially adopted for replacement deposits after the patent has issued in § 1.204(a). Paragraph (a) is proposed to be revised by allowing for an extension of time and by subjecting the time requirement for making a replacement deposit to paragraphs (e), (f) and (g) of § 1.204. Requests for extension of time shall be by petition, only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action is due, but in no case will the mere filing of the request effect any extension.

Comment: Where there are generic claims, the requirement of the "same" biological material in § 1.203(b) and the "identical" biological material in § 1.204(b) should be broadened to include biological materials falling within the scope of the claims.

Response: While an application is still pending, the rules as proposed require that an original or replacement deposit be the same as the biological material described in the application as filed. In cases where there is more than one biological material described, a number less than all of them may be required to be deposited depending upon the facts of the case. The question of whether a post-filing date deposit of a species described generically in the application as filed is the "same" under the rules will have to be decided on a case-by-case basis. There may be cases where a post-filing date deposit, while the same as a biological material described in the application as filed, is of a material different from that of the original deposit due to the circumstances of prosecution. So long as the material(s) deposited and ultimately relied on for purposes of satisfying 35 U.S.C. 112 are described in the application as filed, this requirement of the rules is satisfied.

Comment: Where an original, functional, uncontaminated deposit

loses its functionality or becomes contaminated, replacement should be permitted even if the depository could still furnish samples.

Response: Proposed § 1.204(e) permits replacement deposits during pendency of an application for any reason. The suggestion is not being adopted for already issued patents. As stated in the advance notice, the best evidence of what was originally deposited should not be lost through destruction or replacement if made in association with an existing patent. New paragraph (h) of § 1.204 is proposed to be added to indicate that while a patentee may not replace a viable deposit where the depository can furnish samples, nothing in these regulations is intended to prohibit a patentee from making an additional deposit of a biological material where an earlier deposit has become contaminated or has lost its capability to function as described in the specification.

Comment: It should be explicitly stated in § 1.204(a) that the term "for any reason" includes loss of viability.

Response: The suggestion is not being adopted. While the term "for any reason" includes loss of viability, the Office does not believe it needs further explication in the rule.

Comment: Under § 1.204(a)(2), if a deposit is available within the jurisdiction of the depository, no replacement deposit should be necessary. This is so since if the depositor and a second depository are in the same jurisdiction as the original depository, they would also be unable to provide samples outside of the jurisdiction.

Response: The suggestion is being essentially adopted. § 1.204(a)(2) has been deleted and new § 1.204(g) is proposed.

Comment: The terms "after learning" and "from a depository" should be deleted from § 1.204(c) since the first term is ambiguous and unnecessary and since written notice from anyone should be sufficient that a replacement deposit is needed.

Response: The language objected to does not appear in proposed § 1.204(c).

Comment: Many comments questioned the statutory authority to regulate a patentee's conduct after expiration of the patent under § 1.205, even under the guise of a condition precedent. A similar comment suggested that "beyond" in § 1.205 be replaced with "during." One comment suggested that it is not clear in § 1.205 whether the conditions of the first sentence are to be taken as fulfilling the requirements of the second sentence, or whether the second sentence is an additional

requirement. The comment further suggested that it is unclear from the commentary whether there are different requirements according to whether a deposit is made under the Budapest Treaty or not.

Response: These issues were addressed in the advance notice. The Office believes it is appropriate through rulemaking to assure that a deposited biological material necessary for practice of a patented invention be available without significant restriction after expiration of the patent for which the deposit was made by putting the burden on the depositor. The term of the deposit must comply with the requirements of each sentence of § 1.205, whether or not the deposit is made under the Budapest Treaty.

Comment: If a depository were permitted to maintain a deposit as it saw fit, based on demand and scientific interest, it would meet the public interest of having the deposit available after the patent expires and at the same time, avoid placing an excessive cost burden on the shoulders of patentees.

Response: As the *quid pro quo* for receiving a patent, the statute requires a patentee to provide disclosure sufficient to enable one skilled in the art to make or use the invention. The statute does not provide for an expiration date for enablement. Section 1.205 as proposed is considered to be a reasonable compromise between a patentee's obligation to provide an enabling disclosure in reasonably permanent form and the loss of exclusivity upon the expiration of the patent. It is the statute which governs what the public interest is. A depository is not responsible for the public interest nor would a depository want this responsibility. Moreover, a depository's control over a deposit is limited by the contractual obligations between it and the depositor. The Office cannot compel a depository to make samples of a deposited material available beyond the term of deposit if the depositor has not contracted with the depository to do so.

Comment: There should be a provision for extending the term of deposit under § 1.205 by petition to the Commissioner in extraordinary situations and specifying under what conditions such a petition will be granted.

Response: It is assumed that this comment intended for a third party to be able to extend the term of deposit. The term of deposit is a contractual matter between the depositor and the depository. The only concern of the Office thereover is that the term of deposit complies with the rule.

Comment: In response to a solicitation for comments in the advance notice on the advisability of and rationale for seeking a provision in the law that would permit the type of restrictions on access to a deposit after the patent issues that are recommended in the April 8, 1987 WIPO report on the Industrial Property Protection of Biotechnological Inventions, every comment which took a position on the WIPO recommendations was in favor of their adoption. Additionally, it was suggested, for deposits whether or not under the Budapest Treaty, that requests for samples be in writing, signed and dated, contain the name and address of the requestor and the accession number of the deposit, and that this information be communicated in writing, along with a copy of the request, to the owner of the patent by the depository, as specified in Rules 11.4(c), (e) and (g) of the Budapest Treaty. Other comments were that requestors hold depositories and patent owners harmless regarding any damage caused by the deposited material, make a full accounting to patent owners of their uses of the deposited material, and provide proof that they have complied with all restrictions on access to deposited material.

Response: The Office has concluded that its position expressed in the advance notice that samples of a deposited biological material be available without restriction upon the granting of a patent did not have the flexibility permitted by law and did not adequately protect the patent owner. Given the unique nature of deposit requirements in patent jurisprudence and their value in practicing the invention, it is not unreasonable to allow a depositor to impose some minimal conditions on the requesting party in the obtaining of samples from a depository during the patent term so long as the conditions do not interfere with making the patent disclosure public and do not effectively restrict the requesting party's access. New proposed § 1.207(b) essentially incorporates the provisions of Rules 11.4(c), (e) and (g) of the Budapest Treaty. New proposed § 1.207(c) incorporates some of the recommendations in the April 8, 1987 WIPO report. Recommendations concerning restrictions to experimental purposes and limiting exports need further study and thus are not being incorporated into the text of the proposed rules at this time. Suggestions that requesting parties hold depositories and patent owners harmless regarding any damage caused by the deposited material, make a full accounting to

patent owners of their uses of the deposited material, and provide proof that they have complied with all restrictions on access to deposited material are not being adopted. The Office believes such additional requirements are not justified and would also be excessively burdensome to administer.

Comment: Where all that remains to comply with 35 U.S.C. 112 is a deposit, § 1.208(a) should specify that a provisional rejection be made under 35 U.S.C. 112.

Response: The suggestion is not being adopted. So long as the applicant has not made an acceptable deposit or assured the Office that an acceptable deposit will be made within the required time, the claims are properly rejected without provision. It bears emphasizing that an applicant's assurance that an acceptable deposit will be made within the required time must include a statement as to precisely what will be deposited and under what specific conditions so that an examiner can readily determine whether there are any outstanding issues. A general statement tracking the rule that an "acceptable" deposit will be made, without further description, will not be accepted as an appropriate assurance that an acceptable deposit will be made.

Comment: The requirement in § 1.208(d)(3) of a taxonomic description of a deposit may be unduly burdensome in some situations, such as where taxonomy has no real bearing upon the claims, or unnecessary in others, such as where the species is not novel or the strain is novel but does not differ significantly from the rest of the species. The same comment suggests that where required by an examiner and where a satisfactory deposit has been made, a taxonomic description should be permitted to be added after filing without it being considered to be new matter, since it is inherent in the deposited material.

Response: The extent to which a taxonomic description of the deposited material is required will depend on the facts of the case. It must be sufficient for purposes of 35 U.S.C. 112. It must be sufficient to permit verification that deposited biological material is in fact that disclosed (see, for example, proposed § 1.203(b)). It must be sufficient to allow for a reasonable examination of the patent application so that prior art may be properly distinguished. Once the patent issues, it must be sufficient to aid in the resolution of questions of infringement. Whether the addition of taxonomic description information after filing is

permissible will also depend on the facts of the case.

Comment: Several comments from foreign sources appear to have interpreted a response in the commentary in the advance notice to the effect that applicants may not be granted foreign priority in applications filed in the United States if they fail to make a deposit in a permanent depository acceptable to that foreign country before the U.S. filing date. These comments suggest that foreign priority should be granted so long as a deposit is made according to U.S. rules.

Response: The response in the advance notice correctly stated that applicants may not be granted priority in applications filed in countries foreign to the United States if they fail to make a deposit in a permanent depository acceptable to that foreign country before the filing date of the application in the United States. The response in the advance notice did not state that applicants in the United States could not obtain the benefit of the filing date of an earlier foreign-filed application under 35 U.S.C. 119 if a suitable deposit were not made before the U.S. filing date.

Comment: Another comment along the same lines as the previous comment appeared to suggest that it is not clear if foreign priority will be granted in view of the proscriptions in 35 U.S.C. 104 regarding acts in a foreign country. As a corollary, clarification was requested as to what effect 35 U.S.C. 104 will have on the proof of a U.S. invention where the deposit was made in a foreign depository, such as in an interference situation.

Response: The proposed rules are intended to address procedural requirements rather than substantive issues relating to deposits. The effects of 35 U.S.C. 104 vis-a-vis deposits in foreign countries are deemed to be substantive.

Comment: The Office has been inconsistent in its deposit requirement practice. For example, submission of a copy of a contract for deposit of a sample has typically been considered insufficient proof of existence of deposit. The commentary should discuss elements of proving that a deposit has been made or assuring that it will be made.

Response: Since the comment did not provide any examples, it is unknown to the Office to what extent, if any, it has been inconsistent with respect to the quantum of proof it will accept of the existence of a suitable deposit. A copy of a contract should always be accepted as evidence that a deposit existed, but the contract may not specify all the

conditions necessary to accept the deposit for patent purposes. The existing guidelines as they appear in M.P.E.P. 608.01(p)C state that a copy of the contract with the depository may be required. Once the requirements for deposits are finalized and rules are in place, the Office intends to create a form with which any necessary proof of a suitable deposit may be submitted.

Comment: One comment recognizes that the examiner has the initial burden of giving reasons why a deposit is required and suggests that an applicant's assertions as to why a deposit is not required should be taken at face value absent evidence to the contrary. The comment then goes on to suggest that certain presumptions should be made explicit. For example, an examiner's opinion about "unpredictability" should not be sufficient to sustain the examiner's burden that a deposit is required. The mere fact that a selection technique was used in the process of making a biological material should not create a presumption that the process is not reproducible. An opinion of an expert or that experiments have confirmed reproducibility should suffice to overcome a deposit requirement.

Response: The Office does not believe that it is feasible to set rules or guidelines as to the type or character of proof which an examiner or applicant must present to meet the evidentiary burden on the issue of the necessity of a deposit. This is a substantive law issue which is highly dependent on the facts in each case. It is clear that the initial burden is on the Office, and that burden is not satisfied by a mere conclusory statement.

Comment: The requirement that inventors bear both the cost of a deposit in a depository and the cost of maintaining the material privately in case replacement is needed is burdensome and legal support is inadequate. An inventor should be able to choose which cost to bear. If an inventor chooses the depository and the deposit loses its viability, the public has been any better protected than if the patentee held the deposit all along. If the patentee chooses to maintain the deposit, the patentee runs the risk that the patent will be held invalid if reasonable access is not granted, or the deposit is tampered with, or lost. There is no reason to believe that this would be common but if it did happen, there is little public harm. The public will have had the public disclosure in the patent. If the patent is invalidated, the patentee loses exclusivity. If the patent is not

invalidated, it means that no deposit was necessary in the first place.

Response: While clearly the cost of making and maintaining a deposit in a depository is a burden which applicants and patentees in other fields do not have, the requirement of a deposit in a depository independent of the depositor is the only way to assure that the public interest is served. It is no answer to say that if the depositor, serving as the depository, fails to make samples available, the public is not harmed because the patent may be invalidated. The public may be denied the right to practice the invention after the patent has expired. On balance, public and patent owner interests are better served by independent depositories having the capability of storing and maintaining biological material.

Comment: The rules should require that deposit information be included in the abstract of the disclosure.

Response: The Office does not intend at this time to propose a rule requiring where deposit information should appear in a patent. There is no apparent compelling public interest to adopt a specific location for deposit information nor would the administrative burden of enforcing such a rule appear to be justified.

Comment: There should be some provision which would allow payment to the patentee of a fee every time a request was made by a requestor for a sample of a deposit in an amount insufficient to be a restraint on the availability of the deposited material but enough to alleviate some of the financial burden on the patentee.

Response: If the patentee is required to make a deposit to meet a statutory requirement for obtaining a patent, there is no good reason why the public should pay any fee beyond that for administrative handling.

Comment: It was suggested that § 1.207(c) (now § 1.207(d)) be deleted. This provision appears to be unnecessary since a requestor could obtain this information from the depository or by reviewing the file history.

Response: The suggestion is not being adopted. Certification is a service to depositories and requestors since the mere disclosure of a deposited material in a patent does not necessarily mean that it is available or accessible.

Other Considerations

The proposed rules are in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule change is not expected to have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The proposed deposit practice will not impose extra work on patent applicants (whether small or large businesses or individuals).

The Patent and Trademark Office has determined that this rule change being proposed is not a major rule under Executive Order 12991. The annual effect on the economy will be less than \$100 million. There will be no major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no federalism implications affecting the relationship between the national government and the States as outlined in Executive Order 12612.

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed to make a deposit or request a sample, and completing and reviewing the collection of information. It is further estimated that a respondent depository would spend about five hours collecting and submitting the necessary information to be recognized as a suitable depository by the Office. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents,

Reporting and recordkeeping requirements, Small business.

For the reasons set out in the preamble, 37 CFR Part 1 is being proposed for amendment as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Centered heading and new §§ 1.200 to 1.208 are proposed to be added as set forth below:

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Deposit of Biological Material

- | | |
|-------|-------------------------------------|
| Sec. | |
| 1.200 | Biological material. |
| 1.201 | Need to make a deposit. |
| 1.202 | Acceptable depository. |
| 1.203 | Time of making an original deposit. |
| 1.204 | Replacement of deposit. |
| 1.205 | Term of deposit. |
| 1.206 | Viability of deposit. |
| 1.207 | Furnishing of samples. |
| 1.208 | Examination procedures. |

Deposit of Biological Material

§ 1.200 Biological material.

For the purposes of these regulations pertaining to the deposit of biological material for patent purposes, the term biological material shall include material that is capable of self-replication either directly or indirectly. Representative examples include bacteria, fungi including yeast, algae, protozoa, eukaryotic cells, cell lines, hybridomas, plasmids, viruses, plant tissue cells, lichens and seeds. Viruses, vectors, cell organelles and other non-living material existing in and reproducible from a living cell may be deposited by deposit of the host cell capable of reproducing the non-living material.

§ 1.201 Need to make a deposit.

(a) Where a claimed invention is, or relies on, a biological material which is not known and readily available to the public and which cannot be described in writing alone, the disclosure may include a deposit of a biological material deposited in a depository and under conditions complying with these regulations.

(b) Biological material need not be deposited if it is known and readily available to the public or can be made or isolated without undue experimentation from known and readily available material. Samples will be considered to be readily available

even though some requirement of law or regulation of the United States or of the country in which the depository institution is located permits access to the material only under conditions imposed for safety, public health or similar reasons.

(c) The reference to a specific organism or other biological material in a specification disclosure does not create any presumption that the specific material is necessary to satisfy 35 U.S.C. 112 or that a deposit in accordance with these regulations is required.

§ 1.202 Acceptable depository.

(a) A deposit shall be made in:

(1) Any International Depository Authority (IDA) as established under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, or

(2) any other depository recognized to be suitable by the Office. Suitability will be determined by the Commissioner on the basis of the administrative and technical competence, and agreement of the depository to comply with the terms and conditions applicable to deposits for patent purposes. The Commissioner may seek the advice of impartial consultants from the biotechnology industry or governmental agencies on the suitability of a depository. The depository must:

- (i) Have a continuous existence;
- (ii) Exist independent of the control of the depositor;
- (iii) Possess the staff and facilities sufficient to examine the viability of a deposit and store the deposit in a manner which ensures that it is kept viable and uncontaminated;
- (iv) Provide for sufficient safety measures to minimize the risk of losing biological material deposited with it;
- (v) Be impartial and objective; and
- (vi) Furnish samples of the deposited material in an expeditious and proper manner.

(b) If any depository under paragraph (a) of this section defaults or discontinues the performance of any of the tasks it should perform, the Office will recognize as a substitute in any pending application or patent a deposit, which must be viable if the biological material is of a kind capable of self-replication, made with an IDA or depository recognized to be suitable by the Office which is transferred to said depository from the defaulting depository in the manner required for replacing a deposit under § 1.204.

(c) A depository seeking status under paragraph (a)(2) of this section must direct a communication to the Commissioner which shall:

(1) Indicate the name and address of the depository to which the communication relates;

(2) Contain detailed information as to the capacity of the depository to comply with the requirements of paragraph (b) of this section, including information on its legal status, scientific standing, staff and facilities;

(3) Indicate that the depository intends to be available, for the purposes of deposit, to any depositor under these same conditions;

(4) Where the depository intends to accept for deposit only certain kinds of biological material, specify such kinds;

(5) Indicate the amount of any fees that the depository will, upon acquiring the status of suitable depository under paragraph (a)(2) of this section, charge for storage, viability statements and furnishings of samples of the deposit.

(d) A depository having status under paragraph (a) of this section limited to certain kinds of biological material may extend such status to additional kinds of biological material by directing a communication to the Commissioner in accordance with paragraph (c) of this section. If a previous communication under paragraph (c) of this section is of record, items in common with the previous communication may be incorporated by reference.

(e) Once a depository is recognized to be suitable by the Commissioner or has defaulted or discontinued its performance under this section, notice thereof will be published in the Official Gazette of the Patent and Trademark Office.

§ 1.203 Time of making an original deposit.

(a) An original deposit may be made at any time before filing an application for patent or, pursuant to a requirement that will be made by the examiner no later than the date the Notice of Allowance and Issue Fee Due is mailed, during pendency of the application for patent.

(b) When the original deposit is made after the effective filing date of an application for patent, the applicant shall promptly submit a verified statement from a person in a position to corroborate the fact, and shall state, that the biological material which is deposited is the same biological material described in the application as filed, except if the person is an attorney or agent registered to practice before the Office, in which case the statement need not be verified.

§ 1.204 Replacement of deposit.

(a) Where a depository possessing the original deposit cannot furnish samples

of the deposit for any reason, the depository shall, promptly after having noted its inability to furnish samples, notify the depositor of such inability, indicating the cause thereof. Subject to paragraphs (e), (f) and (g) of this section, the depositor shall be required to make a replacement deposit of the biological material which was originally deposited within three months of receiving notification that the depository cannot furnish samples. The period for satisfying this requirement is extendable upon petition, only for sufficient cause, and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action is due, but in no case will the mere filing of the request effect any extension. The replacement shall be made in any acceptable depository under § 1.202(a).

(b) An applicant or patent owner shall notify the Office in writing, in each application or patent affected, as soon as reasonably possible after a replacement deposit is made. This notification shall state the name and address of the depository, the accession number for the deposit, the date of making the deposit, the results of a viability test if applicable (as provided for in § 1.206), the reason for making the replacement deposit, and include a verified statement, except that if made by an attorney or agent registered to practice before the Office, the statement need not be verified. If the replacement deposit relates to a pending application, the statement shall be by a person in a position to corroborate the fact, and shall state, that the biological material which is deposited as a replacement is the same biological material described in the application as filed. If the replacement deposit relates to a patent, the statement shall be by a person in a position to corroborate the fact, and shall state, that the replacement deposit is identical to that originally deposited. The notification shall be placed in the relevant application or patent file.

(c) A depositor's failure to replace a deposit within the time required by this section may cause the application or patent involved to be treated in any office proceeding as if no deposit were made.

(d) In the event a deposit is replaced, the Office will apply a rebuttable presumption of identity between the original and the replacement deposit where the patent making reference to the deposit is relied upon during any Office proceeding.

(e) Where an application is still pending, the time for making a replacement deposit shall be the same as the time for making an original

deposit under § 1.203(a). The applicant shall promptly notify the Office after receiving notice that the depository possessing the original deposit cannot furnish samples of the deposit for any reason. A replacement deposit may be made during this time for any reason, including where the depository can furnish samples but the original deposit has become contaminated or has lost its capability to function as described in the specification.

(f) In no case is a replacement deposit of a biological material necessary where the biological material, in accordance with § 1.201(b), need not be deposited.

(g) No replacement deposit of the biological material is necessary where a viable deposit is in the depository but the depository for national security, health or environmental safety reasons is unable to provide samples to requesters outside of the jurisdiction where the depository is located.

(h) A patentee may not replace a viable deposit where the depository can furnish samples. Nothing in these regulations is intended to prohibit a patentee from making an additional deposit of a biological material where an earlier deposit, otherwise viable, has become contaminated or has lost its capability to function as described in the specification.

§ 1.205 Term of deposit.

A deposit shall be made for a term of at least thirty (30) years after the date of a viable deposit and at least five (5) years after the most recent request for the furnishing of a sample of the deposited biological material was received by the depository. In any case, samples must be stored under agreements that would make them available beyond the enforceable life of the patent for which the deposit was made.

§ 1.206 Viability of deposit.

(a) A deposit of biological material that is capable of self-replication either directly or indirectly must be viable at the time of deposit and during the term of deposit. Viability may be tested by the depository. The test must conclude only that the deposited material is capable of reproduction. No evidence is necessarily required regarding the ability of the deposited material to perform any function described in the patent application.

(b) A viability statement for each deposit of a biological material defined in paragraph (a) of this section not made under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of

Patent Procedure must be filed in the application and must contain:

- (1) The name and address of the depository;
 - (2) The name and address of the depositor;
 - (3) The date of deposit;
 - (4) The identity of the deposit and the accession number given by the depository;
 - (5) The date of the viability test;
 - (6) The procedures used to obtain a sample if the test is not done by the depository; and
 - (7) A statement that the deposit is capable of reproduction.
- (c) If a viability test indicates that the deposit is not viable upon receipt, or the examiner cannot, for scientific or other valid reasons, accept the statement of viability received from the applicant, the examiner shall proceed as if no deposit has been made. The examiner will accept the conclusion set forth in a viability statement issued by a depository recognized under § 1.202(a).

§ 1.207 Furnishing of samples.

(a) The deposit must be made under conditions that assure that:

- (1) Access to the deposit will be available during pendency of the patent application making reference to the deposit to one determined by the Commissioner to be entitled thereto under § 1.14 and 35 U.S.C. 122, and
- (2) Subject to paragraphs (b) and (c) of this section, all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of the patent.

(b) The depository may contract with the depository to require that samples of a deposited biological material shall be furnished only if a request for a sample, during the term of the patent:

- (1) Is in writing, signed and dated;
- (2) Contains the name and address of the requesting party and the accession number of the deposit; and
- (3) Is communicated in writing by the depository to the depositor along with a copy of the request, the date on which the sample was furnished, and the name and address of the party to whom the sample was furnished.

(c) the depositor may require that sample of a deposited biological material shall be furnished only if the requesting party has agreed in writing, not to make the deposited biological material or any biological material derived therefrom available during the term of the patent to any third party without the written permission of the depositor, and to assume the burden of proof concerning compliance with the agreement. With the exception of the

Commissioner and an acceptable depository under § 1.202 in which the requesting party has made a new deposit for patent purposes of the deposited biological material or any biological material derived therefrom, any person or entity other than the requesting party and the depositor shall be deemed to be a third party under this paragraph. For the purposes of this paragraph, any biological material shall be deemed to be derived from the deposited biological material if it is replicated from, or would not have been produced but for access to, the deposited biological material, provided that the derived matter still exhibits the essential characteristics of the deposited biological material.

(d) Upon request, the Office will certify whether a deposit has been stated to have been made under conditions which make it available to the public as of the issue date of the patent grant provided the request contains:

- (1) The name and address of the depository;
- (2) The accession number given to the deposit;
- (3) The patent number and issue date of the patent referring to the deposit; and
- (4) The name and address of the requesting party.

§ 1.208 Examination procedures.

(a) The examiner shall determine pursuant to § 1.104 in each application if a deposit is needed, in case one has not been made, or if a deposit actually made is acceptable for patent purposes. A deposit accepted in any acceptable depository under § 1.202(a) shall be accepted for patent purposes if made under conditions complying with § 1.207(a). If a deposit is required and has not been made or replaced in accordance with these regulations, the examiner shall in an Office action reject the affected claims in the application under the appropriate provisions of 35 U.S.C. 112, explaining why a deposit is needed and/or why a deposit actually made cannot be accepted.

(b) The applicant shall respond to a rejection under paragraph (a) of this section by—

- (1) Making an acceptable original or replacement deposit or assuring the Office in writing that an acceptable deposit will be made on or before the date of payment of the issue fee, or
- (2) Establishing that the involved biological material is known and readily available to the public, or
- (3) Arguing why a deposit is not required under the circumstances of the

application considered. Other replies to the examiner's action shall be considered non-responsive. The rejection will be repeated until either paragraph (b)(1) or (b)(2) of this section is satisfied or the examiner is convinced that a deposit is not required.

(c) If an application is otherwise in condition for allowance except for the required deposit and the Office has received a written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office will mail to the applicant a Notice

of Allowance and Issue Fee Due together with a requirement that the required deposit be made within three months. The period for satisfying this requirement is extendable under 37 CFR 1.136. Failure to make the required deposit in accordance with this requirement will result in abandonment of the application for failure to prosecute.

(d) For each deposit made pursuant to these regulations, the specification shall contain:

(1) Accession number for the deposit;

(2) Date of the deposit;
(3) Taxonomic description of the deposit and
(4) Name and address of the depository.

Dated: September 9, 1988.

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 88-23102 Filed 10-5-88; 8:45 am]

BILLING CODE 3510-16-M

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H.R. 517/Pub. L. 100-464

To designate Soldier Creek Diversion Unit in Topeka, Kansas, as the "Lewis M. Paramore Diversion Unit." (Oct. 3, 1988; 102 Stat. 2271; 1 page) Price: \$1.00

H.R. 2046/Pub. L. 100-465

Rio Grande Pollution Correction Act of 1987. (Oct. 3, 1988; 102 Stat. 2272; 2 pages) Price: \$1.00

H.J. Res. 580/Pub. L. 100-466

To designate the month of September 1988 as "National Sewing Month." (Oct. 3, 1988; 102 Stat. 2274; 1 page) Price: \$1.00

S. 2789/Pub. L. 100-467

Dwight David Eisenhower Commemorative Coin Act of 1988. (Oct. 3, 1988; 102 Stat. 2275; 3 pages) Price: \$1.00

S.J. Res. 169/Pub. L. 100-468

Designating October 2, 1988, as a national day of recognition for Mohandas K. Gandhi. (Oct. 3, 1988; 102 Stat. 2278; 2 pages) Price: \$1.00

S.J. Res. 333/Pub. L. 100-469

To designate the week of October 9, 1988, through October 15, 1988, as "National Job Skills Week." (Oct. 3, 1988; 102 Stat. 2280; 1 page) Price: \$1.00